

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.603 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 31.05.2016 in O.A. II (U) No.328 of 2010 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby the claim petition filed by the appellants-applicants claiming compensation for the death of Mohd. Fayazuddin (hereinafter referred to, as 'the deceased') in an untoward incident of accidental fall from train No.FL-9 Falaknuma-Lingampalli Local MMTS (hereinafter referred to, as 'the subject train') on 13.11.2010 while travelling from Yakutpura to Hafeezpet, was dismissed.

2. Heard both sides. Perused the record.

3. For convenience, the parties are hereinafter referred to, as per their array before the Tribunal.

4. The learned counsel for the applicants would contend that the deceased while travelling by the subject train on 13.11.2010 with a valid journey ticket, slipped and accidentally fell down at KM No.5/21-19 at the end of platform no.1 of Vidyanagar railway station and was hit by

electrical pole, sustained severe head injury and died on the spot; that there is evidence to substantiate the same; that the Tribunal erroneously held that the deceased was hanging outside the train and the injuries suffered by him are self-inflicted covered under exceptions to Section 124A of the Railways Act, 1989, and it is a criminal act, misdeed, misadventure and abortive attempt made by the applicant unmindful of the consequences, and erroneously dismissed the claim application, and ultimately prayed to allow the appeal granting the compensation.

5. On the other hand, the learned counsel for the Railways supported the impugned order passed by the Tribunal and would contend that deceased was hanging outside the subject train and was hit by a pole erected at platform no.1 of Vidya nagar railway station; that the injuries suffered by the deceased are self-inflicted; that the Tribunal rightly analysed the entire evidence on record and dismissed the claim petition and there is no infirmity, and ultimately prayed to dismiss the appeal.

6. There is no dispute that the deceased was holding a valid journey ticket on 13.11.2010 to travel from Yakutpura to Hafeezpet by the subject train. The question that falls for consideration in this appeal is whether the deceased was hanging outside the subject train at the

relevant point of time of the accident. To substantiate its case, railways examined R.W.1, who is a computer-cum-reservation clerk. Her evidence reveals that on 13.11.2010 when she was on duty, at about 12.22 hours she received information with regard to a male person running over by train no.FL MMTS. The said information was furnished to her by one Gopal, Railway Home Guard. The male dead body aged 19 years was found on the platform. Thereafter, she immediately sent a message to Station Superintendent, Kacheguda for further action. In the evidence of R.W.1, there is no mention that the deceased was hanging outside the subject train. Further, in the inquest report Ex.A3, there is no mention that the deceased was hanging outside the subject train, and there is mention that the deceased had accidentally fallen from the subject train. Further, there is mention that the deceased was travelling with a valid journey ticket and the details of the journey ticket were also given.

7. Learned counsel for the applicants relied on a decision in *Ramsingh Shekawati & another v. Union of India*¹ wherein it is held thus:

"By reading the contents of the inquest report, which has been exhibited as Ex.A5, and the evidence of RW.2, the two views are possible. Firstly, the deceased may have slipped from the compartment and came into contact with the signal pole resulting injuries which

¹ 2011 ACJ 1090

caused his instantaneous death. Secondly, the deceased may have leaned out of the compartment and thereby came into the contact with the signal pole causing injuries which ultimately lead to his instantaneous death. When the two views are possible, basing on the evidence, the view, which is favourable to the applicants, is to be adopted, since the object of the Act is to alleviate the sufferings of the victims or dependants of the victims of untoward incident. The death of the deceased came within the expression of 'accidental falling of a passenger from a train carrying passengers' which is an untoward incident as defined in Section 123[c] of the Railways Act, 1989. The Supreme Court in the above referred decision held that since the provision for compensation in the Railways Act is a beneficial piece of legislation, it should receive a liberal and wider interpretation and not a narrow and technical one. Para.11 of the cited judgment needs to be noted and it is thus:

“11. No doubt, it is possible that two interpretations can be given to the expression 'accidental falling of a passenger from a train carrying passengers', the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence, in our opinion, the latter of the abovementioned two interpretations i.e., the one which advances the object of the statute and serves its purpose should be preferred vide Kunal Singh v. Union of India [(2003) 4 SCC 524 (para.9)]; B.D.Shetty v. CEAT Ltd. [(2002) 1 SCC 193 (para.12)]; Transport Corporation of India v. ESI Corporation [(2000) 1 SCC 332] etc.”

By applying the above proposition of law, laid down by the Supreme Court in the cited judgment, to the facts of the present case, the view which is favourable to the appellants is to be taken into consideration, in

which case the appellants/applicants are entitled to compensation of Rs.4.00 Lakhs as claimed by them."

8. In the case on hand, there is no direct evidence or any other circumstantial evidence to conclude that the deceased was hanging outside the subject train on 13.11.2010. There is specific mention in inquest panchanama that the deceased had slipped and fallen down from the subject train. Though Ex.R1-DRM's report concluded basing on the information given by R.W.1 that the deceased was hanging outside the train and had fallen therefrom due to hit by a pole erected on the platform, when R.W.1 was examined, she did not support this version. Therefore, Ex.R1 is of no use to the case of the railways go conclude that the deceased was hanging outside the train and was hit by an electric pole. Therefore, it can be safely inferred that the deceased had accidentally fallen from the subject train, sustained injuries and died. The Tribunal has not appreciated the evidence on record in right perspective and arrived at perverse findings. The impugned order of the Tribunal is liable to be set aside. Under these circumstances, the points are held in favour of the applicants and against the railways.

Point No.4:

9. In the result, the C.M.A. is allowed. The impugned order dated 31.05.2016 in O.A. II (U) No.328 of

2010 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad is set aside. Consequently, the O.A.A. is allowed. The applicants are awarded compensation of Rs.8,00,000/- (Rupees eight lakhs only) in view of the amended Schedule annexed to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. The respondent-railways is directed to deposit the said amount within a period of three months from the date of receipt of a copy of this judgment, failing which the applicants are entitled to interest @ 6% per annum on the compensation amount awarded from the date of this judgment till date of realization. On deposit, the applicants are entitled to withdraw the compensation amount in equal shares with accrued interest.

There shall be no order as to costs of this appeal. Pending Miscellaneous Petitions, if any, in the appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

13.12.2018
DRK

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DRK