

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.78 of 2016

The Union of India owning
Southern Railway
rep.by its General Manager
Chennai 600 003

... Appellant/Respondent

-Vs-

1. A.Thavamani
 2. A.Shankar
 3. A.Sangeetha
 4. A.Karthick
- (R2 to R4 minors represented by
mother R1-A.Thavamani)

... Respondents/Appellants

Memorandum of Grounds of Civil Miscellaneous Appeal under
Section 23 of the Railway Claims Tribunal Act, 1987 against the
order dated 2.7.2014 made in O.A.No.(II-U) 332 of 2013 on the
file of the Railway Claims Tribunal, Chennai Bench.

For Appellant :: Mr.A.P.Srinivas

JUDGMENT

This civil miscellaneous appeal is directed against the
impugned order of the Railway Claims Tribunal, Chennai Bench
dated 2.7.2014 made in O.A.No.(II-U) 332 of 2013, awarding a
compensation of Rs.4,00,000/- along with interest at 6% per
annum from the date of filing of the original application till
the date of the order and thereafter at 9% per annum till the
date of actual payment to the respondents/claimants.

2. Heard the learned counsel for the appellant and perused
the materials available on record.

3. Learned counsel for the appellant has submitted that the
Tribunal has passed the impugned award on mere surmises and
conjectures, inasmuch as it has brushed aside the specific
provisions under Sections 123 & 124 of the Railways Act and also
failed to note that the alleged accident falls within the
exceptions stated in Section 124A of the Railways Act. Adding

further, he submitted that the Tribunal erred in holding that the deceased was a bona fide passenger when no train ticket was seized from the body of the victim. He further submitted that in any event, the award of interest at 6% per annum from the date of filing of the original application till the date of award and thereafter at 9% per annum till the date of actual payment by the Tribunal is wholly erroneous, since neither the Railway Claims Tribunal Act, 1987 nor the Railways Act, 1989 make any provision for payment of interest on the award amount. On this basis, he prayed for interference with the impugned order.

4. This Court is not able to see any merit in the submissions made by the learned counsel for the appellant. It is not in dispute that the respondents/claimants, being the legal heirs of the deceased, had filed the claim petition before the Tribunal seeking a compensation of Rs.4,00,000/- together with interest due to the accidental falling of the sole breadwinner of the family, namely, Mr.K.Arumugam, who was working as Head Constable in Central Reserve Police Force, No.75, PN, Srinagar, Jammu & Kashmir, at Platform No.3 of Central railway station while travelling by Train No.12640 Brindavan Express on 19.12.2012 from Katpadi to Chennai Central and thereafter succumbed to the injuries at Government General Hospital, Chennai on 20.12.2012 at 12.45 P.M. It was also their plea that the general ticket for his travel from Katpadi to Chennai central was lost. Though the said claim was resisted by the appellant contending that the deceased was not a bona fide passenger, as a reserved PNR No.4657908933 dated 19.12.2012 was found in his possession and that there was no eye-witness to the alleged incident, the Tribunal, based on the evidence let in by A.W.1 and the documents marked by her through Exs.A1 to A8, rejected the contention of the appellant in placing reliance upon Section 124-A(d) of the Railways Act, which talks of any act committed by a person in a state of intoxication, by holding that the police have categorically concluded in the final report, Ex.A7 that the death of Mr.K.Arumugam was due to accidental fall from the running train on the ground of 'untoward incident' as defined under Section 123(c)(2) of the Railways Act, 1989. For holding so, the Tribunal has also relied upon the ratio laid down by the Apex Court in the case of Jameela and others v. Union of India, AIR 2010 SC 3705 stating that in a case where a bona fide passenger falls down from a running train, the fact that he was standing at open doors of the compartment of running train may be a negligent act or even rash act, but it is not a criminal act and the negligent act of the passenger has no effect on liability of railways. The Tribunal has further relied upon yet another ratio laid down by the Apex Court in the case of Union of India v. Prabhakaran Vijaya Kumar and others, (2008) 4 MLJ 323 stating that liability of the Railways is strict and it is irrelevant who was at fault. The Tribunal also found that though the deceased had CRPF

