

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.935 of 2016

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 ('the Act', for brevity), is filed by the appellants-applicants, challenging the order, dated 22.08.2016, passed in O.A.(IIU) No.248 of 2008 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity).

2. Heard the learned counsel for the appellants-applicants, the learned Standing Counsel for the respondent-Railways and perused the record.

3. Learned counsel for the appellants would contend that the deceased-Gaddam Venkanna was travelling by train No.325 Kakatiya passenger from Khammam to Warangal on 14.03.2008 and he accidentally fell from the moving train one kilometre before reaching the destination and died instantaneously. It was revealed during inquest, that he possessed a valid journey ticket. There is also evidence of A.W.2 with regard to the deceased travelling in the subject train and accidentally falling from the moving train at wee hours on 14.03.2008. However, the Tribunal had not considered the same as there was no mention of it in the inquest report and other documents placed on record and erroneously held that the deceased was not a *bona fide* passenger and did not die in an untoward incident of accidental fall from the moving train and ultimately, prayed to grant compensation according to law by setting aside the impugned order.

4. On the other hand, the learned counsel for the respondent-railways would contend that the Tribunal had appreciated all the facts and circumstances and rightly held that the deceased was not a *bona fide* passenger and he did not die in an untoward incident of accidental fall from moving train. There is nothing to take a different view and ultimately, prayed to dismiss the appeal.

5. There is no dispute with regard to the fact that the appellants are the dependents on the deceased. The dispute is only with regard to travel made by the deceased on 14.03.2008 by train No.325 Kakatiya passenger from Khammam to Warangal with a valid ticket and his accidental fall from the moving train.

6. In view of the submissions made by both sides, the points that arise for determination are as follows:

1. Whether the deceased-Gaddam Venkanna was a *bona fide* passenger of train No.325 Kakatiya passenger from Khammam to Warangal on 14.03.2008?
2. Whether the deceased-Gaddam Venkanna died in an untoward incident of accidental fall from the aforesaid moving train?
3. Whether the impugned order, dated 22.08.2016, passed in O.A.(IIU)No.248 of 2008 by the Tribunal is liable to be set aside?"
4. To what relief?

7. POINTS 1 & 2:- To substantiate the claim, applicant No.1-wife of the deceased deposed as A.W.1 and also examined A.W.2 and got marked Ex.A1-copy of FIR, Ex.A2-copy of inquest report, Ex.A3-copy of P.M.E. report, Ex.A4-death report, Ex.A5-death certificate and Ex.A6-family members certificate. On behalf of

respondent/railways, no oral evidence was adduced, but Ex.R1-DRM's report was marked.

8. A.W.1 is the wife of the deceased. She spoke about the deceased travelling in Kakatiya passenger train on 14.03.2008 to reach Warangal and also stated that the deceased was a *bona fide* passenger on the said train. She also stated that the deceased was returning after attending the meeting of New Democracy Party from Secunderabad. Admittedly, A.W.1 is not an eye witness. A.W.2 is said to be a co-passenger of the deceased. In his chief-examination, A.W.2 reiterated the averments of the application for grant of compensation stating that the deceased is a *bona fide* passenger in train No.325 and was travelling from Khammam to Warangal by purchasing a ticket. He also stated that he saw the deceased falling down from the moving train. He did not pull the chain due to fear. On the contrary, Ex.A2-copy of inquest report reveals that while the deceased was crossing the track, one kilometre before railway station, he was hit by a train and succumbed to the injuries. So, the evidence of A.W.2 is running contra to the contents of Ex.A2-copy of inquest report with regard to the manner of death of the deceased. It is pertinent to note that in Ex.A2, by which train the deceased was travelling, the details of the ticket i.e., ticket number as 19890870 and some other articles belonging to the deceased which were found near the dead body of the deceased, were mentioned. There is no dispute with regard to the said ticket and it is not the case of the railways that the said ticket was not issued by the railways and it is not meant to travel in the subject train from Khammam to Warangal.

9. The DRM report marked as Ex.R1 dated 24.12.2008 reveals that the deceased did not cross the railway track at Yelgur railway station as claimed in the application. The enquiry reveals that the deceased along with his party members travelled by train No.325 on 14.03.2008 without any railway ticket from Nekkonda to Secunderabad and after meeting was over, he left by train No.325 Kakatiya passenger on the same day evening from Secunderabad to Nekkonda and accidentally fell between Yelgur to Nekkonda stations from the running train one kilometre away from Yelgur railway station out of his own negligence. It appears that the deceased was not a railway passenger as he was travelling without ticket. Hence, this is a false case. Ex.R1-DRM report demonstrates that there was fall of the deceased from train No.325 passenger in between Yelgur to Nekkonda stations. It mentions that there was no journey ticket for the deceased to the said travel. It appears that in Ex.R1-DRM's report, the ticket details found in Ex.A2 panchanama were not dealt with. Under-Ex.A2 copy of inquest report, there was a valid journey ticket possessed by the deceased. When there is a valid journey ticket possessed by the deceased and when it has come in the inquest report, it cannot be said that the deceased was not possessing journey ticket and he was not a *bona fide* passenger of train No.325. So, Ex.A2-copy of inquest report clearly demonstrates that the deceased was a *bona fide* passenger of train No.325. As per the DRM report, train No.325 had left in the evening of 13.03.2018. The dead body is found around 7.30 a.m. on 14.03.2008. Since it is a passenger train, it takes time to cover small distances. Therefore, it cannot be said that the deceased had not fallen from the moving train No.325.

10. There is no direct evidence that the deceased committed suicide. When there is a specific mention in the DRM report that the deceased had fallen from the moving train, there is nothing on record to take a different opinion. The death of the deceased was only due to an untoward incident of accidental fall from moving train No.325. Therefore, the impugned order passed by the Tribunal is liable to be set aside. As per the amended schedule annexed to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, the appellants are entitled to compensation of Rs.8 lakhs. The 1st appellant is entitled to half of the compensation awarded and the other appellants are entitled to share the remaining compensation.

11. In the result, the appeal is allowed setting aside the impugned order dated 22.08.2016 passed by the Tribunal in O.A.(IIU) No.248 of 2008. Consequently, the O.A. is allowed directing the respondent-Railways to pay compensation of Rs.8,00,000/- (Rupees eight lakhs) within three months from the date of receipt of a copy of this order, failing which, the appellants are entitled to interest @ 6% per annum from the date of this order till the date of realisation.

Miscellaneous Petitions pending, if any, in this appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 01.11.2018
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