

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2018

CORAM

THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.M.A.No.646 of 2014

S.Balamurugan

... Appellant/Applicant

vs.

The Union of India Owing  
Southern Railway rep. by its  
General Manager,  
Chennai 600 003.

... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 23 (1) of Railway Tribunal Act to set aside the order passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U) 117/2013 dated 31.01.2014 and allow the appeal.

For Appellant : M/s.S.Parthasarathy

For Respondent : M/s.T.P.Savitha

J U D G M E N T

Aggrieved over the rejection of the claim petition by the Railway Claims Tribunal in O.A.(II-U) 117/2013 dated 31.01.2014, the present appeal has been filed.

2. According to the learned counsel for the claimant, the claimant was working as an agent for HDFC Bank and on 11.03.2013 after finishing his official work at Avadi, he purchased train ticket to go to Chennai and boarded the train. After traveling some distance, due to heavy rush he slipped down from the train and both his legs went beneath the train and lost both the legs. On the basis of injuries suffered, the claimant laid the above claim petition. In order to prove his case, he examined himself as a witness A.W.1 and marked exhibits, Ex.A1 FIR and Ex.A2 history of treatment at Government General Hospital, Chennai. On the side of the respondent to prove the negligent act of the claimant, three witnesses were examined as R.W.1 to R.W.3 and the report of the Divisional Railway Manager, Chennai Division dated 17.04.2013 was marked as Ex.R1. In so far as the issue of untoward incident is concerned, the Tribunal placed reliance

heavily on the Accident Register supported by the evidence of RW1 to RW3 and dismissed the claim on the ground that the accident is not proved and that it was not an "untoward incident" but it was an act of criminal negligence and a case of tress pass.

3. Heard both sides.

4. On a perusal of the materials available before this Court, it is seen that the claimant has let in evidence that he had purchased ticket and boarded the train at Avadi and after traveling some distance, he lost balance due to heavy rush. He fell down from the train and his legs went beneath and run over by the wheels of the train, wherein he lost both his legs. It is clear that the claimant has lost his both the legs due to run over of the wheels over his legs. From the evidence of motorman, who has been examined as R.W.3, it is seen that after moving the train he heard some sound and therefore, he stopped the train after passing starter signal. He got down from his cabin and found nothing abnormal, therefore, giving bell code to the guard, he started the train. If that evidence should be believed, it clearly shows that the motorman has not seen any one crossing the railway track and the claimant was hit by the train. It is obvious that nobody can trespass, while the train was running and RW3 would further state that he had not given any information to the guard or station master. In such an event, the case of the railways that the claimant trespassed the track and was hit by the train, is highly improbable. Tribunal also relied on Ex.A2 Accident Register to arrive at its finding. Even though Ex.A2 was marked as history of treatment at Government General Hospital, Chennai, we presume that Accident Register annexed to it also forms part of the document. A perusal of the Accident Register goes to show that it was registered as "alleged history of (H/o) fall from train into Railway track at around 7:14 p.m". This is altered as "alleged H/o TTA hit by train into the Railway track". The words "Fallen from" were struck off. In such circumstances the onus is on the railways to prove that it is a case of tress pass by sufficient evidence. The alteration made in the accident register raises serious doubts as to whether it is a case of fall from train or hit by train. At this juncture, at a situation like this, the evidence of the Motorman plays a vital role. According to the motorman he heard some sound and saw nothing abnormal, means that it is not a case of hit by train or run over by train while the person crossing the railway track. There are no eye witnesses to the incident. Statement of the Inspector of Police (RW1) does not corroborate the FIR. RW2, the Gate keeper near Avadi Railway Station deposed that he had not seen the accident and that he would only hear the sound of the injured person and informed the station master.

5. It is also very important to note that, as vehemently contended by the learned counsel for the appellant, if a person is hit by train, normally, there will be head injury and serious injuries due to the impact of hit by train. Whereas, the claimant was beneath the train and his legs were run over by the wheels of the train. It is always probable that if a person was hit by train, he would certainly be thrown off and suffer injuries such as fractures, bruises and severance of some appendices. But, in the instant case, the claimant's legs were run over by the train without much injuries and he was conscious and oriented. In that circumstance, this Court is persuaded to believe that it is a case of accidental fall from the train, rather than hit by the train. The case of the railways is highly improbable and the Railway Claims Tribunal has failed to apply its mind to all these aspects. The counter filed by the railways is also based only on the accident register and not on the basis of any eye witness, more particularly of the motorman. In such circumstances, the order passed by the Railway Claims Tribunal is not based on proper appreciation of evidence and hence it is set aside. In view of the findings given here above we come to a conclusion that it is an "untoward incident" and that the appellant/claimant is entitled to compensation. This is a proven case of amputation of both the legs.

6. Discharge summary reads as under"-

"Diagnosis: crush injury both lower limbs with traumatic amputation.

Treatment: B/L revision above knee amputation

Presenting Complaints & History: Pt. admitted as unknown with alleged H/o TTA at 7:15 p.m.

No vomiting/seizure

Co-morbid diseases:

On treatment with:

O/E: drug E<sub>2</sub> V<sub>2</sub> M4

BP:96/60 Hg

severe pallor/dysproce

PR:96 min

Ovs-S1S2 + RS-BAE +

P/A: soft

L/E: 1) crushed traumatic amputation (R) thigh

2) crushed (L) B.K.traumatic amputation

3) multiple laceration in scalp 2x2 cm in frontal region".

7. For amputation of both the legs, compensation need to be awarded. The notification issued by the Ministry of Railways (Railway Board), dated 22.12.2016 specifies the amount of compensation payable in respect of death and injuries, under Rule 3 of Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 2016. Part II S.No.3 of the

Schedule under Rule 3 specifies that for double amputation through leg or thigh or amputation through leg or thigh on one side and loss of other foot, compensation payable is Rs.8 lakhs.

8. As seen in the present case, the amputation of right thigh and traumatic amputation below knee of the left leg entitles the claimant for compensation of Rs.8 lakhs. Accordingly, this Court awards Rs.8 lakhs towards compensation. The Railway/respondent is directed to deposit award of compensation along with interest @ 6% from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order.

8. with the above direction this Civil Miscellaneous Petition is allowed. No costs.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The Railway Claims Tribunal,  
Chennai Bench.
  2. The Section Officer, V.R.Section, High Court Madras.(2 Copies)
- +1cc to Mr.S.PArthasarathy, Advocate, S.R.No.16236
- +1cc to Mr.T.P.Savitha, Advocate, S.R.No.16417

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C.M.A.No.646 of 2014

RSY (CO)

RRK (02/05/2018)

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