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C.M.A.No.2080 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.2080 of 2017

1.Santhi
2.Radhika
3.Seetha

... Appellants

vs.

Union of India
Owning
Southern Railway
rep.by
General Manager,
Chennai-600 003.

... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 23 of the Railway Claims Tribunal Act, 1987, against judgment dated 25.04.2017 made in O.A.No.(II-U) 154 of 2016 on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellants : Mr.C.Prabakaran

For Respondent : Mr.M.Vijay Anand

JUDGMENT

The legal heirs of S.Ragupathi, S/o. Subramani have preferred this



C.M.A.No.2080 of 2017

Civil Miscellaneous Appeal against the order of dismissal passed by the Railway Claims Tribunal, Chennai Bench in O.A.No.154 of 2016.

2. The application was filed under Section 146 of Railway Claims Tribunal Act, 1987 read with Section 123(c) 2 and 124 A of Railways Act, claiming compensation of Rs.4,00,000/- for the death of S.Raghupathy who is said have dead while travelling in Train No.16089, fell down and died at Kms 153 / 30 – 32.

3. The Tribunal after hearing both sides and upon consideration of oral and documentary evidence has dismissed the application holding that it is not a fit case for claiming compensation and dismissed the O.A.No.154 of 2016.

4. The learned counsel appearing for the appellants/claimants would strenuously argue that the deceased Ragupathy was working as a clerk in the Consumer Court in Chennai died while travelling in the train on 15.12.2015. Ex.A8 is season ticket meant for travelling between Gudiyatham and Katpadi for the period from 25.11.2015 to 24.12.2015. It is



C.M.A.No.2080 of 2017

his further argument that the place of accident was Gudiyatham yard. It was further claimed that on 15.12.2015 early morning, the deceased in order to go to Chennai for his work in Court, he boarded in train No.16089 at Gudiyatham, while travelling due to heavy rush, he got slipped and fell down from the running train at Kms 153 / 30 – 32 and sustained severe injuries and died on the spot and prayed for grant of compensation. To buttress their claim, the learned counsel for the claimant relied on the following judgments

- i) Union of India v. Rina Devi reported in (2019) 3 SCC 572
- ii) Shoba and another v. Union of India in C.M.A.No.764 of 2016 dated 13.06.2018.

5. Per contra, the learned counsel appearing for the Railways Mr.Vijayanand would vehemently contend that the said train started at 3.30. a.m., at Elagiri and reaches Gudiyattam at 5.58 a.m. The train would halt for two minutes, leave from Gudiyatham by 6 a.m. As per Section 2(29) of Railways Act, a person in order to claim compensation he should have a valid pass or ticket. He would further contend that the burden is on the claimants that during travel he fell down from the train and died. As the claimants have failed to prove the same, the Tribunal has rightly dismissed



C.M.A.No.2080 of 2017

the application for grant of compensation. To buttress the arguments, the learned counsel for the respondent relied on the judgment in ***Veeralakshmi and others v. Union of India*** in C.M.A.No.3196 of 2019 dated 29.03.2022.

6. Heard the arguments of the learned counsel appearing for both sides and perused the materials on record.

7. According to the claimants, on 15.12.2015, early morning, the deceased holding the ticket to Chennai for his work at Consumer Court, Chennai boarded in Train No.16089 at Gudiyatham and while travelling, he got slipped and fell down at Kms 153 / 30 – 32 and died on the spot.

8. Per contra, it was contended by the Railways that season ticket submitted by the claimants for travel between Gudiyatham and Katpadi only and not for Chennai. It was further contended that the death could have been caused due to reasons other than fall from the train for which, the Railways is not liable to pay compensation under Section 124 A of the Railways Act.



C.M.A.No.2080 of 2017

9. Based on the pleadings, the Tribunal had framed the following issues:

1. Whether the applicants are the only dependents of the deceased?
2. Whether the deceased was a *bona-fide* passenger as alleged?
3. Was there any untoward incident on 15.12.2015 as defined under Section 123 (c) (2) of the Railways Act, 1989 as alleged?
4. Whether the applicants are entitled for the compensation as claimed and other relief if any?

