

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.142 of 2016

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 21.03.2014, passed in O.A.A.No.221 of 2008 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the claim petition of the appellants-claimants claiming a compensation of Rs.4,00,000/- for the death of T.Veera Raju in an untoward incident of accidental fall from a running train No.7256 Narsapur Express at Secunderabad railway station while travelling from Secunderabad to Narsapur on 11.05.2008, was dismissed.

2. Heard both sides. Perused the record.

3. The learned counsel for the appellants-applicants would contend that the deceased was a *bona fide* passenger of train No.7256 Secunderabad-Narsapur Express, he was possessing a valid journey ticket bearing No.33683843 to travel from Secunderabad to Narsapur and the same was marked as Ex.A.1, which was seized from the dead body of the deceased and it has come in the inquest panchanama; the subject train was started at Secunderabad due to jerks, the deceased accidentally fell from the train; the Tribunal had not properly considered the evidence on record and erroneously dismissed the claim application of the applicants holding that there is inconsistency in the evidence of A.W.1-wife of the deceased; the

findings of the Tribunal are not based on evidence and record and are erroneous; and ultimately, prayed to set aside the impugned order and grant compensation in favour of the appellants by allowing the appeal.

4. On the other hand, the learned counsel for the respondent-Railways would contend that there is inconsistency in the evidence of A.W.1-wife of the deceased with regard to the purchase of ticket and the boarding the train; she has given different versions in her oral evidence; the Tribunal rightly held that the deceased was not a *bona fide* passenger of train No.7256 Secunderabad-Narsapur Express and rightly dismissed the claim application of the applicants; the findings of the Tribunal are based on evidence and record; there are no circumstances to interfere with the findings of the Tribunal; and and ultimately, prayed to dismiss the appeal.

5. In view of the above submissions, the following points have come up for determination in this appeal:

- 1) Whether the deceased died in an untoward incident of accidental fall from train No.7256 Secunderabad-Narsapur Express at Secunderabad railway station while travelling from Secunderabad to Narsapur on 11.05.2008?
- 2) Whether the appellants-applicants are entitled to claim compensation as the dependents on the deceased?
- 3) Whether the impugned order dated 21.03.2014 passed by the Tribunal is liable to be set aside?
- 4) To what relief?

6. Point Nos.1 and 3: To substantiate the case of the applicants, the 1st applicant-wife of the deceased deposed as A.W.1 and got marked Ex.A.1-original ticket, Ex.A.2-attested copy of F.I.R., Ex.A.3-attested copy of inquest report, Ex.A.4-attested copy of post-mortem examination report, Ex.A.5-xerox copy of ration card (compared with original) and Ex.A.6-Family Members Certificate. There was no evidence adduced on behalf of the respondent-railways. As per the claim application filed before the Tribunal, the applicants have given the details of the journey ticket of the deceased, i.e., ticket bearing No.33683843, which was purchased to travel from Secunderabad to Narsapur on 11.05.2008. The same was filed along with the claim application and marked as Ex.A.1 through the evidence of A.W.1. In Ex.A.3-inquest report also, there is mention that Ex.A.1-original ticket was found with the deceased when panchanama was conducted. There is specific mention in the said panchanama that the deceased purchased Ex.A.1-original journey ticket bearing No.33683843 on 11.05.2008 to travel from Secunderabad to Narsapur and while boarding the train at Secunderabad railway station, he fell down from the general compartment of train No.7256 Secunderabad-Narsapur Express, suffered grievous injuries and while undergoing treatment in Gandhi Hospital, Secunderabad, died on 12.05.2008. There is ample evidence to hold that the deceased had fallen down from the train No.7256 Secunderabad-Narsapur Express. The dispute is only with regard to the journey ticket. The journey ticket of the deceased was filed and got marked as Ex.A.1. In Ex.A.3-

inquest report also, there is mention about the journey ticket found with the deceased at the time of inquest panchanama. There is small inconsistency in the evidence of A.W.1-wife of the deceased with regard to the purchase and possession of Ex.A.1-original ticket. She is an uneducated lady. The death was occurred on 12.05.2008 and the claim application was filed in the month of July, 2008 and much time has been passed from the date of incident till the date of her evidence before the Tribunal. Further, she is in pain and shock, as she lost her husband. There is possibility of inconsistencies in her evidence. Therefore, it can be safely concluded that the deceased was a *bona fide* passenger of train No.7256 Secunderabad-Narsapur Express and died due to untoward incident of accidental fall from the train on 11.05.2008. The Tribunal had not properly appreciated the evidence on record and erroneously dismissed the claim of the applicants. Therefore, the impugned order passed by the Tribunal is liable to be set aside. Accordingly, these points are answered.

7. Point Nos.2 and 4: The applicants are dependents on the deceased. In view of the amendment made to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, the appellants-claimants are entitled to Rs.8,00,000/- (Rupees eight lakhs only) as compensation.

8. In the result, the appeal is allowed, setting aside the order, dated 21.03.2014, passed in O.A.A.No.221 of 2008 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. Consequently, O.A.A. No.221 of 2008 filed by the appellants-

applicants is allowed granting Rs.8,00,000/- (Rupees eight lakhs only) in favour of the appellants-applicants as compensation. The respondent-Railways is directed to pay the said compensation to the appellants-applicants within a period of three (03) months from the date of receipt of a copy of this judgment, failing which, the appellants-applicants are entitled to interest @ 6% per annum from the date of this judgment till realisation. The 1st applicant is entitled to half of the compensation awarded and the remaining half of the compensation shall be apportioned equally among the applicants 2 to 4. On deposit, all the appellants are entitled to withdraw their respective shares. Pending Miscellaneous Petitions, if any, shall stand closed. There shall be no order as to costs.

13th November, 2018
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Dr. SHAMEEM AKTHER, J

