

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

Civil Miscellaneous Appeal No.655 of 2014

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 29.04.2014, passed in OAA No.128 of 2005 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the claim petition filed by the appellants/applicants claiming a compensation of Rs.4,00,000/- for the death of the deceased-Md.Nizamuddin in an alleged untoward incident of accidental fall from a running train, was dismissed.

2. Heard both sides. Perused the record.
3. The learned counsel for the appellants/applicants would contend that the deceased-Md.Nizamuddin was travelling from Nalgonda to Lingampally by Train No.352 Repalle – Secunderabad Passenger on 04.03.2005 with a valid journey ticket bearing No.K-17554471. He accidentally fell down from the said train near Pagidipally and suffered grievous injuries. He was immediately shifted to Gandhi Hospital, Secunderabad, for treatment by 108 Ambulance, where he succumbed to the injuries while undergoing treatment on 05.03.2005. The journey ticket was recovered from the apparel of the deceased. The same is reflected in the Inquest Panchanama conducted by the police. The Tribunal erroneously held that the journey ticket

recovered from the apparel of the deceased was issued after the subject train departed from Nalgonda Railway Station and therefore, the deceased was not a *bona fide* passenger of Train No.352 Repalle – Secunderabad Passenger travelling from Nalgonda to Lingampally on 04.03.2005. By the time of inquest Panchanama, the dead body of the deceased was not identified by anybody. Hence, there is no possibility of the journey ticket being planted in the apparel of the deceased by anybody. The findings of the Tribunal are erroneous and ultimately prayed to allow the appeal by setting aside the order under challenge.

4. On the other hand, the learned Standing Counsel for the respondent-Railways would contend that the deceased did not possess a journey ticket to travel from Nalgonda to Lingampally by Train No.352 Repalle – Secunderabad Passenger on 04.03.2005. The ticket said to have been recovered from the apparel of the deceased was planted in order to claim compensation. The Tribunal, after analysing the entire evidence on record, rightly held that the deceased was not a *bona fide* passenger of Train No.352 Repalle – Secunderabad Passenger travelling from Nalgonda to Lingampally on 04.03.2005. There is no infirmity in the order under challenge and ultimately prayed to dismiss the appeal by confirming the order under challenge.

5. In view of the above rival contentions, the points that arise for determination in this appeal are as follows:

1. Whether the deceased was a *bona fide* passenger of Train No.352 Repalle – Secunderabad Passenger travelling from Nalgonda to Lingampally on 04.03.2005?

2. Whether the deceased-Md.Nizamuddin died in an untoward incident of accidental fall from running Train No.352 Repalle – Secunderabad Passenger on 04.03.2005?
3. Whether the order under challenge is liable to be confirmed/ set aside?
4. To what result?

Point Nos.1 and 2:-

6. To substantiate the claim of the appellants/applicants, the father of the deceased deposed as A.W.1 and got marked Ex.A.1-First Information Report, Ex.A.2-Inquest report, Ex.A.3-Postmortem Certificate, Ex.A.4-Ticket copy, Ex.A.5-Family Member Certificate, Ex.A.6-copy of SSC certificate, Ex.A.7-copy of Final Report and Ex.A.8-Photograph. On behalf of the respondent-Railways, R.W.1 and R.W.2 were examined and Ex.R.1-copy of Rough Journal and Ex.A.2-Divisional Railway Manager's report were marked.

7. The specific case of the appellants/applicants is that the deceased-Md.Nizamuddin was their son and he boarded Train No.352 Repalle – Secunderabad Passenger on 04.03.2005 to travel from Nalgonda to Lingampally and had accidentally fallen down from the said train. It is also contended that the deceased-Md.Nizamuddin had purchased a journey ticket bearing No.K-17554471 to undertake the said journey. The appellants/applicants got marked a copy of the said journey ticket as Ex.A.4. The Tribunal, while examining the genuineness of Ex.A.4, held that R.W.2, Guard of the subject train, stated that the subject train arrived at Nalgonda Railway Station at 13:35 hours and departed at 13:58 hours on 04.03.2005; Ex.A.4

