

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No. 2228 of 2014
and M.P.No.1 of 2014 &
CMP No.18367 of 2017

The Union of India Owning,
Southern Railway,
Rep. By its General Manager,
Park Town,
Madras - 600 003. ... Appellant/Respondent

Vs.

1. A.Sekar
2. Smt.S.Vijayalakshmi ... Respondents/Appellant

Prayer: Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987 (Act 54 of 1987), against the Judgment passed by the Railway Claims Tribunal, Chennai Bench dated 30.04.2014 in O.A.(II-U) 280 of 2013.

For Appellant : Ms.T.P.Savitha
Standing Counsel for Southern Railway

For Respondents:Mr.T.Rajamohan

J U D G M E N T

Aggrieved over the order passed by the Railway Claims tribunal, Chennai Bench in O.A.(II-U) 280 of 2013, dated 30.04.2014, the Southern Railway/appellant has preferred this appeal.

2. The claim made by the father and mother of the deceased is that their son fell down from the train and died. On 22.04.2013, there was a bandh in Kanniyakumari District and the college in which the deceased was studying, declared holiday. Therefore, the deceased informed to the claimants that he is returning to his native place and purchased a second class ticket for travel in train from Tirunelveli to Sivakas. He travelled by Nagercoil - Mumbai Express. Thereafter, it was

informed by a friend of the deceased to the claimants (parents) that the deceased fell down from the train and died. The First Information Report was registered in Crime No.62 of 2013 on 22.04.2013. On the basis of the death of their son, the claimants made a claim for compensation against the Southern Railways.

3. The Southern Railways had filed a reply statement denying the claim made by the claimants. In the absence of any complaint from the Station Master about the incident of train pulling or any information from the driver, it may not be stated that there was such an incident. The Southern Railways denied the liability to pay compensation to the claimants U/s 124-A of the Railways Act, 1989, before the Tribunal.

4. In order to prove the case of the claimants, 7 documents were marked as Exs.A.1 to Exs.A.7 and the father of the deceased examined himself as A.W.1. On the side of the respondent, Investigating Officer was examined as R.W.1 and DRM Report of Madurai Division dated 26.03.2014 was marked as Ex.R.1.

5. Considering the oral and documentary evidence, the Tribunal has come to the conclusion that it is an accident and awarded a compensation of Rs.4 lakhs to the claimants. Aggrieved over the award, the appellant/Southern Railways has preferred the above appeal.

6. According to the appellant, the deceased was having a very bad mentality and he was under continued stress. He frequently quarelled with room-mates, neighbours and the owner of the landlord. According to the appellants, he might have committed suicide and there is no chance of the deceased's body cut into two pieces from the abdomen level due to falling down, as the track of the said area is high from the ground level. In case of accidental death, there must be smear of grease and oil all over the body. The train was moving only at speed on 130 k.m., with caution order over a bridge. If there was an accidental fall, the deceased should have fallen below the bridge, which is about 10 feet high, whereas the deceased was cut in two pieces, which shows that it is a clear case of suicide and not an accidental death. The analysis of the evidence made by the Inspector of Railway Protection Forces and Ex.R.1, DRM Report, shows that it is a case of suicide attended by the deceased and not an accident. Therefore, Order passed by the tribunal is sought to be set aside.

7. Heard both sides.

8. On the side of the respondents/claimants, the First Information Report was marked as Ex.A.1, which speaks that the deceased was travelling from Tirunelveli to Sathur in Nagercoil-

Mumbai Express, due to bandh announced in Kanniyakumari District. It is further stated that the Collector had declared Holiday for the colleges. First Information Report was filed based on the information given by the Station Master and thereafter, message received from the father of deceased about the place of occurrence.

9. The Inquest Report stated that the deceased, who travelled at door step, had fell down for some reason and was dragged for 50 meters and was cut below the chest and suffered injury on the back side of the head. The final report filed on 13.05.2013 also gave finding that it was an accidental death due to the accidental fall from the running train. In the cross-examination of the Investigating Officer, when a specific question was put to him that it is a case of suicide, he has denied the same. From the documentary and oral evidence, it is clear that the deceased travelled in the train and he fell down accidentally and died.

10. It is submitted by Mrs.T.P.Savitha, learned Standing Counsel for Southern Railway, that in a case of accidental fall, a body would not have been cut into two pieces and there would not be any smear of oil and grease all over the body. This case has been filed on the basis of information given by the father of deceased and it does not reflect the actual happening. The enquiry report shows that the bad antecedents of the deceased with his room-mates, neighbours and owner of house.

