

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.2539 OF 2014

M.Ayyappan

... Appellant/Applicant

Vs.

The Union of India Owning
Southern Railway
Rep. by its General Manager
Chennai.

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 23(1) of Railway Tribunal Act, against the order passed in O.A.(II-U) No.319 of 2013 dated 18.08.2014 by the Railway Claims Tribunal, Chennai Bench.

For Appellant : Mr.S.Parthasarathy
For Respondent : Ms.A.Shrijayanthy

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the order dated 18.08.2014 passed in O.A.(II-U) No.319 of 2013 by the Railway Claims Tribunal, Chennai Bench.

2. According to the appellant / claimant, he travelled in an Express Train from Nagercoil to Virudhachalam with journey ticket no.406870320 on 07.10.2013. While he was about to get down from the train at Virudhachalam Railway Station, the train started moving and in that impact, he fell down and suffered injuries. In order to prove the claim, the appellant has marked Exs.A1 to A3 and examined himself as A.W.1. On the side of the respondent, no witnesses were examined and the report of the Divisional Railway Manager dated 06.01.2014 was filed as document. The Tribunal, has erroneously concluded that the accident had taken place due to his carelessness and negligence on the basis of the discharge summary, which is marked as Ex.A2. In the discharge summary, it is mentioned that the claimant was an alcoholic dependent.

3. Learned counsel for the appellant would submit that the past history of the appellant shall not be taken into account and that he cannot be said to be under the influence of alcohol at the time of accident.

4. On the other hand, learned counsel for the respondent Railway would submit that the discharge summary, which is marked as Ex.A2, clearly shows that the appellant is an alcoholic dependent and he was instructed to abstain from

alcohol. Therefore, it should be construed that at the time of accident, he was under the influence of alcohol.

5. Heard the submissions made on either side and perused the materials available on record.

6. On a perusal of the materials available before this Court, it is seen that the appellant had taken ticket to travel from Nagercoil to Virudhachalam. The journey ticket was marked as Ex.A1. Therefore, the travel and that the appellant is a bonafide passenger, are proved. He was supposed to get down at Virudhachalam. The appellant would state that due to heavy crowd, he could not get down immediately and at the time of getting down, the train started moving and that is why he fell down and suffered injuries. Even though Ex.A2 marked by the appellant shows that the appellant is an alcoholic dependent, there is no evidence on the part of the Railway to prove that the appellant was under the influence of alcohol at the time of accident.

7. Section 124-A of the Railways Act, 1989, speaks about exemptions. Clause (d) of the proviso specifies that "no compensation shall be payable by the Railway Administration under this Section if the passenger dies or suffers injury due to any act committed by him in a state of intoxication or insanity."

8. But in the instant case, there is no proof on the part of the Railway to show that the act is committed by the appellant under the influence of alcohol or in a state of intoxication or insanity. The respondent has not let in any evidence to prove that the act committed by the appellant was in the state of intoxication. Merely relying on the document, without any evidence, the Tribunal ought not to have dismissed the application. The matter requires evidence and proof and therefore, this Court is of the opinion that the finding of the Tribunal is not based on proof but on presumption.

9. In such circumstances, the order passed in O.A.(II-U) No.319 of 2013 dated 18.08.2014 by the Railway Claims Tribunal, Chennai Bench, is set aside and the matter is remitted back to the Tribunal for fresh consideration, in accordance with law. This exercise shall be completed by the Tribunal within a period of four weeks from the date of receipt of a copy of this order.

10. The Civil Miscellaneous Appeal is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

TK

To

1.The Railway Claims Tribunal,
Chennai Bench,
Chennai

2.The Section Officer,
VR Section,
High Court, Madras 600 104

+1cc to Mr.S.Parthasarathy, Advocate Sr.No.13003

EV(CO)
sm:11.4.2018

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