

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.856 of 2015

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the appellants-applicants, challenging the order, dated 31.08.2015 in O.A.II (u) No.43 of 2005 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the claim petition filed by the appellants-applicants claiming compensation for the death of Mandla Vijaya Kumar (hereinafter referred to, as 'the deceased') in an untoward incident of accidental fall from train No.443 Yeshwantpur-Guntur passenger (hereinafter referred to, as 'the subject train') on 08.08.2004 between Linganeni Doddi and Malyala railway stations, was dismissed.

2. Heard both sides. Perused the record.

3. For convenience, the parties are hereinafter referred to, as per their array before the Tribunal.

4. The learned counsel for the applicants would contend that the deceased was studying 3rd year engineering course at Piditala Ranga Reddy Polytechnic College, Giddalur; that he was a *bona fide* passenger of the subject train; that while travelling in the subject train on

08.08.2004 from Guntakal to Giddalur to go to his college, the deceased had accidentally fallen from the said train between Linganeni Doddi and Malyala railway stations, suffered injuries and succumbed to the same; that there is evidence of A.Ws.1 and 2 and documents to substantiate that the deceased was a *bona fide* passenger of the said train and had an accidental fall from it; that the Tribunal had not properly appreciated the oral and documentary evidence adduced on behalf of the applicants and erroneously held that the deceased was not a *bona fide* passenger of the subject train and he did not die in an untoward incident of accidental fall from the running train; that the finding of the Tribunal are erroneous; that there is no rebuttal evidence from the side of the railways, and ultimately prayed to set aside the impugned order and grant compensation.

5. On the other hand, the learned counsel for the Railways supported the impugned order passed by the Tribunal and would contend that there are no direct witnesses to the purchase of journey ticket by the deceased as well as his alleged accidental fall from the subject train; that A.W.2 is a planted witness to claim the compensation; that the Tribunal had elaborately dealt with the oral and documentary evidence and rightly held that the deceased was not a *bona fide* passenger of the subject train and he

did not die in an untoward incident of accidental fall from the running train; that there is no infirmity and there is nothing to take a different view, and ultimately prayed to dismiss the appeal.

6. In view of the above submissions, the following points arise for determination in this appeal:

- 1) Whether the deceased Mandla Vijaya Kumar was a *bona fide* passenger of train No. 443 Yeshwantpur-Guntur passenger on 08.08.2004 and was travelling from Guntakal to Giddalur ?
- 2) Whether the deceased died in an untoward incident of accidental fall from running train No. 443 Yeshwantpur-Guntur passenger on 08.08.2004 between Linganeni Doddi and Malyala railway stations ?
- 3) Whether the impugned order passed by the Tribunal is liable to be modified or set aside ?
- 4) To what relief ?

Points 1 to 3:

7. To substantiate the claim of the applicants, A.Ws.1 and 2 were examined, and Ex.A1-Attested copy of First Information Report; Ex.A2-Attested copy of inquest report; Ex.A3-Attested copy of post mortem examination report; Ex.A4-family member certificate; Ex.A5-Attested copy final report and Ex.A6-family member certificate were got marked. On behalf of railways, R.Ws.1 and 2 were

examined and Ex.R1- DRM's report was got marked. C.Ws.1 and 2 were examined as Court Witnesses.

8. Specific case of the applicants is that on 08.08.2004, the deceased boarded train No.443 Yeshwantpur-Guntur passenger to travel from Guntakal to Giddalur by purchasing a journey ticket and fell accidentally from the said train between Linganeni Doddi and Malyala railway stations, suffered injuries and succumbed to the same. The railways denied the accidental fall as well as the deceased travelling in the subject train with a valid journey ticket.

9. The evidence of A.W.1, who is father of the deceased, reveals that his son, the deceased, died in an untoward incident of accidental fall from the subject train on 08.08.2004. He is not an eye-witness to the accidental fall. A.W.2, friend of deceased, deposed that he along with the deceased reached Guntakal by bus from Urvakonda and they parted their ways there. He is not a witness to the purchase of journey ticket and boarding the subject train, by the deceased. C.Ws.1 and 2 are revenue officials, who deposed about issuance of family member certificate marked as Ex.A6.

10. As per the evidence placed on record, the deceased was studying 3rd year engineering course at

Piditala Ranga Reddy Polytechnic College, Giddalur, and he came to his native village Uravakonda due to ill-health and after taking treatment, he was returning to Giddalur from Guntakal by the subject train, and in that process, he had accidental fall on 08.08.2004. The evidence of R.Ws.1 and 2 reveals that on 09.08.2004, a dead body was found on the side of railway track between Linganeni Doddi and Malyala railway stations. Both of them are not direct witnesses to the occurrence of death.