warrant (ex:KKDI-JAT), he met with the accident in Train No.12640 Brindavan Express (ex SBC-MAS) by falling from general coach of Platform No.3/MAS and that for the journey in Train No.12640 he was not holding any valid ticket. The Tribunal also found that being a defence personnel, the deceased would not have ventured to travel without a travel authority and that the possibility of losing the journey ticket could not be ruled out, as he was handled by various agencies in the course of shifting to the hospital. The Tribunal also found that since no evidence was let in by the appellant in this regard, the victim has to be treated as a bona fide passenger unless the contrary is proved that he was a passenger without a ticket and accordingly answered the issue that the victim was a bona fide passenger. Based on the said findings, the Tribunal has awarded a total compensation of Rs.4,00,000/- to the respondents/claimants, being the legal heirs of the deceased, and apportioned the sum to each of the claimants, namely, a sum of Rs.1,75,000/- to the wife and a sum of Rs.75,000/- each to the three minor children of the deceased.

5. Coming to the contention of the learned counsel for the appellant as to the award of interest on the compensation amount, the Tribunal has held that though the respondents have claimed 9% interest per annum from the date of filing of the application, placing reliance upon the ratio laid down by the Apex Court in the case of Thazhathe Purayil Sarabi and others v. Union of India and another, AIR 2009 SC 3098, it has awarded pendente lite interest at 6% per annum from 13.11.2013 till the date of the order and thereafter at 9% per annum till the date of actual payment considering the fact that there was no delay on the part of the respondents. When the Tribunal has rendered factual findings in respect of each of the issues, this Court is not inclined to interfere with the impugned order on any of the grounds raised by the appellant. Accordingly, the civil miscellaneous appeal fails and it is dismissed. Consequently, C.M.P.No.740 of 2016 is also dismissed.

सत्यमेव जयते

-s/d-

Assistant Registrar (CSV)

True Copy

WEB COPY

Sub-Assistant Registrar

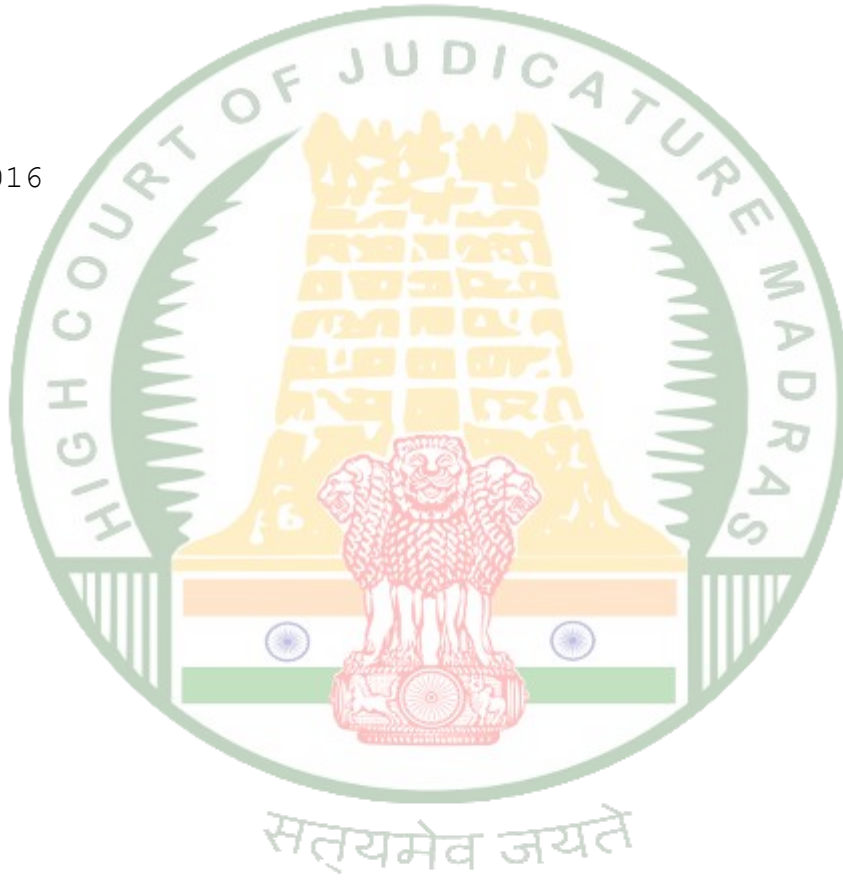
ss

To

1. The Railway Claims Tribunal
Chennai Bench

C.M.A.No.78 of 2016

rsy(co)
aa10/02/2016



WEB COPY