

IN THE HIGH COURT OF JUDICATURE AT MADRAS

04.12.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

C.M.A.No.698 of 2008

1.M.Devaki
2.M.Vinoth, Minor
3.M.Divya Bharathi, Minor
Minor applicants 2 & 3 are
rep. by mother and next friend
M.Devaki,
all are residing at
No.3, 3rd Street,
Sarathy Nagar, West Saidapet,
Chennai - 600 015. ... Appellants / Applicants

versus

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

2.A.Muniammal ... Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987, to set aside the order dated 09.11.2007 passed in O.A.No.68 of 2001 on the file of the Railway Claims Tribunal, Chennai Bench and granting an award of statutory compensation [i.e.] Rs.4 lakhs with interest at the rate of 12% per annum from the date of filing of the claim application viz., 06.06.2001 till the date of payment and the costs of the proceedings.

For Appellants :Mr.T.Raja Mohan
For Respondents :Mr.M.Vijay Anand

J U D G M E N T

The claimants, who are the applicants in O.A.No.68 of 2001 have filed this Civil Miscellaneous Appeal under Section 23 of the Railway Claims Tribunal Act 54 of 1987, seeking the relief to set aside the order of dismissal dated 09.11.2007 passed by the Railway Claims Tribunal, Chennai Bench (hereinafter referred to as "the Tribunal") and for granting an

award of statutory compensation [i.e.] Rs.4 lakhs with interest at the rate of 12% per annum from the date of filing of the claim application viz., 06.06.2001 till the date of payment and costs of the proceedings.

2. The case of the prosecution before the Tribunal in brief, is as follows: On 11.06.2000, after purchasing the second class travel ticket while the deceased was travelling in a train as a passenger from Egmore to Tambaram, at about 8.30p.m., when the train was passing in between Egmore and Chetpet Railway Stations, the deceased was hit by a lamp post due to over crowd and jerk of the train and consequently fell down from the running train and thereby, sustained severe head injuries. For the said accident, a case has been registered by the Railway Protection Force, Egmore, in Crime No.767 of 2000 under Section 174 Cr.P.C. The first applicant is the wife and the applicants 2 and 3 are the children of the deceased, further, the second respondent [A.Muniammal] is the mother of the deceased [Manivel]. The applicants filed a Claim Application against the Railway Administration and claiming compensation of Rs.4 lakhs for the death of the deceased.

3. Opposing the claim made by the claimants, the first respondent [Railway Administration] by filing a reply statement, denied the allegations made in the application. Further, contend that the deceased had suddenly trespassed and knocked down by a running train and as such, the Railway Administration is not liable to pay any compensation to the applicants. According to the first respondent, the Claim Application filed by the applicants is liable to be dismissed.

4. Before the Tribunal, the first applicant examined herself as A.W.1 and one M.G.Murugesan was examined as A.W.2. On the side of the applicants, 7 documents were marked as Ex.A.1 to Ex.A.7. Further, on the side of the respondents, 3 witnesses have been examined as R.W.1 to R.W.3 and 2 documents were exhibited as R.1 and R.2.

5. Having considered all the above, the Tribunal dismissed the application filed by the applicants. Aggrieved over the said order, the applicants are before this Court with the present Civil Miscellaneous Appeal.

6. When the appeal is taken up for consideration, I have heard the arguments of Mr.T.Raja Mohan, learned counsel appearing for the appellants, Mr.M.Vijay Anand, learned counsel appearing for the respondents and also perused the records carefully.

7. The learned counsel appearing for the appellants would contend that, in the order passed by the Tribunal it has clearly held that the evidence let in by the Railway Authority

[R.W.1 to R.W.3] is not worthy of acceptance, even after coming to the said conclusion, the Tribunal rejected the claim made by the applicants. He would further contend that the deceased was travelling as a bonafide passenger with a valid journey ticket and died as a result of the injuries sustained in an untoward incident and for that relief ought to have been granted to the appellants.

8. Per contra, the learned counsel appearing for the respondents would contend that the opinion of the Panchayatars in inquest report, non-production of the ticket and the relevant materials produced by the applicants proved that the injury sustained by the deceased is a self inflicted. According to him, interference is not necessary in the findings arrived at by the Claims Tribunal.

9. I have considered the rival submissions made on either side and perused the relevant material available on record.

10. Before coming into the merits and demerits of the Appeal, it is necessary to see Section 124-A of the Railways Act, 1989, which reads as follows:

"124-A. Compensation on account of untoward incidents. - When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or ; the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, not withstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident. Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to -

- (a) suicide or attempted suicide by him:
- (b) self-inflicted injury:
- (c) his own criminal act:
- (d) any act committed by him in a state of intoxication or insanity;
- (e) any natural cause or disease or medical or surgical treatment unless such treatment

becomes necessary due to injury caused by the said untoward incident."

11. So, the said Section contemplates that the duty of the Railway Administration in respect to the payment of compensation in a deserving case. Further, it disclosed under which circumstances the Railway Tribunal is exempted from the liability to pay the compensation. However, the burden is upon the Railway Administration to show that it is saved of its liability under any one of the exceptions enumerated in the proviso to Section 124-A of the Railways Act. But the said burden can be discharged by preponderance of probability from the circumstances appearing in this case.

12. Coming to the case in our hand, in the order passed by the Tribunal it was held that the evidence given by R.W.1 to R.W.3 are highly unnatural, particularly the testimony given by R.W.1 before the Tribunal appears to be false one. In the same way, the evidence given by R.W.2 is also not reliable for the reason that the rough journal maintained by him was not produced for the reasons best known to the Railway Administration. Further, due to the withholding of the copy of the message alleged to have been sent to the Station Master, the Tribunal concluded the evidence of R.W.1 to R.W.3 examined on behalf of the Railway Administration is not worthy of acceptance.

