

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.01.2018

CORAM

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.M.A.No.321 of 2015

and M.P.No.1 of 2015

The Union of India
owning Southern Railway
rep by its General Manager,
Park Town, Madras - 600 003. ... Appellant/Respondent

Vs.

1.S.Nadhiya
2.S.Danush
3.S.Kamalesh
(R2 & R3 being a minors rep by mother
& natural guardian R1)
4.Parvathi ... Respondents/Appellants

Civil Miscellaneous Appeal filed under Section 23 (i) of
the Railway Claims Tribunal Act 54 of 1987) against the judgment
passed by the Railway Claims Tribunal, Madras Bench in O.A.(II-
U) 183 of 2013 dated 14.02.2014.

For Appellant : Ms.T.P.Savitha
For Respondents : Mr.R.Sekaran (R1 to R4)

J U D G M E N T

Challenging the order passed in O.A.(II-U) 183 of 2013 on
the file of the Railway Claims Tribunal, Madras Bench, the
Southern Railways have filed the above appeal.

2.The claimants filed a Claim Petition before the Tribunal
claiming a total compensation of Rs.4 lakhs for the death of one
K.Suresh.

3.According to the respondents/claimants, the deceased was a
resident of Avadi and he used to go by Train and Bus to various
places in and around Chennai for his Coolie job. On 24.07.2012,
he left his house for his job and the respondents came to know
from the Korukkupet Railway Police that the deceased, by holding
a II Class return ticket for travel between Avadi and Minjur,

while travelling in one of the Electric Train between Korukkupet and Basin Bridge, due to heavy rush, speed and jolt of the Train, accidentally fell down and hit against the post of Km 2A/7 and suffered grievous head injuries, resulting in his death on the spot. According to the claimants, it was an untoward incident.

4. According to the appellant/Southern Railways, the alleged incident is a case of other than fall from the Train and will not come under the definition of untoward incident within Section 123 (c) (2) of the Railways Act for which the respondent is not liable to pay compensation under Section 124-A of the Railways Act, 1989. Further, the appellant denied that the deceased was a bonafide passenger. Though the appellant had filed their counter before the Tribunal, they have not produced the report of the Divisional Railway Manager.

5. Before the Tribunal, on the side of the claimants, A.W.1 was examined and 7 documents, Ex.A1 to A7 were marked. On the side of the appellant/Railways, R.W.1 was examined. However, no document was marked.

6. R.W.1, the Sub Inspector of Police, in his evidence has stated that he had enquired an eye-witness by name Sudha and that she has given 161 statement in which he has stated that she saw the deceased falling from the Train and hit the post. Therefore, from the evidence of R.W.1, it is clear that the deceased had fallen from the running train and hit the post, thereby, died on the spot.

7. So far as the issue of bonafide passenger is concerned, the burden is on the Railways to establish that the deceased was not a bonafide passenger. In the case on hand, R.W.1 himself had admitted that the eye-witness informed him that the deceased had fallen down from the running Train. That apart, the Railway ticket was also produced by the claimants before the Tribunal and the same was marked as Ex.A5.

8. The contention of the learned counsel for the appellant/Railways that the deceased's wife had stated that the deceased left the house at 09.00 hours, but the ticket was purchased by the deceased at 07.31 hours, much prior to the time mentioned by A.W.1, cannot be accepted for the reason that the deceased was holding a valid Railway Ticket in his pocket and that the eye-witness also saw the deceased falling down from the moving train. Therefore, the submission made by the learned counsel for the appellant cannot be accepted.

9. When the claimants have clearly proved that the deceased was a bonafide passenger, the Tribunal had rightly awarded a sum of Rs.4 lakhs as compensation for the death of K.Suresh.

10.The learned counsel for the appellant/Railways submitted that the appellant had already deposited the awarded amount before the Railway Claims Tribunal, Chennai Bench.

11.In these circumstances, I do not find any reason to interfere with the order passed by the Tribunal. The appeal is liable to be dismissed. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1.The Railway Claims Tribunal,
Madras Bench.

2.The Section Officer,
High Court, Madras.

+ 1 cc to Mr.R.Sekaran Advocate,SR.519

+ 1 cc to Ms.T.P.Savitha Advocate,SR.598

C.M.A.No.321 of 2015
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nr 25/01/2018

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