

IN THE HIGH COURT OF JUDICATURE AT MADRAS

11.07.2018

CORAM

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

CMA No.458 of 2014

The Union of India owning
Southern Railway,
Park Town,
Madras - 600 003.

Rep. by its The General Manager Appellant/Respondent

versus

G. Sasikala Respondent/Petitioner

Civil Miscellaneous Appeal filed under section 23 of the
Railway Claims Tribunal Act, 54 of 1987 against the final order
passed by the Railway Claims Tribunal, Madras Bench, dated
23.05.2013 in O.A. No.(II - U) 40 of 2013.

For Petitioner : Mr.T.P. Savitha

For Respondent : Ms.T. Rajamohan

JUDGMENT

The Civil Miscellaneous Appeal is filed under section 23 of
the Railway Claims Tribunal Act, 54 of 1987 against the final
order passed by the Railway Claims Tribunal, Madras Bench, dated
23.05.2013.

2. The facts stated in the claim application is as
follows :-

The applicant has filed the claim application as a widowed
mother by stating that her son who held the second class season
ticket No.809799347 valid from 07.10.2012 to 06.11.2012 for the
journey between Arakkonam and Saidapet. On 14.10.2012 at about
14.05 hours, while the son of the applicant was travelling by
train No.56001 from Chennai to Arakkonam he had accidentally
fallen from the train at Platform No.2 of Thiruvallur Railway
Station at KM 41/24A-26A due to heavy crowd in the train. As
the son of the applicant died at the spot, the claimant /

respondent herein filed the petition for compensation before the Tribunal.

3. In the reply statement, it was stated that accidental fall of the deceased from the train was admitted, but it was that the deceased, due to his negligence, had contributed to the accident since, at the time of accident the son of the claimant had tried to board a running train in question, which led to the accident. Further, it has been stated that the investigation report does not reveal any season ticket or other valid ticket recovered from the deceased.

4. The Tribunal after analysing the evidence and documents, has given a finding that there was an untoward incident, due to which the deceased had fallen from the train. The Tribunal also concluded that the deceased was a bonafide passenger as per section 123 (c) (2) of the Railway Act. The Tribunal has also assessed the compensation payable to the claimant at Rs.4,00,000/- with 6% interest. Aggrieved over the same, the Southern Railway has preferred this appeal.

5. In the grounds of appeal, it was contended by the appellant that the Tribunal has not properly considered the scope and ambit of Section 124-A(b) of the Railways Act, which stipulates that a passenger, who suffers death or injury owing to his negligence is not entitled for compensation. Further, it is argued that the deceased, who tried to enter into the running train had fallen down and it could at the best be construed as a self inflicted injury and hence, the conclusion of the Tribunal that the deceased died due to an untoward incident has to be set aside. Relying on Ex. A1, FIR, which also states that the said passenger fallen down between the platforms while trying to board into the moving train and hence the appellant vehemently denies the incident as an untoward accident. Further, it is also claimed in the appeal that there was no season ticket or ID card placed before the Tribunal to show that the deceased was a bonafide passenger or the validity of the season ticket. The further grounds raised in the appeal is that the deceased has no necessity to entrain or detrain in between Arakkonam, being the boarding point or at the destination point being Saidapet.

6. Heard both sides and perused the materials available on record.

7. On a perusal of the order passed by the tribunal, it is seen that the respondent had produced documents Exs. A1 to A8 on her side. It is also evident that the respondent has admitted the accident and classified it at Column No.6 of the report, Ex.R1, as "fallen down and died". Further in the investigation report, it has been stated that the deceased had fallen down on

platform No.2, while boarding into the moving train No.56001, sustained injury and succumbed due to injury. Even, before the Tribunal, reliance was placed on the decisions reported in AIR 2010 SC 3705 (Jameela & Others v. Union of India). The relevant portion of the judgment is as follows :

"passenger falling down from running train while travelling on valid ticket - fact that he was standing at open doors of compartment of running train may be negligent act or even rash act, but it is certainly not criminal act and negligence of passenger does not have effect on liability of railways.

b) (2008) 4 MLJ 323 (SC) Union of India vs. Prabhakaran Vijaya Kumar and others) - it was held that section 124 lays down strict liability or no fault liability in case of railway accidents and if a case comes within the purview of Section 124-A it is wholly irrelevant as to who was at fault. It was also held therein that the expression accidental falling of a passenger from a train carrying passengers includes accidents when a bonafide passenger travelling with a valid ticket is trying to enter into a railway train and falls down during the process".

8. In this case, even though the appellant has defended the claim petition by stating that the deceased contributed to the accident and also admitted the fact that there was a huge crowd in the train, the appellant has not chosen to examine any independent witness to substantiate the same. Therefore, this Court is of the view that the liability of the respondent cannot be denied under Section 24 (A) of the Railway Act, 1989.

9. Hence, in view of the report filed before the Tribunal and the deceased had fallen down from the train due to over crowding, it cannot be said that the deceased had contributed to the accident, while he attempted to get into the moving train.

10. It is also observed from the application that the claimant was having II class season ticket in 809799347, valid from 07.10.2012 to 06.11.2012 .Further it is very much observed from the final report of the Inspector of Police, Railway Protection Force that the deceased travelled in Train No.56001 and fallen down from the train at Thiruvallur Railway Station at Platform No.2, due to heavy crowd in the train. Hence, the observation made by the Tribunal does not require any interference.

11. However, on the side of the respondent/claimant, it was argued that as per Gazette G.S.R., Notification 2016, with effect from 01.01.2017, the amount of compensation payable to in cases of this nature has been enhanced to Rs.8,00,000/-. Therefore, it is argued that the claim made by the claimant at Rs.4,00,000/- be enhanced to Rs.8,00,000/- as per the notification cited above. This Court is inclined to accept the said submission. Accordingly, in view of the above Gazette G.S.R. Notification 2016, the compensation payable is now enhanced to Rs.8,00,000/- and the appellant is directed to make payment to the claimant as indicated above, within a period of two months from the date of receipt of a copy of this order.

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

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

To

1. The Railway Claims Tribunal, Madras Bench.

2. The Section officer

VR Section, High Court, Madras 104.

+2 Ccs to Mr.T.Rajamohan, advocate sr 45567.

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CMA No.458 of 2014

GP (CO)

SP (05/12/2018)

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