

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

Civil Miscellaneous Appeal No.749 of 2015

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 29.07.2015, passed in O.A.II(U)No.49 of 2009 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity).

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

3. Learned counsel for the appellants-applicants would contend that the deceased-Dharmana Krishna along with A.W.2-C.Bhaskar Rao purchased a ticket for travel to Rajahmundry and boarded Howra-Secunderabad Falaknama express at 07.00 hours on 03.01.2009. Thereafter, he accidentally fell down due to jerks and speed from the moving train between Cheepurupalli and Sigadam Villages and died. A journey ticket was recovered from the dead body of the deceased during the inquest panchanama. The Tribunal held that the deceased did not die in an untoward incident of accidental fall from the moving train and erroneously, dismissed the application. He further contended that as the dead body was found lying in bushes, it was not noticed for 3½ days and there is oral and documentary evidence to substantiate that the deceased fell down from the moving

train. The finding of the Tribunal is erroneous and ultimately, prayed to set aside the impugned order and grant the compensation as prayed for.

4. On the other hand, the learned Standing Counsel appearing for the railways would submit that the dead body was found four days after the alleged incident. Further, it was found 60 feet away from the railway track. The injuries found on the dead body of the deceased did not appear to have been sustained in a railway accident. There is possibility of planting the ticket. The Tribunal elaborately discussed with regard to the age, finding of the dead body of the deceased and also other aspects of the case and rightly concluded that the deceased did not die in an untoward incident of accidental fall from the moving train. There is no infirmity in the impugned order and ultimately, prayed to dismiss the appeal.

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 Falaknama express on 03.01.2009?
2. Whether the deceased died in an untoward incident of accidental fall from Falaknama express?
3. Whether the impugned order is liable to be set aside?
4. To what relief?

6. To substantiate the claim, appellant No.1-father of the deceased was examined as A.W.1 and the paternal uncle of the deceased was examined as A.W.2 and got marked Ex.A1-copy of FIR, Ex.A2-copy of inquest report, Ex.A3-copy of ticket, Ex.A4-

family member certificate, Ex.A5-copy of post-mortem examination report and Ex.A6-copy of final report. On behalf of the railways, R.W.1 was examined and Ex.R1-Divisional Railway Manager's report was got marked.

7. The specific case of the appellants is that the deceased-Dharmana Krishna started from Kadipilanka on 03.01.2009 to go to Srikakulam. The deceased reached Srikakulam railway station on 03.01.2009 along with A.W.2-C.Bhaskar Rao, who is his paternal uncle, purchased ticket on that day and boarded Falaknama express at 07.00 hours. During journey, he accidentally fell from the moving train and succumbed to the injuries. Ex.A3-journey ticket shows that it was issued on 03.01.2009 at 17.50 hours. There is evidence of A.W.2-paternal uncle of the deceased that he along with the deceased reached Srikakulam on 03.01.2009 and he purchased journey ticket for Rs.90/- and gave it to the deceased and the deceased boarded the train at 7.00 p.m. In the course of inquest, a reference is made with regard to finding of Ex.A3-journey ticket. As per the evidence placed on record, the deceased commenced his journey at 7.00 p.m. on 03.01.2009. His dead body was noticed by Keyman on 07.01.2009 around 6.30 a.m. Basing on that, FIR was issued in this case. The dead body was found in the bushes outside up line track at Km No.784/15 at Cheepurupalli, the dead body was 60 feet away from the railway track. As per Ex.A2-inquest report and Ex.A5-postmortem report, the dead body was found in a highly decomposed state. There is variation with regard to the age of the deceased. In Ex.A.2-inquest

report, it was shown as 50 years while in Ex.A.5-post-mortem report, it was shown as 30 years. As the dead body was highly decomposed, the variation in the age is not fatal. Ex.R1-DRM's report and Ex.A2-inquest report reveals that the dead body was found 60 feet away from the railway track. As per Ex.A5-postmortem report, there are multiple fractures and head injury, and the death was due to cardiac arrest. In the post-mortem report, it was opined that the injuries found on the dead body of the deceased are possible with a blunt object and it was stated that there were no marks of dragging the dead body. The dead body was found 60 feet away from the railway track. When a person falls from a moving train, there will be severance of limbs or sometimes trunk is cut into pieces. If a person falls from a stationed train, the body will be found in railway track. In any event or under any circumstances, by fall from a train, the dead body would not be thrown 60 feet away from the railway track.

8. As per Ex.R1-DRM's report, the deceased did not purchase the ticket and travel in the said train. Further, if the deceased had fallen from the moving train, somebody would have pulled the chain. The DRM report, which is a statutory report, falsifies the entire case of the applicants and discloses that a false claim is laid to claim compensation. Further, the dead body was not noticed for about 3½ days. Generally, the railway employees guarding the track would notice the dead body within hours. Had there been a fall into the bushes as contended, it would have been noticed by the passersby and railway employees. There is possibility of hiding the dead body in the bushes. There

is also possibility of planting ticket to depict the subject death as a railway accidental one. Considering the nature of the injuries, the DRM's report and the place of finding of the dead body, it can be safely concluded that the subject fall is not from Falaknama express on 03.01.2009, as contended by the applicants. The death in the subject case is highly suspicious. The Tribunal had dealt with all these aspects elaborately and answered the issues against the applicants. In the circumstances of the case, there is nothing to take a different view. The appeal lacks merits to consider.

9. In the result, the appeal is dismissed.

Pending Miscellaneous petitions, if any, shall stand closed.

Date: 14.11.2018
ssp

Dr. SHAMEEM AKTHER, J

