

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.1320 OF 2010

1.S.Muthulakshmi

2.S.Navin - minor

3.S.Dhinesh - minor

(Appellants 2 and 3

rep. by mother and natural guardian

Smt.S.Muthulakshmi)

4.R.Rani

... Appellants

Vs.

Union of India

Owning Southern Railway

Rep. by General Manager

Chennai - 600 003.

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987, against the order dated 23.02.2010 passed by the Railway Claims Tribunal, Chennai Bench, in O.A.No.147 of 2009.

For Appellants

:

Mr.T.Raja Mohan

For Respondent

:

Mr.M.T.Arunan

(ACGSC)

J U D G M E N T

Challenging the award passed by the Railway Claims Tribunal in O.A.No.147 of 2009 dated 23.02.2010, the claimants have preferred the above appeal.

2. According to the claimants, the deceased travelled in Train No.108 passenger from Tindivanam to Maduranthagam to meet his friend. He had taken a second class journey ticket. Due to accidental fall from the train, he suffered death. In order to prove the claim, first appellant / claimant examined herself as A.W.1 and marked Exs.A1 to A7. On the side of the respondent, report of the Divisional Railway Manager, Chennai Division, dated 09.01.2010 was marked as Ex.R1 and no witnesses were examined. The Tribunal after considering the oral and documentary evidence, had come to a conclusion that the accident

is proved and fall under the definition, which is admitted by the report of the Divisional Railway Manager. In so far as the question of bonafide passenger is concerned, the Tribunal has considered the evidence of the first applicant, as it was stated by the witness that she was not aware as to whether her husband was in possession of the ticket on the fateful day or not. It is held that in the absence of any proof, he cannot be considered as a bonafide passenger. That stand has been corroborated by the report filed by the Divisional Railway Manager, which was marked as Ex.R1, wherein it is stated that the deceased was an unauthorised vendor selling snacks in the railway station and was not having any ticket. Therefore, the claim was rejected on that ground.

3. Aggrieved over the rejection of claim, the claimants have preferred an appeal on the ground that there is a clear statement in the claim petition as well as by way of evidence by A.W.1 that the deceased purchased second class journey ticket and the same was lost in the accident. The burden is on the Railway Administration to prove that the deceased was not a bonafide passenger and therefore, they are not entitled to claim.

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

5. On a perusal of the materials available before this Court, it is clearly seen that there is a statement that the deceased had travelled from Tindivanam to Maduranthagam by purchasing a second class journey ticket and during the course of travel, he fell down from the train and died in the accident. The Tribunal has also held that Ex.R1 clearly shows that it was an untoward incident and therefore, there is no doubt about the same. So far as the issue of bonafide passenger is concerned, a presumption is raised in the claim petition as well as by oral evidence. In any untoward incident during train journey, it is always probable that the tickets and belongings of the deceased goes missing or untraced. It is to be presumed that the deceased has travelled with a ticket and that he is a bonafide passenger. The burden is on the Railway Administration to disprove the case by adducing suitable evidence that he had not purchased ticket. In the instant case, though Railways have clearly made a statement that the deceased is not a bonafide passenger, but failed to prove the same by adducing suitable evidence both oral and document. In the absence of any evidence that the deceased was not a bonafide passenger, the rejection of claim by the Tribunal is not sustainable in law. Therefore, this Court has no hesitation to set aside the order passed by the Railway Claims Tribunal dated 23.02.2010 and holds that the respondent is liable to pay compensation to the claimants/legal representatives of the deceased.

6. As per the Notification of the Ministry of Railways (Railway Board) dated 22.12.2016 in G.S.R.1165 (E), wherein, Part-I of the Schedule under Rule 3 of the Rules prescribes Rs.8,00,000/- as compensation for death and accordingly, the claimants are entitled to a sum of Rs.8,00,000/-. The Notification has come into force with effect from 01.01.2017. Till 31.12.2016, the compensation due was Rs.4,00,000/-. Therefore, interest shall be calculated proportionately for the compensation prevailing prior and after 2017.

7. In fine, the impugned order dated 23.02.2010 passed by the Railway Claims Tribunal, Chennai Bench, in O.A.No.147 of 2009, is set aside and a sum of Rs.8,00,000/- (Rupees Eight Lakhs Only) is awarded to the claimants. On this amount, the claimants are entitled to interest at the rate of 6% per annum, on Rs.4,00,000/- from 23.02.2010 till 31.12.2016, and thereafter, at the rate of 6% per annum, on Rs.8,00,000/- with effect from 01.01.2017 till the date of deposit. This amount shall be deposited by the Railway within a period of six weeks.

8. It is submitted that the second and third respondents are minors. The award amount shall be apportioned in equal shares to all the claimants and the share of the minors should be deposited in a Nationalised Bank, proximate to the residence of the first appellant, in a reinvestment scheme, till they attain majority. The first appellant / mother is entitled to withdraw the interest accrued thereon, once in three months, for the welfare of the minors. Appellant nos.1 and 4 are entitled to withdraw their respective shares on proof.

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

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

TK
To

The General Manager
Government of India
Southern Railway
Chennai - 600 003.

+1 CC to Mr.T.Raja Mohan , Advocate sr 15647(04/05/2018)

C.M.A.NO.1320 OF 2010

SP(17/04/2018)