13. Now on going to the contents of exhibits marked in this case, there is no averment that the accident had happened not due to the negligent act of the deceased. Further, in Ex.A.2 [Postmortem Certificate] discloses that the death is due to the head injury sustained by the deceased and the other documents exhibited as A.3 to A.7 are not related to the occurrence. In the said circumstances, there is no evidence on the side of the applicants to show that the deceased was hit by a lamp post at the time of occurrence. Since the accident had occurred in a running train, we are not in a position to expect the eye witness to the occurrence. However, on going through the Ex.R.1 [Inquest Report], in Col.No.XV, the Panchayatars had held as follows:

"XV.On 11.06.2000 at about 20.30 hrs. while the deceased crossed the railway line in between Egmore and Chetpet railway station by his negligence, he was hit by an electric train which was proceeding from Beach to Tambaram. He was admitted at Chennai Government Hospital and inspite of the treatment he died at about 23.15 hrs.

The joint enquiry of Panchayatars and after seeing the injuries sustained by the deceased, we, the Panchayatars have come to a conclusion that the

deceased died due to his grievous injuries by train accident, while he was crossing the railway line by his negligence in between Egmore-Chetpet Railway Station. The opinion has been given by the Panchayatars jointly and severally. The deceased died only due to train accident and not by any other reason."

14. So, as per the opinion of the Panchayatars, the alleged accident had happened in consequence of the wrongful act and negligent of the deceased. Even though Section 123[c][2] says that "the accidental falling of any passenger from a train carrying passengers" is comes under the definition of untoward incident. In this case, in order to prove that the deceased has accidentally fell down from the train, no evidence is adduced on the side of the applicants.

15. Even assuming that the deceased has fell down from the train after hit into a lamp post due to over crowd, it is impossible for touching the head of the deceased in a lamp post, but it is possible when he was projecting his body outside the compartment, the backside of his body might be in a position to hit in a lamp post. But in this case in the postmortem certificate it was mentioned that only due to the head injury, the death had occurred to the deceased.

16. Apart from that, Section 2(29) of the Railways Act defines "passenger" means "a person travelling with a valid pass or ticket". In this aspect, it is an admitted fact that the deceased has not found with a valid ticket at the time he was admitted in the Hospital. Therefore, the present case falls under exception (a)(e) of proviso to Section 124-A of the Railways Act, 1989, as such, the Railway Administration is not liable to pay any compensation to the claimants of the deceased. In the said circumstances, the claimants are not at all entitled to any relief as prayed in the Claim Application.

17. For the reasons stated above, the findings arrived at by the Tribunal does not need any interference.

18. In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

sri

To

1.The Railway Claims Tribunal,
Chennai Bench.

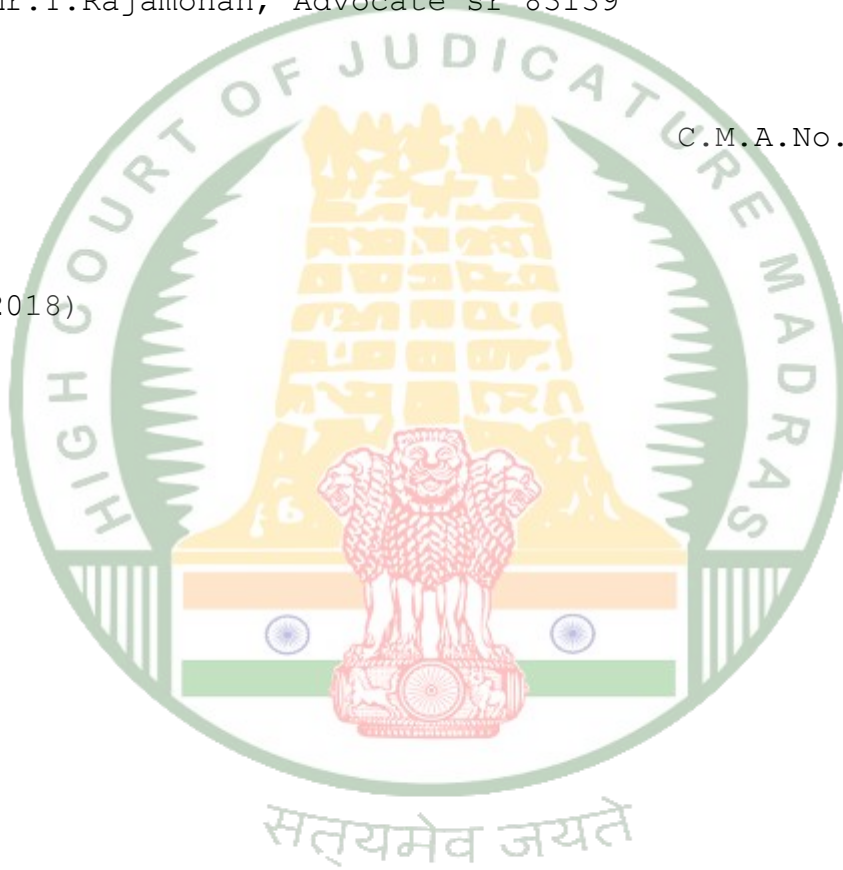
2.The General Manager.
Union of India,
Owning Southern Railway,
Chennai - 600 003.

+1 CC to Mr.M.Vijay Anand, Advocate sr 83581.

+1 CC to Mr.T.Rajamohan, Advocate sr 83139

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VBA(CO)
SP(19/12/2018)



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