

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.2914 of 2009
and M.P.No.1 of 2009

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

Vs.

D.R.Govindan ..Respondent/Claimant

Prayer : Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987, against the order dated 01.08.2008 in O.A.No.2007 00050 passed by the Railway Claims Tribunal, Chennai Bench.

For Appellant : M/s.V.Hari Babu
For Respondent : M/s.M.Prem Kumar

J U D G M E N T

Aggrieved over the award of compensation passed by the Railway Claims Tribunal, Chennai Bench, dated 01.08.2008 in O.A.No.2007 00050, the Southern Railway has preferred this appeal.

2. According to the Railway, the claimant was not a bona fide passenger and he did not possess any valid ticket for the travel and it is not a case of untoward incident, but one of a self inflicted injury, as provided under Section 124A(b). The claimant was negligent and therefore, the award passed by the Tribunal is erroneous.

3. The respondent/claimant has denied all the allegations and grounds raised in the appeal. He would state that he had marked Exs.A1 to A9, and let in evidence in support of the same. Ex.A1 is the original journey ticket bearing No.43789874-II. Ex.A2 is the General Diary Extract of Sub Inspector/Railway Police outpost, Morappur. Exs.A3 to A6 are the hospital records. The untoward incident is admitted and that he had proved his case as a bona fide passenger and incident was not due to his negligence. Therefore, the appeal shall be dismissed.

4. Heard the learned counsel for both the parties.

5. From a perusal of the materials on record, it is seen that there is no dispute with regard to the incident. There is cogent evidence on the side of the claimant that he travelled in Inter City Express and thereafter, to Thonganur through passenger train No.885 at Salem, as Inter City Express does not have a stop at Thonganur Railway Station. Accordingly, he got down at Salem and boarded train No.885 passenger train at Salem and on 08.06.2003, while he was getting down from the train at Thonganur Railway Station due to sudden jerk and movement he fell down between the bogey and platform and sustained injuries.

6. The Tribunal on the basis of oral and documentary evidence has found that the claimant suffered injuries due to the accidental fall from the train. Insofar as the plea of the appellant/Railway that it is not an accidental fall, but self inflicted injuries is concerned, it was negatived, as there is no contra evidence to prove the claim or disprove the evidence of the claimant. Relying on a judgment of the Full Bench of Andhra Pradesh High Court in the case of Union of India, South Central Railways V. Kurukundu Balakrishnaiah, reported in 2004 ACJ 529 (AP) and also another judgment in the case of Union of India Vs. S.Yadagiri @ Yadaiah & Another reported in III (2005) ACC 839 (AP), the Tribunal has held the burden of proving that a passenger died or sustained injuries on account of self inflicted injury squarely rests upon the Railway.

7. But, unfortunately, even though the Railway has taken defence and filed the reply statement, they have not examined any witness to prove the pleadings in the reply statement.

8. Further, no document was also marked on the side of the Railways upon the statement made. When the party to litigation put forth defence, it is for him to produce the best evidence to substantiate the pleadings. If he does not produce any evidence, adverse inference shall be drawn against him. In the cases of Railway accidents, Doctrine of strict liability is applied. It is for the Railways to prove the negligence on the part of the victim. Since the railways has failed to prove the negligence, the tribunal has rightly awarded compensation and the award does not require interference. The appeal is accordingly dismissed.

9. The learned counsel appearing for the respondent would produce the Notification of the Ministry of Railways (Railway Board) dated 22.12.2016, wherein, in S.No.22 in Part III of the Schedule under Rule 3 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, the compensation has been fixed at Rs.3,20,000/-. Therefore, the compensation, as published in the Notification dated 22.12.2012, shall be given to the claimant.

10. Accordingly, the Railway is directed to pay the compensation of Rs.3,20,000/- (Rupees three lakh and twenty thousand only) with interest at the rate of 9% per annum from the date of the 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 being made, the respondent/claimant is entitled to withdraw the same.

11. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Railway Claims Tribunal,
Chennai Bench.

2. The Section Officer, VR Section,
High Court, Madras. (+ 2 copies)

+ 1 cc to Mr. M. Premkumar, Advocate Sr.86229

+ 1 cc to Mr.V. Haribabu, Advocate Sr.86573

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BR(CO)
EU(29/10/2018)

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