11. But, unfortunately nothing was spoken through witnesses. If at all it is a case of suicide, an information and report from driver, guard and station master should have been on record. But no such record was found to be in existence and no such records were marked before the Tribunal as exhibits. In the reply statement also the case of untoward incident was not denied, but only the liability of compensation was denied. The absence of any oral and documentary evidence to prove that it was a case of suicide, the argument of the learned standing counsel for the appellant cannot be accepted. No further witness was examined on behalf of the appellant. R.W.1, Investigating Officer himself denied the suggestion that it was a case of suicide. In such circumstances, the Tribunal rightly concluded that it is a case of accidental fall and claimants are entitled for compensation. Since the case projected by the Railways that one of suicide attempt and not the fall due to negligence, which falls under Section 124-A of Railways Act, the exemption cannot be claimed by the Railways from paying the compensation. Therefore, the finding of the Tribunal is well supported by valid reasons and legal evidence. In such circumstances, no interference is called for from this Court to the impugned order passed by the Tribunal. The impugned order passed by the Tribunal is confirmed and the appellant is directed to deposit the compensation amount.

12. As far as the quantum of compensation is concerned, the learned counsel for the claimants/respondents submitted that the appellant has not deposited the compensation amount as awarded by the Tribunal and they filed the appeal and got stay of Order passed by the Tribunal. Therefore, they prayed for the compensation as per the prevailing rate. According to the respondents, Ministry of Railways (Railway Board) has issued a notification vide G.S.R.1165 (ex-ordinary) dated 12.12.2016, which specify in cases of death, the compensation would be Rs.8 lakhs. Therefore, claimants/respondents seeks for enhancement of compensation from Rs.4 lakhs to Rs.8 lakhs, as per notification issued by the Railways. In support of their claim relied upon the decision reported in, 2001(3) SCC 714 (Radhi Menon Vs. Union of India), wherein it has been held that the compensation as prescribed at the time of making the final order should be paid. So far as this case is concerned, the Order of the Tribunal has been stayed on 28.08.2014 and it is stated that no compensation was deposited or paid to the claimants. Therefore, the amount of compensation shall be payable as per the rates prevailing on date of this order as per notification issued in GSR.1165(Exordinary) dated 12.12.2006 which is Rs.8 lakhs. Therefore, there shall be a direction to the appellant to deposit a sum of Rs. 8 lakhs (Rupees Eight Lakhs Only) along with the interest at the rate of 9% p.a., from the date of claim petition till the date of deposit. On such deposit being made, the claimants are entitled to withdraw the same.

13. With the above terms, this Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

ksa

To

1.The Railway Claims Tribunal,
Chennai Bench.

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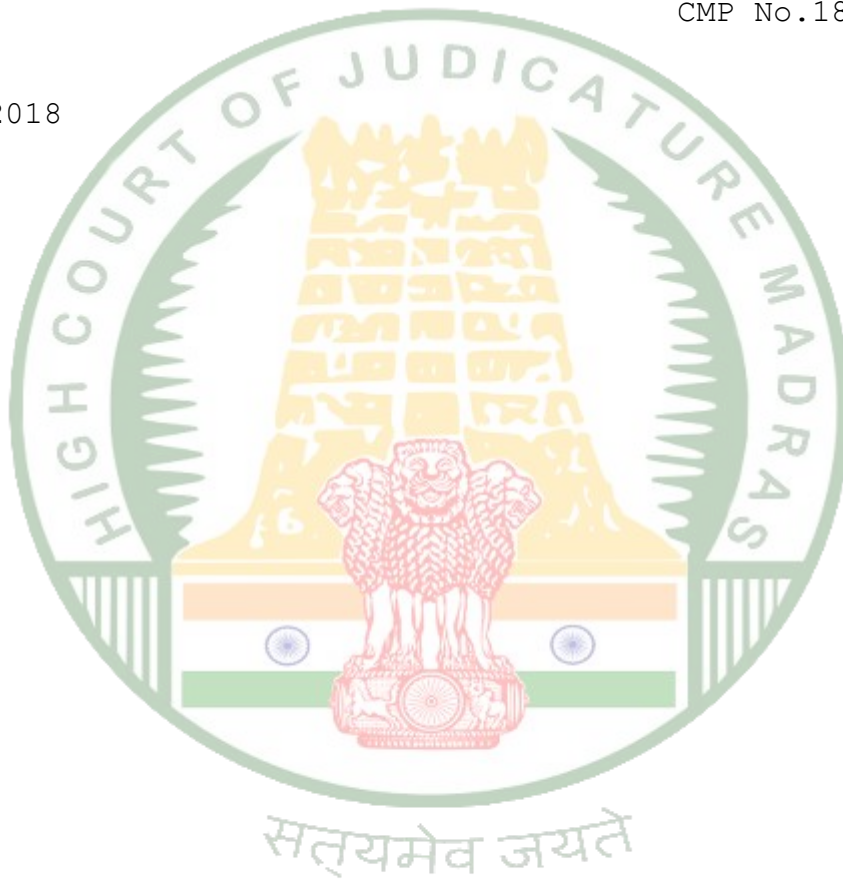
2.The Section Officer,
VR Section, High Court,
Madras.

+ 2 cc to Mr.T.Rajamohan Advocate,SR.83842

+ 1 cc to Ms.T.P.Savitha Advocate,SR.84079

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