ticket was issued at Nalgonda Railway Station on 04.03.2005 at 14:06 hours, i.e., after departure of the subject train from Nalgonda Railway Station; there is no possibility of issuance of the said journey ticket after departure of the train from the Railway Station and ultimately held that the deceased was not a *bona fide* passenger of the subject train. In this regard, as per the evidence and material placed on record, the deceased was found lying near railway track at Pagidipally on 04.03.2005. The First Information Report in this case, which is marked as Ex.A.1, was issued on 04.03.2005 at 17:15 hours. Ex.A.2 is the Inquest conducted by the police concerned over the dead body of the deceased. In Ex.A.2, there is no specific mention of the name of the deceased, but in column No.7, there is a mention that the journey ticket bearing No.K-17554471 was found in the apparel of the deceased. As per the records produced by the respondent-Railways, it is a valid journey ticket to undertake travel from Nalgonda to Lingampally on 04.03.2005. The Tribunal found that the said ticket was issued after departure of the subject train from Nalgonda Railway Station. In the course of Inquest Panchanama, the doctor who conducted inquest over the dead body of the deceased found the ticket in the apparel of the deceased and handed over the same to the concerned. Admittedly, the dead body of the deceased was not identified by any one at the time of inquest. It establishes that no person knowing the deceased was there at the time of inquest. There is no reason for the doctor who was present at the time of conduct of inquest over the dead body of the deceased to get a ticket

from Nalgonda Railway Station and plant it in the pocket of the deceased. Even the doctor who was present there does not know the deceased and his journey particulars. Therefore, the question of planting Ex.A.4-copy of journey ticket in the apparel of the deceased by somebody/doctor would not arise. The respondent-Railways produced the record that on 04.03.2005, the subject Train No.352 Repalle-Secunderabad Passenger arrived at Nalgonda Railway Station at 13:53 hours and departed from said Railway Station on 13:58 hours. Admittedly, the journey ticket bearing No.K.-17554471 was issued at Nalgonda Railway Station on 14:06 hours. It establishes that there must be something wrong in recording the time on the journey ticket or with regard to the time of arrival and departure of the subject train at Nalgonda Railway Station. The said aspect was overlooked by the Tribunal. Further, in the Final Report, it has come to light that the parents of the deceased (appellants/applicants) have identified the dead body of the deceased and took the same with them. Therefore, it cannot be held that there was no proper identification of the deceased. There is also mention in the Investigation Report and in the DRM's report that the subject death of the deceased might be due to accidental fall from a running train. Therefore, the evidence of A.W.1 with regard to the deceased boarding the Train No.352 Repalle – Secunderabad Passenger on 04.03.2005 to travel from Nalgonda to Lingampally and his accidental fall from the said train, cannot be disbelieved. Under these circumstances, it is held that the deceased-Md.Nizamudddin was

a *bona fide* passenger of Train No.352 Repalle – Secunderabad Passenger travelling from Nalgonda to Lingampally on 04.03.2005 and he accidentally fell down from the said train on 04.03.2005, suffered injuries and succumbed to the same. The findings recorded by the Tribunal on these two points are not based on evidence on record and are, accordingly, set aside. These points are accordingly answered in favour of the appellants/applicants and against the respondent-Railways.

Point No.3:-

8. The findings of the Tribunal are not in consonance with the evidence on record. There is infirmity in the order under challenge and the same is liable to be set aside.

Point No.4:-

9. In the result, the appeal is allowed and the order, dated 29.04.2014, passed in OAA No.128 of 2005 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, is set aside. The appellants-applicants are entitled for a compensation of Rs.8,00,000/-, in view of the 2016 amendment made to the Schedule to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. The respondents-Railways is directed to deposit the awarded compensation of Rs.8,00,000/- before the Tribunal within a period of three (03) months from the date of receipt of a copy of this order, failing which, the appellants-applicants are entitled for interest @ 6% per annum on the said amount, from the date of this order till realisation.

On deposit of the compensation, the appellants/applicants are permitted to withdraw the same in equal shares.

There shall be no order as to costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

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Dr. SHAMEEM AKTHER, J

16<sup>th</sup> November, 2018  
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