10. At trial, wife of the deceased was examined as AW1 and Exs.A1 to A8 were marked. The final report and season tickets are Exs.A7 and A8.

11. According to the claimants, on 15.12.2015, early morning, the deceased by holding season ticket in order to go to Chennai for his regular official work at Consumer Court, Chennai, boarded in train No.16089 at Gudiyatham and while travelling, he got slipped and fell down at Kms 153 / 30 – 32 and died on the spot. Mobile phone, watch and season tickets were recovered from the dead body, as per the inquest report. The season ticket namely Ex.A8 is a ticket which is taken by the deceased is a valid for travel by the deceased between Gudiyatham and Katpadi for the period covering



C.M.A.No.2080 of 2017

from 25.11.2015 to 24.12.2015. It is useful to refer to Sections 123 and 124 A of Railways Act which are extracted hereunder:

Section 123 (c) "untoward incident" means--

"(1) (i) the commission of a terrorist act within the meaning of sub-section (1) of section (3) of the Terrorist and Disruptive Activities (Prevention) Act, 1987;

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers."

Section 124-A. Compensation on account of untoward incident -

When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the department of a passenger who has been killed to



C.M.A.No.2080 of 2017

maintain an action and recover damages in respect thereof, the the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only of loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to-

- (a) Suicide or attempted suicide by him;*
- (b) Self-inflicted injury;*
- (c) his own criminal act;*
- (d) any act committed by him in a state of intoxication or insanity;*
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.*

Explanation:- For the purposes of this section, "passenger" includes -

- (i) a railway servant on duty; and*
- (ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a*



C.M.A.No.2080 of 2017

victim of an untoward incident."

12. Therefore, as per Section 123 (2) a passenger must have a valid ticket and should have travelled in the said train. Therefore, the burden lies on the claimants that the deceased travelled with train ticket.

13. The final report filed by the Inspector of Jolarpet Police Station, Ex.A7 reads as follows:

"வழக்கு கோப்பை பார்வையிட்டதிலிருந்தும் பின் சம்பவ இடம் சென்று பார்வையிட்டதில் இருந்தும், பஞ்சாயத்தார்களின் கருத்தில் இருந்தும், சாட்சிகளின் வாக்குமூலத்தில் இருந்தும் உதவி ஆய்வாளர்களின் முதற்கட்ட விசாரணையிலிருந்தும் season ticket எடுத்துக்கொண்டு T.No.16089 ஏலகிரி Exp.ல் தினமும் குடியாத்தம் R.S-லிருந்து சென்னைக்கு சென்று கன்கமர் கோர்டில் கிளார்க் வேலை செய்து வந்த பிரேதமானவர் கடந்த 15.12.2015 - ம் தேதி வழக்கம் போல குடியாத்தம் R.S-ல் காலை 6.00 மணிக்கு T.No.16089 ஏலகிரி Exp.ல் ஏறியவர் கூட்ட நெறிசலின் காரணமாக ஓடும் இரயில் வண்டியிலிருந்து தவறி விழுந்து பலத்த காயம் ஏற்பட்டு சம்பவ இடத்திலேயே இறந்துள்ளார் என விசாரணையில்



C.M.A.No.2080 of 2017

தெரிகிறது."

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14. Therefore, final report reads that on enquiry it came to be known that the deceased was travelling in the Yelagiri Express and slipped and fell down from train and died on the spot.

15. Admittedly, the place of accident is Gudiyatham yard. Season ticket recovered from the body is Ex.A8. Of course, in order to go to Chennai this season ticket is not a valid one, but, the accident had taken place is admittedly at Gudiyatham yard. He had valid train ticket to travel between Gudiyatham and Katpadi. Therefore, it should not lie in the mouth of the respondent that the deceased does not have a valid train ticket to travel to Chennai.

