

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.12.2017

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THE HON'BLE MR. JUSTICE M.DURAISWAMY

C.M.A.No.323 of 2016

1.R.Balasubramanian

2.B.Muneeswari

... Appellants/Applicants

Vs.

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

... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 23 of Railway Claims Tribunal Act, 54 of 1987 against the order dated 16.09.2015 in O.A.(II-U) 20/2015 to set aside granting an award for the statutory compensation of Rs.4,00,000/- with interest at 12% p.a from the date of filing of the claim application viz 20/01/2015 till the date of payment and the cost of the proceedings. passed by the Railway Claims Tribunal, Chennai Bench.

For Appellants : Mr.T.Raja Mohan
For Respondent : Dr.S.R.Sundaram

J U D G M E N T

Challenging the order passed in O.A.(II-U) 20/2015 on the file of Railway Claims Tribunal, Chennai Bench, the claimants have filed the above Civil Miscellaneous Appeal.

2.According to the appellants, on 18.05.2014, their son was travelling from Saidapet to Chennai Beach Railway Station in an EMU Train bound towards Chennai Beach and due to rush, speed and jolt of the Train, he accidentally fell down from the running Train between Saidapet and Mambalam Railway Station and thereby sustained grievous injuries on head and in his right Jaw. He was shifted to Royapettah Government Hospital and thereafter to Rajiv Gandhi Government General Hospital, Chennai and admitted in I.C.U. However, on 23.05.2014, at about 08.30 p.m., he succumbed to the injuries. According to the appellants, the deceased had purchased group ticket for travelling from Saidapet to Chennai Beach. Further, according to the appellants, it was an untoward incident.

3. According to the respondents, the accident had occurred only because of the negligence on the part of the deceased.

4. The Tribunal dismissed the Claim Petition stating that the accident had occurred only because of the negligence on the part of the deceased.

5. Heard, Mr. T. Raja Mohan, learned counsel appearing for the appellants and Dr. S. R. Sundaram, learned Counsel appearing for the respondent.

6. Mr. T. Raja Mohan, learned counsel appearing for the appellants submitted that the negligence of the passenger does not have effect on the liability of Railways and the claimants are entitled to compensation. In support of the said contention, the learned counsel relied upon the following judgements:-

(i) AIR 2010 SCC 2705 [Jameela & Ors. v. Union of India] wherein, in paragraph No. 5, the Apex Court held as follows :

"5. We are of the considered view that the High Court gravely erred in holding that the applicants were not entitled to any compensation under section 124 A of the Act, because the deceased had died by falling down from the train because of his own negligence. First, the case of the Railway that the deceased M. Hafeez was standing at the open door of the train compartment in a negligent manner from where he fell down is entirely based on speculation. There is admittedly no eyewitness of the fall of the deceased from the train and, therefore, there is absolutely no evidence to support the case of the Railway that the accident took place in the manner suggested by it. Secondly, even if it were to be assumed that the deceased fell from the train to his death due to his own negligence it will not have any effect on the compensation payable under Section 124 A of the Act."

(ii) (2008) 9 Supreme Court Cases 527 [Union of India v. Prabhakaran Vijaya Kumar], wherein in paragraph No. 17, the Supreme Court of India held as follows :

"17. Section 124-A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124-A it is wholly irrelevant as to who was at fault."

7. Countering the submissions made by the learned counsel appearing for the appellants, Dr. S. R. Sundaram, learned counsel appearing for the respondent submitted that the Tribunal has

rightly dismissed the petition for the reason that the accident had occurred only because of the negligence on the part of the deceased.

8.The ratio laid down by the Apex Court in the above referred judgements squarely applies to the case of the appellants. From the above judgments, it is clear that the negligence pleaded by the Railways does not have effect of liability of the Railways and that the claimants are entitled for compensation for the death of the deceased.

9.The judgments relied upon by the learned counsel appearing for the appellants squarely applies to the facts and circumstances of the present case.

10.In these circumstances, the order passed by the Railway Claims Tribunal, Chennai Bench, in O.A.(II-U) 20/2015, is set aside and the matter is remitted back to the Tribunal for fresh consideration. The Tribunal is directed to decide the quantum of compensation payable to the claimants afresh and pass orders, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this judgment.

11.With these observations, the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-

Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

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To

1.The Registrar,
Railway Claims Tribunal,
Chennai Bench.

2. The General Manager,
Union of India, Southern Railway
Chennai - 600 003.

+lcc to Mr.Rajentran, Advocate SR.No.88912

+lcc to Mr.S.R.Sundaram, Advocate SR.No.88648

C.M.A.No.323 of 2016

VGII(CO)

GN(28/12/2017)