

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2017

CORAM :

THE HONOURABLE MR. JUSTICE M. GOVINDARAJ

C.M.A.No. 2378 of 2009
in M.P.No. 1 of 2009

The Union of India owing
Southern Railways,
Rep. by its General Manager,
Chennai. Appellant/Respondent

Vs.

1. Jeevarathinam
2. Mrs. J.Nagarathinam Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 23 of the Railway Claims Tribunal, to call for the entire records leading to passing of the final order in O.A.No.2006 00023 dated 26.05.2009 on the file of the Railway Claims Tribunal, Chennai Branch and set aside the same.

For Petitioner: Dr.S.R.Sundaram
Counsel for Railways

For R1-R2 : Mr. D.Gopinath

O R D E R

The Southern Railways is the appellant against an award of compensation by the Railway Claims Tribunal, Chennai Branch.

2. According to the claimant, his son travelled in the train and fell down due to heavy rush and suffered multiple injuries and died on the spot. On the death of his son, his father has laid the claim petition before the Tribunal. After considering the evidence of the claimant and two co-passengers as AW.2 and AW.3 and the documents marked through them, as Ex.A1 to Ex.A6 and also after considering the evidence of Ex.R1 to Ex.R6 documents, the tribunal has come to the conclusion that the claimant is entitled to compensation and awarded sum of Rs.4 lakhs as compensation. Aggrieved by the award of compensation, the railways preferred the above appeal.

3. According to the appellant, the alleged incident is one of trespass and not that of an accident. The deceased has crossed the railway track on 19.07.2005 and was hit by the train and died on the spot. The Senior Motorman had stopped the train and informed the guard that the guard has seen the body and directed the Senior Motorman to move the train for purpose of clearing the body, thereby, he informed RW.3 about the accident and proceeded further and gave detailed report to the Railway station (Madras Beach Station).

4. Heard the submissions.

5. At the time of examination of witness, RW.3 had given a contra statement that the body was lying on the middle of the Track and RW.3 was informed by the driver of the following Train i.e., TM-38. Because of the contradiction, the tribunal could not accept the theory projected by the railways. The contradiction in the deposition of RW.1 and RW.2 is that the body was moved from the railway track and the train proceeded further, whereas the statement of RW.3 was that the body was lying between the rails. To add more confusion, the statement of RW.1 to RW.3 that the accident had taken place at two different points between Villivakkam and Korattur i.e., at 11.9 Km and 11.7 Km. This contradiction also was not properly explained. Further, with regard to age of the deceased, there is contra statement that one body of a male aged about 32 years and other one was male aged about 21 years. On the other hand, the claimant let in evidence that the deceased had travelled in train which was substantiated by PW.2 that the deceased had purchased the Ticket for himself and he had fallen from the train due to rush and heavy crowd. PW.3 also speaks about fall of the deceased from the train.

6. Considering the cogent evidence, the Tribunal has come to a conclusion that on the fateful day the deceased travelled in the train and further found that he is a bonafide passenger. In view of finding that it is accidental fall and he fell from the train between the Stations, the Tribunal awarded sum of Rs. 4 Lakhs as per the notification issued by the Ministry of Railways.

7. This Court considered the rival contentions of the parties from pleadings and oral and documentary evidence. It is clear that the finding of the Tribunal is based on the reasons. If at all the deceased had trespassed into the railway track, the probabilities of being there and the necessity and surrounding circumstances to cross that place, should have been explained through the investigation done by the police, Whereas there is no evidence on this aspect. On the other hand, co-passengers clearly deposed that the deceased was travelling in

the train and he suffered death due to the accidental fall. This part of the evidence was not disputed by the appellant. The other oral and documentary evidence clearly go to show that the case of the claimants is reliable and the appellant has not established the theory projected by them. In the circumstances, this Court has come to the conclusion that the finding of the Tribunal is based on reasons and does not require any interference.

8. In view of the orders passed above, a direction is issued to the appellant to deposit the compensation awarded by the tribunal along with interest of 9% per annum, from the date of claim petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the same.

9. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

bsm

To

The Chairman,
The Railway Claims Tribunal,
Chennai.

Copy to

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

+1cc to Mr.D.Gopinath, Advocate Sr.81825

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