16. In the DRM Report, it is explained that the train No.16089 goes from Chennai to Jolarpettai and the train proceeding from Jolarpettai to Chennai is No.16090. As per the inquest report, the body was seen by one Sri.Vijaykumar Pradhan, Key man, Gr.III, while performing track maintenance duty between Kavanur to Gudiyatham Sections, at about 7.30 am. The deceased was lastly seen by his wife on the same day at about



C.M.A.No.2080 of 2017

5.30 a.m., As per the inquest report, the body was lying on its back with head on north and legs on south. Suffered injuries on the head and hip.

The inquest report further reads that he travelled from Gudiyatham in Train No.16089, fell down from running train and died on the spot.

17. From the careful perusal of the Post-mortem Certificate Ex.A1, he had sustained fracture of skull bone. In all probabilities, he may have fallen down and sustained fracture of skull bone. Had he been hit by train, his body would have crushed into pieces. Therefore, relying upon the evidence of AW1, coupled with the documents, it is vividly clear that the deceased who was in possession of season ticket Ex.A8 had fallen down from the train and died.

18. In ***Union of India v. Rina Devi*** reported in **(2019) 3 SCC 572**, it has been held that mere presence of body in railway premises will not be conclusive to hold that injured or deceased was a *bona-fide* passenger for which claim for compensation could be maintained. Further mere absence of ticket with such injured or deceased will not negative the claim that he was a *bona-fide* passenger. Initial burden on claimant can be discharged by filing an affidavit of relevant facts and burden will then shift on Railways and



C.M.A.No.2080 of 2017

the issue can be decided on the facts shown or the attending circumstances.

19. As per the legal heir certificate Ex.A4, the claimants 1 to 3 are the legal heirs of the deceased Raghupathy. Therefore, the claimants have discharged their initial burden rest upon them by filing the proof affidavit with necessary documents.

20. It is the evidence of AW1 that her husband, deceased Raghupathy left home by early morning in order to reach the Consumer Court, Chennai, as he was working as a clerk in the said Court, Ex.A8 is the season ticket of the deceased, which was taken for travelling between Gudiyatham and Katpadi for the period from 25.11.2015 to 24.12.2015. As per Section 2(29) of the Railways Act, 1989, he is a passenger as he was holding valid ticket at the relevant point of time. As per Section 123 (2) r/w. Section 2(29) of the Railways Act, 1989, the deceased was holding season ticket which is valid for travelling between Gudiyatham and Katpadi for the period from 25.11.2015 to 24.12.2015, had fallen and sustained head injury, suffered fracture in the head and died of the same. Therefore, the deceased died of untoward accident with valid ticket.



C.M.A.No.2080 of 2017

WEB COPY

21. In the result, this Civil Miscellaneous Appeal is allowed and the judgment dated 25.04.2017 made in O.A.No.(II-U) 154 of 2016 on the file of the Railway Claims Tribunal, Chennai Bench, is set aside. No costs.

22. The legal heirs of the deceased who are appellants/claimants are entitled for compensation of Rs.4,00,000/- with interest at 7.5% per annum from the date of the accident till the date of deposit.

23. The respondent is directed to deposit Rs.4,00,000/- along with interest at 7.5% per annum from the date of accident till the date of deposit to the credit of O.A.No.(II-U) 154 of 2016 on the file of the Railway Claims Tribunal, Chennai Bench within a period of eight weeks from the date of receipt of a copy of this judgment.

24. On such deposit being made, the 1st appellant/wife of the deceased would be entitled to Rs.2,00,000/- and the appellants 2 and 3 / daughters of the deceased are entitled to Rs.1,00,000/- each with proportionate interest and costs, by making necessary cheque application before the Tribunal. No costs.



C.M.A.No.2080 of 2017

WEB COPY

29.09.2023

Index : Yes/No
Speaking / Non-Speaking Order
ssn

To:

1. The Motor Accident Claims Tribunal,
O.A.No.(II-U) 154 of 2016,
Railway Claims Tribunal,
Chennai Bench.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI, J.,

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WEB COPY



C.M.A.No.2080 of 2017

C.M.A.No.2080 of 2017

29.09.2023