

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.11.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. NO.2598 OF 2015
& M.P.NO.1 OF 2015

The Union of India owning
Southern Railway,
Rep.by its General Manager,
Chennai - 600 003. .. Appellant/ Respondent

Versus

1.R.Duraisamy
2.D.Sankar
3.D.Krishnakumar ... Respondents/ Applicants

PRAYER : Civil Miscellaneous Appeal filed under Section 23(i) of the Railway Claims Tribunal Act, 1987, against the order passed by the Railway Claims Tribunal, Chennai Bench made in O.A.No.(II-U)234/2013 dated 11.06.2014.

For Appellant : Mr.A.P.Srinivas

For Respondents : Mr.R.Sekaran

J U D G M E N T

The present Civil Miscellaneous Appeal is directed against the impugned award passed by the Railway Claims Tribunal, Chennai Bench in O.A.No.(II-U)234/2013 dated 11.06.2014 awarding a sum of Rs.4,00,000/- for the death of the deceased, namely, Thirupathal with pendente lite interest at 6% per annum from 13.08.2013 till the date of the order and thereafter at 9% per annum till date of actual payment.

2.Learned counsel for the appellant would submit that the claimants had miserably failed to establish the factum whether the deceased, Thirupathal was a bonafide passenger at the time of falling down from the running train near yard of Katpadi Railway Station and subsequently, run over by the wheels of the train causing death of her. He would further submit that the claimants' case was constructed based only on the inquest report of the police authority and not based on any facts or any report from the eye witnesses. If the deceased had incidentally fallen down from the train there would have been a complaint made to the

nearest station master or atleast a chain pulling by a co-passenger. Therefore, a story made by the claimants that the deceased had fallen down from the train. But this contentions do not carry any merits for the simple reason, this Court in the case of Union of India vs. R.J.Simpson and another has laid down the ratio with regard to the discharge of the dependants whether the deceased passenger was a bona fide one or not has been fixed by the Railway Department, in the present case, no where the claimants has discharged successfully.

3.Ex.A.1 was registered by the police based on the information from the Station Master of Katpadi. Ex.A.5 is the inquest report drawn by the police has specifically spoken about the deceased, while travelling in a train near the yard of Katpadi Railway Station at KM 129/26-28 Loop Line, accidentally fallen down from the train, caught into wheels and died on the spot. Besides Ex.A.2 is the Postmortem Certificate, which states that the deceased would appear to have been died of shock and hemorrhage due to crush injury both lower limbs. Ex.A-6 is the Final Report prepared by the police, which was reiterated the findings given by the panchayatdars in the inquest report and after due enquiry, treated the case as accidental death. Further, as against the oral and documentary evidence available on the side of the claimants, no contra evidence was made available by the appellant.

4.Under this background, the Tribunal relying upon the judgment of the Hon'ble Apex Court in the case of Jameela and others vs. Union of India reported in AIR 2010 SC 3705 has held that the passenger falling down from the running train while travelling on valid ticket, it is certainly not criminal act and negligence of the passenger does not have effect on liability of railways. Again relying on another judgment of the Hon'ble Apex Court in the case of Union of India vs. Prabhakaran Vijaya Kumar and others reported in 2008 [4] MLJ 323 [SC] has held that Section 124 lays down strict liability or no fault liability in case of railway accidents and if a case comes within the purview of Section 124-A, it is wholly irrelevant as to who was at fault.

5.A.W.1 in his evidence has stated that the deceased was his mother and she travelled from Katpadi to Tiruppur. Here the legal presumption is that one who travels by a train carrying passengers has to be treated as a bonafide passenger unless the contrary is proved. Keeping in mind the injuries, the Tribunal has come to the conclusion that the possibility of the deceased loosing ticket at the time of fall or after the fall cannot be ruled out. In any event, as it is stated by this Court, the burden of proof that the deceased was not a bonafide passenger has to be discharged only by the respondent, but, in the present case, the respondent has not successfully discharged that burden. In this circumstances, while dealing with the case, the Tribunal

has come to the conclusion that the burden of proof that the deceased held a valid ticket is impossible to be discharged by the dependants, who can have no means of knowledge about the ticket purchased by the deceased on the ground that it is likely that such a deceased passenger held a valid ticket.

6.This Court is not able to see any infirmity in the impugned order. Therefore, the Civil Miscellaneous Appeal fails and is dismissed. However, there is no order as to costs. Consequently, connected M.P.No.1 of 2015 is closed.

7.Learned counsel for the claimants would submit that till date the appellant has not deposited the award amount with interest. Therefore, the appellant / Insurance Company is directed to deposit the award amount with interest to the credit of O.A.No.(II-U)234/2013 on the file of the Railway Claims Tribunal, Chennai Bench within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimants are entitled to withdraw the same, by moving an application before the Tribunal.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

sri

To

The Railway Claims Tribunal,
Chennai Bench.

1 cc to Mr.A.P.Srinivas, Advocate, Sr. 64349
1 cc to Mr.R. Sekaran, Advocate, Sr. 63902

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