

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.153 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 23.01.2015 in O.A.A. No.138 of 2008 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 E.Prakash Reddy (hereinafter referred to, as 'the deceased') in an untoward incident of accidental fall from Telangana express (hereinafter referred to, as 'the subject train') on 13.07.2007 while travelling from Mancheri to Kazipet, 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 A.W.2, owner of welding shop, dropped the deceased at Mahcheri railway station and he witnessed the deceased standing in queue to purchase ticket to travel by the subject train; that A.W.1, wife of the deceased, also stated the same; that journey ticket of the deceased was

lost in the accidental fall; that the Tribunal erroneously held that the deceased did not die in an untoward incident and dismissed the claim application; that Ex.R2-DRM's report was prepared belatedly and no value can be assigned to the said report, but the Tribunal, relying on the said report, was pleased to dismiss the claim application, and ultimately prayed to allow the appeal granting the compensation.

5. On the other hand, the learned counsel for the Railways supported the impugned order passed by the Tribunal and would contend that the deceased was neither a *bona fide* passenger nor died in an accidental fall from the subject train; that A.W.2 is a planted witness to claim compensation; that there are many inconsistencies in the statements of A.Ws.1 and 2 given in the course of enquiry and their evidence given before the Tribunal and also in the inquest report; that the Tribunal disbelieved the evidence of A.W.2 assigning reasons and rightly dismissed the claim application; that there is no infirmity, 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 was a *bona fide* passenger of Telangana express on 13.07.2007 ?

- 2) Whether the deceased died in an untoward incident of accidental fall from Telangana Express on 13.07.2007 ?
- 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. Admittedly, A.W.1, who is wife of the deceased, is not an eye-witness to the incident. A.W.2 is said to be owner of welding shop who dropped the deceased at Mancherial railway station and saw the deceased purchasing a journey ticket on 13.07.2007. He also stated that the deceased wanted to travel by Telangana express from Mancherial to Jammikunta. Several inconsistencies are pointed out by the Tribunal in the evidence of A.W.2. In chief-examination affidavit, he stated that the deceased came to him on 12.7.2007 and wanted to work with him; he gave the deceased Rs.400/-, took him to railway station and make him stand in queue to purchase a journey ticket to go to Jammikunta. As per his evidence, he did not see the deceased boarding the Telangana express. When he was examined by railway authorities, he stated that he has not witnessed the purchase of journey ticket by the deceased to travel by Telangana express, but stated that the deceased worked under him for two months and he paid an amount about Rs.400/- to Rs.500/- due to him

and dropped him at Mancherial railway station. With regard to the deceased seeking employment or working under him, there is inconsistency. A.W.2 is a witness to the inquest. During the course of inquest, he did not state in Ex.A2 by which train the deceased wanted to travel. Further, the deceased standing in queue in Mancherial railway station to purchase journey ticket, was also not stated by A.W.2 during inquest. With regard to travel proposed to be undertaken by the deceased also, there is inconsistency in the evidence of A.W.1, who is wife of the deceased. A.W.1 stated that her husband (deceased) wanted to travel from Mancherial to Khajipet on 13.7.2007 by Telangana express. She also stated that on 12.7.2007, she gave send off to her husband to attend a function of their relatives at Jammikunta and that her husband did not go to Jammikunta on 13.7.2007. It is her further evidence that on 14.7.2007, she received death message of her husband. There is also no evidence of A.W.1 that the deceased worked under A.W.2 at any point of time. In such an event, there is no question of A.W.2 giving any amount due to the deceased either Rs.400/- or Rs.500/-. The evidence on record does not establish any acquaintance between A.W.2 and the deceased.

8. As per Ex.A2 inquest panchanama, it has come up that the deceased was travelling by some down train

towards Warangal, which falsifies the evidence of A.Ws.1 and 2 with regard to the deceased undertaking journey between Mancherial to Jammikunta. Further more, though other articles were recovered from the possession of the deceased, journey ticket was not found or traced in the vicinity of finding the dead body.

9. Further more, Ex.A3-post mortem examination report, which was conducted on 14.7.2007, indicates that the subject death had taken place between 10.30 hours and 14.30 hours on 14.07.2007. It also falsifies the deceased boarding Telangana express on 13.7.2007. Further more, as per the material placed on record particularly Ex.R2-DRM's report, the dead body was found at 8.00 AM on 14.7.2007. Had the deceased boarded Telangana express and accidentally fallen as contended, the dead body would have been found on the evening of 13.7.2007 itself.

10. Under these circumstances and in view of the inconsistencies in the evidence adduced on behalf of applicant, the initial burden lying on the applicants to establish that the deceased was a *bona fide* passenger of Telangana express on 13.7.2007 and died in an untoward incident of accidental fall from the said train, has not been discharged. The Tribunal has appreciated the evidence on

record in right perspective and arrived at correct findings. There is no infirmity. The points are held in favour of the railways and against the applicants. The appeal is devoid of merit and is liable to be dismissed.

Point No.4:

11. In the result, the C.M.A. is dismissed.

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

20.12.2018
DRK



Dr. SHAMEEM AKTHER, J

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