

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.No.263 OF 2016

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is directed against the order, dated 25.02.2016, passed in O.A.II (U) No.371 of 2007 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short, 'the Tribunal') whereunder and whereby, the claim of the appellant/applicant under Section 16 of the Railway Claims Tribunal Act, 1987 read with Sections 124-A and 125 of the Railways Act, 1989 with regard to grant of compensation of Rs.4,00,000/- for the death of the deceased Chenna Basava in a railway accident that took place on the intervening night of 20/21.07.2007, was dismissed.

2. Heard the learned counsel for the appellant/applicant and the learned Standing Counsel for the respondent/Railways.

3. Learned counsel for the appellant/applicant would contend that the deceased Chenna Basava was a *bona fide* passenger of train No.7210 Kakinada Town – Bangalore Seshadri Express travelling from Vijayawada to Bangalore on 20.07.2007 and had accidentally fallen from the said train and succumbed to the injuries; that there are journey tickets to substantiate the same and the same are filed before the Tribunal and got marked as Exs.A1/a and A1/b; that there is also the evidence of co-passenger - A.W.2, who deposed about the deceased Chenna Basava purchasing the ticket and travelling by the subject train; that though there is ample oral and documentary evidence on

record, the Tribunal held that the deceased Chenna Basava was not a *bona fide* passenger of the said train and did not die in an untoward incident of accidental fall from the said train; that further, the Tribunal erroneously held that the applicant, who is the mother of the deceased Chenna Basava, was not a dependant on the deceased Chenna Basava and erroneously denied the compensation; that the D.R.M's report is filed with a delay of more than six months in the instant case and it cannot be acted upon and ultimately, prayed to set aside the impugned order and allow the appeal.

4. On the other hand, learned Standing Counsel for the respondent/Railways would contend that the Tribunal had elaborately dealt with the aspect of the deceased Chenna Basava possessing a ticket, considered the credential value of evidence of A.W.2 and also the final report filed before this Court and rightly dismissed the claim application and ultimately, prayed to confirm the impugned order and dismiss the appeal.

5. In view of the submissions made by the learned counsel on either side, the points that arise for determination are as follows:

“1. Whether the applicant is the mother of the deceased Chenna Basava and whether she was depending on him at the time of the incident?”

2. Whether the deceased Chenna Basava was a bona fide passenger and died in an untoward incident of accidental fall from train No.7210 Kakinada Town – Bangalore Seshadri Express on 20.07.2007 travelling from Vijayawada to Bangalore?”

3. Whether the order, dated 25.02.2016, passed in O.A.II (U) No.371 of 2007 on the file of the Railway Claims

Tribunal, Secunderabad Bench at Secunderabad is liable to be set aside? and

4. To what relief?"

6. POINT Nos.1 & 2:-

It is the specific case of the applicant that on 20.07.2007, the deceased Chenna Basava and his friend Basavaraju - A.W.2 went to Vijayawada Railway Station from Guntur and from there, to go to Bangalore along with their Maistry - Veeramani for contract coolie work. They purchased two individual computer train journey tickets bearing Nos.54688609 and 54688610 to travel from Vijayawada to Bangalore. The tickets were kept with A.W.2 and they boarded II Class General Compartment of train No.7210 Kakinada Town - Bangalore Seshadri Express and settled at different places as there was heavy rush of passengers in the compartment. The deceased Chenna Basava, on that night, had accidentally fallen from that train due to jerks and speed of the train and succumbed to the injuries.

7. A.W.1, who is said to be the mother of the deceased Chenna Basava, is not an eye witness to the purchase of ticket and travel said to have undertaken by the deceased Chenna Basava. A.W.2 is said to be the eye witness and he corroborated with the averments of the claim application, as indicated above.

8. It is pertinent to state that in the subject case, the dead body of the deceased Chenna Basava was not identified either at the time of inquest or at the time of post mortem examination and the dead body was buried by the officials concerned. Ex.A-6 is the final report wherein there is mention that the deceased Chenna

Basava accompanied A.W.2 to travel from Vijayawada to Bangalore, purchased tickets and boarded train No.7210 Kakinada Town – Bangalore Seshadri Express on 20.07.2007 and had accidentally fallen from the said train. Ex.A-6 corroborates the evidence of A.W.2. The question is whether the evidence of A.W.2 can be acted upon.

9. When A.W.2 and the deceased Chenna Basava were friends and when they went together to the railway station and boarded the subject train, there is no reason for them to sit separately in the compartment. It has come in the evidence of A.W.2 that he was informed about the fall of the deceased Chenna Basava on that night. However, he did not take any steps either to pull the chain or immediately inform the subject fall to the mother of the deceased Chenna Basava. When there is a fall from the subject train and when it was within the knowledge of A.W.2, then immediately, on the next day, A.Ws.1 and 2 would have gone to the place of fall and identified the dead body of the deceased Chenna Basava and on completion of the formalities by the police, the applicant might have taken the dead body of the deceased Chenna Basava for funerals. It did not happen so. In the inquest panchanama and post mortem examination report, there is no identification of the dead body. The Tribunal observed that A.W.2, in the cross examination, stated that he came to the Tribunal at the instance of the advocate on record. Later, he stated that the applicant also told him to give evidence before the Tribunal. Under Ex.A-3 – Inquest report, there is mention that the death of the deceased Chenna Basava may be by fall from the train or while crossing the railway track. Under Ex.A-6 – final report also, there

is a mention that the deceased Chenna Basava might have died due to hit by a running train.

10. It is also necessary to state that Exs.A1/a and A1/b - tickets were marked in this case. As per the evidence of A.W.2, those were handed over to police three to four days after the death of the deceased Chenna Basava. Any way, in the police records, there is no mention that these tickets were handed over to the police. When the deceased Chenna Basava was sitting separately, there is no reason for the deceased Chenna Basava to keep the ticket with A.W.2. Further, from the apparels of the dead body of the deceased Chenna Basava or from the place where the dead body of the deceased Chenna Basava was found, no journey ticket was found. The finding of the dead body after four days of the alleged accidental fall and also exhibiting the tickets after three to four days after the death of the deceased Chenna Basava makes the case of the applicant a doubtful one. The Tribunal had elaborately dealt with all these aspects and ultimately, held that the deceased Chenna Basava was not a *bona fide* passenger and did not die in an untoward incident of accidental fall from train No.7210 Kakinada Town – Bangalore Seshadri Express on 20.07.2007. It appears that on coming to know about the subject death, A.W.2 is pressed into service and Exs.A1/a and A1/b - tickets were planted to make an illegal gain under the Railways Act, 1989. The whole case of the applicant is doubtful. The initial burden is also not discharged by the applicant. Further, there are so many inconsistencies in the Family Members Certificate filed before the Tribunal under Ex.A-7. There is also discrepancy with regard to the age of the applicant. The Tribunal rightly discarded the same.

Under these circumstances, there is no infirmity in the findings recorded by the Tribunal. The appeal is devoid of merit and is liable to be dismissed.

11. **POINT Nos.3 & 4:-**

Accordingly, the Civil Miscellaneous Appeal is dismissed confirming the order, dated 25.02.2016, passed in O.A.II (U) No.371 of 2007 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. There shall be no order as to costs.

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

Date : 06.12.2018
AMD

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