11. Ex.A1-copy of First Information Report reveals that an unknown dead body was found on railway track between Linganeni Doddi and Malyala railway stations. In Ex.A2 inquest report relating to the dead body of the deceased, there is specific mention that the deceased had fallen from running train. In Ex.A5 copy of final report also, there is specific mention that the deceased had fallen from a running train, sustained injuries and succumbed to the same. Ex.R1-DRM report discloses that there was a fall from a train. Under Ex.R1, there is specific mention that the fall is from train no.434. There is also evidence of A.W.1 that his son used to travel to Giddalur by train. The evidence of A.W.2 is clear that on 08.08.2004, the deceased came to Guntakal by bus for going to Giddalur. The dead body of the deceased was noticed on that day on the side of railway track between Linganeni Doddi and Malyala railway

stations. All the above circumstances clinchingly establish that the deceased had an accidental fall on 08.08.2004 while travelling by train no.443-Yeshwantpur-Guntur passenger. It appears from the record that train number is wrongly mentioned in Ex.R1 as 434 instead of 443. No such train bearing no.434 passed through Linganeni Doddi and Malyala railway stations at the relevant point of time of the incident.

12. The Tribunal, while dealing with the claim application, ignored the documentary evidence, particularly Ex.R1-DRM report, and held that there was no untoward incident of accidental fall and the deceased was not a *bona fide* passenger. When there was a fall from a train, it is quite natural to lose belongings. There is every possibility of misplacing the journey ticket. On this aspect, it is pertinent to refer the decision of the Hon'ble Supreme Court in **Union of India vs. Rina Devi**¹, wherein *inter alia* it is held as follows:

"Conflict of decisions has been pointed out on the subject. As noticed from the statutory provision, compensation is payable for death or injury of a 'passenger'. In Raj Kumari vs. Union of India [(1993) ACJ 846] referring to the scheme of Railways Act, 1890, it was observed that since traveling without ticket was punishable, the burden was on the railway administration to prove that passenger was not a

¹ Civil Appeal No.4945 of 2018 dated 09.05.2018

bonafide passenger. The Railway Administration has special knowledge whether ticket was issued or not. 1989 Act also has similar provisions being Sections 55 and 137. This view has led to an inference that any person dead or injured found on the railway premises has to be presumed to be a bona fide passenger so as to maintain a claim for compensation.”

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“We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

13. Therefore, mere absence of journey ticket in possession of the deceased is not a ground to hold that he was not a *bona fide* passenger. There is every possibility of the ticket being lost or misplaced in an incident of accidental fall.

14. The Tribunal has not appreciated the evidence on record in right perspective and erroneously concluded

that the applicants failed to discharge their initial burden and so, the deceased was not a *bona fide* passenger, and placing reliance on the decision of this Court in *Jetti Nagalaxmi v. Union of India*², held that the applicants are not entitled to compensation. The facts and circumstances of the above case are different from the case on hand where the initial burden lying on the applicants stands discharged.

15. The deceased was travelling from his native place to Giddalur where he was pursuing his studies. There would not be direct evidence in cases of accidental falls. Inference is required to be gathered from the relevant circumstances of the case. There is no reason for the deceased to commit suicide. From the evidence of A.W.2 and the recitals in Exs.A2, A.3, A.5 and R1, it can safely be concluded that the deceased was a *bona fide* passenger of the train no.443 Yeshwantpur-Guntur passenger and his death resulted in an incident of accidental fall from the said train. Hence, the impugned order passed by the Tribunal is liable to be set aside. The points are answered in favour of the applicants and against the railways.

² 2013 ACJ 1061

Point No.4:

16. In the result, the C.M.A. is allowed. The impugned order of the Tribunal is set aside. The claim application O.A.II(u) No.43 of 2005 filed by the applicants is allowed awarding compensation of Rs.8,00,000/- (Rupees eight lakhs) to the applicants as per the amended Schedule annexed to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. The respondent-railways are directed to deposit the said amount within a period of three months from the date of receipt of a copy of this judgment, failing which the applicants are entitled to interest @ 6% per annum on the compensation amount awarded from the date of this judgment till date of realization. The claimants are entitled to share the compensation amount equally. On deposit, the applicants are entitled to withdraw their respective shares along with accrued interest.

There shall be no order as to costs of this appeal. Pending Miscellaneous Petitions, if any, in the appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

13.11.2018
DRK

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13.11.2018

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