

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 14.12.2016

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.2913 of 2009
and MP.No.1 of 2009

The Union of India,
Owning Southern Railway,
Rep.by its General Manager,
Chennai-600 003.

... Appellant

Vs.

1. Ravi
2. Moorthy
3. Mohan
4. Sivakumar
5. Santhi
6. Latchumi
7. Pappammal.

... Respondents

Prayer :

Civil Miscellaneous Appeal preferred under Section 23 of the Railway Claims Tribunal Act, 1987, against the order dated 27.08.2008 in O.A.No.2004 00012 on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellant : Mr.V.Hari Babu

For Respondents : Mr.S.Subbiah

JUDGMENT

The Railway has preferred this appeal challenging the order of the Railway Claims Tribunal dated 27.08.2008 in O.A.No.2004 00012 passed by the Railway Claims Tribunal, Chennai Bench.

2. The brief facts that lead upto the appeal may be stated as below:-

- On 04.05.2003 at about 9.30 a.m., a male body aged about 50 years was found by the Railway Guard of the train in between Tiruvallur and Egattoor and he promptly informed the same to the Station Master, Tiruvallur, on whose instance an FIR was registered by the Railway Police.
- An Inquest report was conducted on the same day and the postmortem too was performed. The inquest report and

postmortem certificate are made available on record as Ex.A-3 and Ex.A-2 respectively.

- On 03.06.2003, the Railway Police has concluded its investigation and filed its final report which is available on record as Ex.A-4. The course of the investigation disclosed that the person found dead was one Murugesan aged 65 years, a coolie by avocation, from Manavala Nagar, Tiruvallur Taluk and his heirs preferred a Claim Petition before the Tribunal in O.A.No.2004 00012.

3. Before the Tribunal, the appellant took the contention that the deceased had attempted to cross the railway line and that he was a trespasser and not a bona fide traveller in any of the train which passed through the route the previous night.

4. Rejecting the contention of the Railways, the Tribunal has passed an award, and in arriving at its conclusion, the Tribunal has believed the claimants' version that the deceased had travelled from Tiruvallur to Senthamangalam to visit his brother-in-law, and that he might have lost his ticket. The Tribunal also found some corroboration in Ex.A-3, postmortem report and fixed the time of death of the deceased any where between 14.00 to 18.00 hrs., before postmortem.

5. Before this Court, the learned counsel for the appellant contended that the Tribunal had gone wrong in relying on the self-serving statement of the claimants and in the absence of any ticket recovered from the body of the deceased by the Railway Police during inquest, it would be a conjecture to believe that the deceased had actually purchased the ticket and as long as the ticket was not found, the burden is on the claimants to establish that the ticket indeed was purchased by the deceased, and since this burden was not discharged, it cannot be inferred that the victim was a bona fide traveller.

6. Opposing the said arguments of the learned counsel for the appellant, the counsel for the respondents submitted that the conclusion of the Tribunal was not found solely on the logic but on human experience. Merely because a ticket is not found, it cannot be concluded that no ticket was purchased and the burden is only on the Railways to establish that no ticket was so purchased. Indeed the Railways did not examine any witness on its side to establish the fact which was well within its knowledge, something the claimants could not have accessed it.

7. The normal procedure contemplated by The Railways Passengers [Manner of Investigation of Untoward Incidents] Rules 2003 is that on conclusion of investigation by the Railway

Police the report shall be forwarded to Railway Protection force, which is statutorily required to conduct an independent enquiry under Rule 7 and once it completed its enquiry, the Railway Protection Force should make available its report to the Divisional Railway Manager, who is again required to conduct yet another enquiry under Rule 11. What happened in the instant case is, only the Railway police has completed its investigating part of the case, but no investigation by the Railway Protection Force or enquiry were conducted in accordance with Rule 7 and 11 of the aforesaid Rules. Normally, it would be difficult for the claimants, who may not even know about the death of one of the family members till they are informed by the Railway itself to produce the relevant documents. In these circumstances, it is inappropriate for the appellant to insist on a ticket, when it has failed to do its homework properly.

8. Given the circumstances in which the appellant finds itself in, I do not find any infirmity in the order passed by the Railway Claims Tribunal. Consequently, I do not find any merit in this appeal and the same is dismissed without costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kmi/ds

To:

1. The Registrar,
Railway Claims Tribunal
Chennai Bench.
2. The VR Section
High Court, Madras. (2 Copies)

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