

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 967 of 2016

1. Smt. K. Gomathi
2. K. Krithika
3. K. Gayathri ..Appellants/Applicants

Vs.

The Union of India owning
Southern Railway,
Rep. by General Manager,
Chennai - 600 003. ..Respondent/Respondents

Prayer: Civil Miscellaneous Appeal as against the order dated
18.02.2016 passed by the Railway Claims Tribunal, Chennai Bench
in O.A. (II-U) 129/2015.

For Appellants :: Mr.T. Rajamohan
For Respondent :: Mr.C.V. Ramachandramoorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the legal heirs of the victim, namely, one P.Kannan, who accidentally fell down from the running train while travelling as a passenger from Chengalpet Railway Station to Tambaram on 19.07.2014, in between Singaperumal Koil and Maraimalai Nagar Railway Stations at about 12.00hrs. Therefore, the legal heirs filed the claim petition which was dismissed by the Railway Claims Tribunal stating that the claimants have not proved that the deceased was a bona fide passenger and that he accidentally fell down from the train. Aggrieved by the same, the present appeal has been filed.

2. Heard Mr.T.S. Rajamohan, learned counsel for the appellants and Mr.C.V. Ramachandramoorthy, learned counsel for the respondent.

3. Though Mr.C.V. Ramachandramoorthy, learned counsel for the respondent would very vehemently argue that there was no ticket recovered from the body of the deceased and therefore, he could not have been a bona fide passenger, it is evident from the final report filed by the Railway Police that the victim

fell from the train on 19.07.2014 and he was taken to SRM C.H., Potheri by 1.55p.m. When a person accidentally falls down from the train, it cannot be expected that the victim should hold the ticket in his hand or that the ticket should always be found either on the body of the deceased or in the pocket of the deceased. When a passenger accidentally falls down from a moving train, he is likely to be caught in between the wheels of the train and the track and moreover, he would be dragged to a sufficient distance. That being so, there is possibility of the falling of the ticket either at the time of fall or at the time when he comes under the wheels of the train or when the victim is being dragged. That apart, it is stated in the final report that the victim was taken to Government Hospital, Potheri and even during that time, there are chances of the ticket getting lost. Merely because, the ticket could not be recovered from the victim, it cannot be concluded that he was a ticketless traveller and not a bona fide passenger. Further, it is admitted even by the witnesses examined by the Railways, that the victim was seen travelling in the train before the fall. In this regard, the Divisional Railway Manager's report would reveal that one M.Arumugam, who was examined, had deposed that the victim travelled in EMU Train NO. 40708 Ex. TMLP to MSB on footboard and was not in possession of any valid ticket and he was taken to SRM hospital in an ambulance. The very evidence of Arumugam would show that the deceased had travelled in the train and after he fell down, he was taken to the hospital. The circumstance under which the victim was taken to the hospital, after the fall from the train, would undoubtedly prove that there is no question of holding the ticket even if he had been in possession of the same. Further, the evidence of Arumugam cannot be taken as ultimate truth as he could have only witnessed the victim travelling as a passenger and falling from the train and it would not have been possible for him to know whether the victim was having a valid ticket or not. Therefore, he could be termed only as an interested witness, who was examined on the side of the Railways to substantiate their case.

4. It is for the Railways to prove the fact that the victim was not a bona fide passenger by adducing evidence. The 1st appellant, who was examined as P.W.1, has categorically stated that the deceased was having valid ticket and in the absence of any rebuttal evidence, this Court has to necessarily come to the conclusion that the deceased was a bona fide passenger having a valid ticket.

5. For the above reasons, this Court comes to the conclusion that the victim was a bona fide passenger.

6. As far as negligence attributed to the deceased, as portrayed by the Railways that he was travelling on footboard,

is concerned, the same is not sustainable. The Honourable Supreme Court in the judgment rendered in Jameela and Others V. Union of India reported in AIR 2010 SC 3705 has held that "negligence of passenger does not have effect on liability of Railways and the claimants are entitled to compensation with interest". Paragraph Nos. 9 and 10 of the said judgment are extracted as follows:

"9. The manner in which the accident is sought to be reconstructed by the Railway, the deceased was standing at the open door of the train compartment from where he fell down, is called by the railway itself as negligence. Now, negligence of this kind which is not very uncommon on Indian trains is not the same thing as a criminal act mentioned in clause (c) to the proviso to Section 124A. A criminal act envisaged under clause (c) must have an element of malicious intent or mens rea. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. Thus, the case of the railway must fail even after assuming everything in its favour.

