

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.432 of 2015

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 (for short 'Act'), is filed by the appellants - applicants challenging the order, dated 24.02.2015, passed in O.A. II (U) No.88 of 2001 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short 'Tribunal'), whereby, the claim petition filed by the appellants - applicants for a compensation of Rs.4,00,000/- for the death of deceased - Reddy Gouru Naidu, in an alleged untoward incident of accidental fall from a running train, was dismissed.

2. Heard Sri J. Pramod Goud, learned counsel for the appellants and Mrs. Pushpinder Kaur, learned standing counsel for Railways appearing for the respondent.

3. Perused the evidence on record, both oral and documentary.

4. The appellants herein are applicants in O.A. II (U) No.88 of 2001 before the Tribunal, while respondent - Railways is arrayed as such. For the sake of convenience, the parties herein are referred to as they were arrayed in the foresaid OA before the Tribunal.

5. The learned counsel for the applicants would contend that the deceased - Reddy Gouru Naidu was a *bona fide* passenger of Train No.230 Visakhapatnam - Durg Passenger on 18.02.2001, and he had

fallen from the said train on that day while travelling along with Smt. Reddy Venkatamma (AW.2) and Badi Bangara Naidu from Narsipuram to Rayagada having purchased three valid different tickets; that the deceased died in an untoward incident of accidental fall from the subject running train on 18.02.2001. There is ample evidence, both oral and documentary, to substantiate the same. The Tribunal did not consider the same and erroneously held that the deceased was not *bona fide* passenger and did not die in an untoward incident of accidental fall. Originally when the Tribunal dismissed the claim application of the applicants by order, dated 21.06.2006, the applicants preferred the appeal vide C.M.A. No.835 of 2006. But, this Court observing that there was no record in the private hospital about providing treatment to the deceased and that the doctor was not examined remanded the matter to the Tribunal for consideration afresh on the following points, as reflected in the impugned order, by affording opportunity to both sides to adduce evidence:

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- i. The Hon'ble High Court observed that Doctor who conducted the inquest on the dead body of the deceased opined that the deceased died as a result of shock and injuries to vital organs, but he has not stated whether these injuries are possible when a person falls from a running train:
- ii. The Hon'ble High Court also questioned how the Village Administrative Officer, Narsipuram came to know about the death of deceased and observed that this appears to be suspicious in nature;

- iii. The cause of death of the deceased has been established from Post-mortem Examination report, Ex.A4. The Hon'ble High Court observed that because no evidence was let in to show that the deceased was admitted in a private hospital for treatment and succumbed to injuries and to prove that the deceased was shifted to a private hospital from the place of accident.”

Though there is ample evidence to substantiate the case of the applicants, the Tribunal did not consider the same, and ultimately prayed to set aside the impugned order and grant compensation as prayed for by allowing the appeal.

6. On the other hand, the learned standing counsel for Railways would submit that this Court had entertained a doubt and was pleased to remand back the matter to the Tribunal, by order, dated 23.03.2011, in C.M.A. No.835 of 2006, observing the above three aspects. However, in spite of affording opportunity, the applicants did not adduce any evidence to answer the aforesaid points. In the said circumstances, the Tribunal has rightly dismissed the claim application, and ultimately prayed to dismiss the appeal.

7. In view of the above submissions made by both sides, the following points that arise for determination in this appeal:

- i. Whether the deceased - Reddy Gouru Naidu was a *bona fide* passenger of Train No.230 Visakhapatnam - Durg Passenger on 18.02.2001?

- ii. Whether the deceased - Reddy Gouru Naidu died in an untoward incident of accidental fall from the said Train on 18.02.2001 due to jerks and jolts of the subject train?
- iii. Whether the impugned order is liable to be set aside?
- iv. To what result?

8. To substantiate the claim of the applicants, wife of the deceased, who is applicant No.1, was examined as AW.1 and also examined the co-passenger of deceased as AW.2 and got marked Ex.A.1- original tickets, Ex.A.2-attested copy of first information report, Ex.A.3-attested copy of Inquest Report, Ex.A.4-attested copy of post-mortem examination report, Ex.A.5-attested copy of final report and Ex.A.6-family member certificate. On behalf of the respondent-Railways, RW.1 was examined and Ex.R.1-copy of Guard's rough journal was marked.

Point Nos.(i) and (ii):-

9. There is inconsistency in column 6 of the claim application with regard to the deceased getting admission in a private hospital and securing first aid. In the evidence, it has also come up that the deceased was declared dead by Dr. Ram Mohan Rao before admitting in the hospital. As per Ex.A.5-final report, there is mention that the deceased was given first-aid. Hence, while remanding back the matter earlier, this Court entertained a doubt with regard to the manner of deceased suffering injuries and succumbing to those injuries. Ex.A.5-final report reveals that the deceased was given first-aid in a private

hospital. As per the evidence, the deceased was not given any medical aid as, before he was being admitted in the hospital, he died. Under these circumstances, a genuine doubt can be entertained with regard to the alleged fall from the subject train on 18.02.2001. AW.2 is a relative of the deceased and interested witness. Further, applicants had not adduced further evidence to answer the aforesaid three points framed by this Court while remitting back the matter to the Tribunal for consideration afresh. In the said circumstances, it cannot be said that the impugned order suffer from any infirmity. Accordingly, these points are answered against the applicants and in favour of the respondent - Railways.

Point No.(iii):-

10. The Tribunal had elaborately dealt with the contentions and the evidence on record and rightly reached the conclusion and dismissed the claim petition. There is no infirmity in the impugned order. There is nothing to take a different view. Hence, the appeal is devoid of merit and is liable to be dismissed.

Point No.(iv):-

11. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the order, dated 24.02.2015, passed in O.A. II (U) No.88 of 2001 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel, miscellaneous applications, if any, pending in the present appeal, stand closed.

Dr. SHAMEEM AKTHER, J

December 19, 2018

Mgr