10. We are, therefore, constrained to interfere in the matter. The judgment and order of the High Court coming under appeal is set aside and the judgment and order of the Tribunal is restored. Since a period of more than 10 years has already elapsed from the date of the judgment of the Tribunal, the compensation money along with interest need not be kept in fixed deposits, but should be paid to the appellants in the ratio fixed by the Tribunal. The payment must be made within 2 months from today."

Therefore, the respondent Railways is liable to pay compensation. The date of accident is 19.07.2014. The compensation originally payable by the Railways is Rs.4 lakhs. But, the same has been enhanced to Rs.8 lakhs by virtue of notification dated 22.12.2016. The Honourable Supreme Court in Rathin Menon V. Union of India reported in (2001) 3 SCC 714 has held that the payment has to be made, as per law, which is in force at the time of disposal of the case. The case has been decided by this Court today and therefore, as per the aforesaid judgment, the appellants are entitled to Rs.8 lakhs as compensation.

7. In the result, the Civil Miscellaneous Appeal is allowed and the respondent is directed to pay Rs.8 lakhs as compensation along with interest@ 6% per annum and each of the appellants would be entitled to equal share in the said compensation amount. The Railways has to deposit the aforesaid compensation amount with interest before the Tribunal within a

period of eight weeks from the date of receipt of a copy of this order and on such deposit being made, the Tribunal is directed to transfer the amount to the account of the appellants, as per the ratio fixed by this Court, within a period of one week thereafter, through RTGS. No costs.

-s/d-

Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

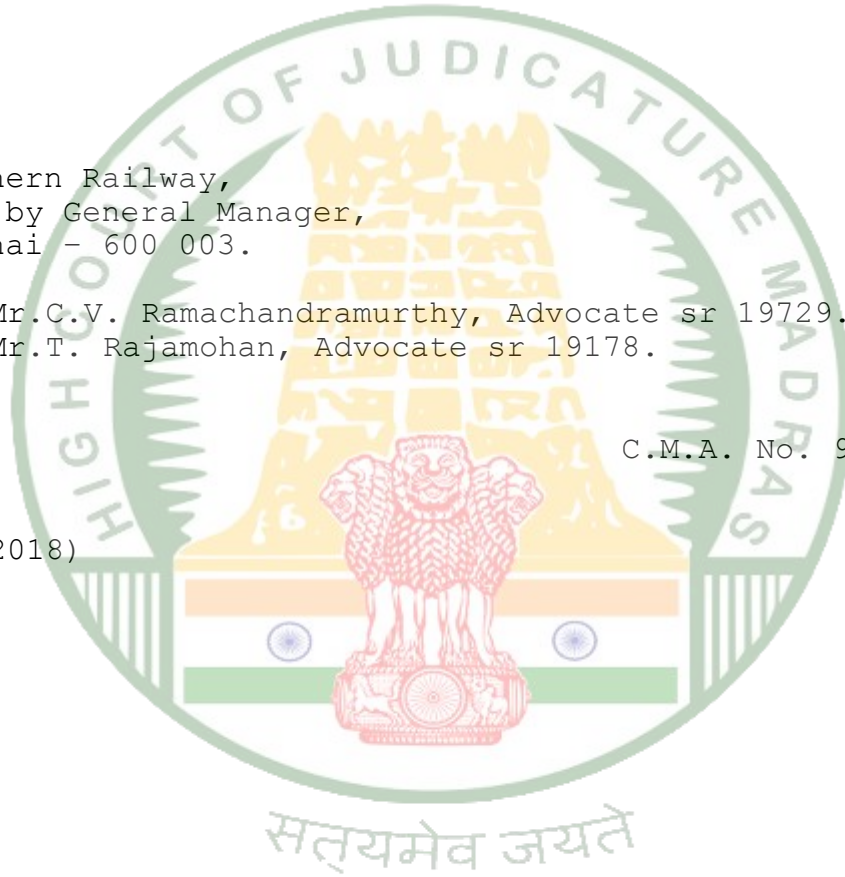
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To

Southern Railway,
Rep. by General Manager,
Chennai - 600 003.

+1 CC to Mr.C.V. Ramachandramurthy, Advocate sr 19729.
+1 CC to Mr.T. Rajamohan, Advocate sr 19178.

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RSI(CO)
SP(12/11/2018)



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