

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1723 of 2010

R.K.Balaji

... Appellant/Applicant

Vs.

Union of India,
Owning Southern Railway,
Represented by its General Manager,
Park Town, Chennai - 600 003. ... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 23 of the Railway Claim Tribunal, Act, 1987, against the order passed by the Railway Claims Tribunal, Chennai Bench, dated 05.02.2009 in O.A.No.85 of 2007.

For Appellant : Mr.P.V.S.Giridhar
For Respondent: Mr.M.Vijay Anand
Additional Standing Counsel

J U D G M E N T

Aggrieved over the dismissal of the claim petition by the Tribunal in O.A.2007 00085 dated 05.02.2009, the appellant has come before this Court with this Civil Miscellaneous Appeal.

2. According to the appellant, he had gone to Coimbatore Railway Station on 01.05.2006 after purchasing a platform ticket for seeing off his relatives in Train No.2674 Cheran Express bound for Chennai. When the train was brought to the platform, huge crowd rushed forward to board an unreserved compartment and pushed the claimant. In that melee, he fell down in the gap between the train and the platform, a wheel of one of the bogies ran over his right palm, in which, four fingers were severed and he was hospitalized for 12 days till 12.05.2006 and underwent surgery in his right hand. On the basis of the injuries, he laid the above claim petition for compensation.

3. The Railways denied the averments made in the claim petition and countered that the incident cannot be called an "untoward incident", as the injuries sustained by the appellant was due to his own carelessness and negligent act, and therefore, they are not liable to pay any compensation.

4. In order to prove his claim, the appellant examined himself as A.W.1, his uncle as A.W.2, the Sub Inspector of Police, who registered the First Information Report as A.W.3, and marked documents from Exs.A1 to A8. On the side of the respondent, a Station Master was examined as R.W.1 and no documents were marked.

5. The Tribunal, after considering the elaborate oral and documentary evidence, has come to a conclusion that the appellant is a bona fide passenger having purchased the platform ticket. In so far as the issue as to whether the appellant has suffered injuries in an untoward incident or not is concerned, the Tribunal found that the incident will not fall under the purview of untoward incident and negatived the claim and dismissed the petition, against which, the appeal has been preferred.

6. Heard the learned counsel appearing for both parties.

7. Section 123(c)(2) of the Railways Act, deals with the accidental falling of any passenger from a train carrying passengers. Section 2 sub-section 29 of the Act, defines the "passenger" means a person travelling with a valid pass or ticket. For the purpose of amount of compensation, Section 124-A explains that the "passenger" includes i) railway servant on duty ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident. Therefore, the accidental falling of a person, who is holding a valid ticket for travelling by a train carrying passenger is also defined as an "untoward incident". In the instant case, the appellant has purchased a platform ticket, Ex.A1, and would state that he was pushed down by the crowd attempting to board an unreserved compartment.

8. From the perusal of Ex.A3, news item published in the news daily, Ex.A4 certificate issued by Richmond Hospital, where the appellant was admitted and Ex.A5, Discharge summary and Series of medical bills, the appellant appeared to have suffered injuries and lost his three fingers due to the running over of the wheels of the train over his right hand. The Sub Inspector, who was examined as A.W.3 would also speak about the General Diary Extract, wherein, he recorded statements of the appellant in the hospital on the basis of the complaint forwarded by the Hospital to them on 07.05.2006. The eye-witness to the accident, A.W.2, would speak about the incident, which had taken place on 01.05.2006.

9. From the documentary evidence, Exs.A1 to A5 and the deposition of A.W.1 to A.W.3, it is clear that the appellant has suffered injuries in an incident, which had taken place on Railway platform while he went to send-off his relatives. When a person, who had not indulged in any prohibited act, but, was

pushed down by the unruly crowd in an attempt to board the unreserved compartment and suffered injuries would definitely fall within the definition of an "untoward incident". Even though there is no fault or negligent on the part of Railways, the Railways is liable to pay compensation for all these incidents as "no fault liability".

10. There is no evidence on the side of Railways to prove that the incident had taken place due to the carelessness and reglignce of the appellant. In the absence of any contra evidence, this incident shall be construed as an untoward incident, which had occured due to the heavy rush on the platform, in which, the appellant was pushed down and he fell down in the gap between the compartment and the platform. Therefore, the finding of the Railway Claims Tribunal, Chennai Bench, dated 05.02.2009 in O.A.No.85 of 2007 that the incident will not fall within the definition of an "untoward incident" is erroneous and accordingly, it is set aside.

11. From the perusal of Exs.A5 and A7, it is amply proved that the appellant has lost his middle, ring, and little fingers of his right hand. Therefore, he is entitled to compensation for the injuries suffered by him in the untoward incident.

12. A Notification of Ministry of Railways dated 22.12.2016 specifies the amount of compensation payable in respect of Death and Injuries under Rule 3 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. As per S.No.(8), Part III of the Schedule, it is notified that a sum of Rs.2,40,000/- as compensation for loss of three fingers of one hand. It is proved by Ex.A7 that the appellant has lost middle, ring, and little fingers of his right hand in the accident, which had happened on 01.05.2006.

13. In such circumstances, the claimant is entitled to compensation of a sum of Rs.2,40,000/- as per the Notification of the Ministry of Railways, dated 22.12.2016. Accordingly, this Civil Miscellaneous Appeal is allowed. A sum of Rs.2,40,000/- is awarded for the injuries suffered in the untoward incident by the appellant on 01.05.2006 at Coimbatore Railway Station.

14. The claim was laid on 05.02.2009. There is no delay in filing the claim petition. However, the Tribunal has rejected the claim petition that it was filed under the purview of an untoward incident. By virtue of the order passed today, the claimant is entitled to compensation. The Hon'ble Supreme Court, in the case of Rathi Menon Vs. Union of India reported in 2001 ACJ 721, has held that the Railways Administration shall pay the award with interest at 12% per annum from the date of order passed by the Tribunal following the procedures laid down by the Workmen's Compensation Act.

15. In the light of the law laid down by the Hon'ble Supreme Court, the award of compensation will carry interest @ 12% per annum. Accordingly, the Railway is directed to deposit the award of Rs.2,40,000/- (Rupees Two lakh and forty thousand only) with interest at 12% per annum from the date of order passed by the Railway Claims Tribunal i.e. 05.02.2009 till the date of deposit, within a period of six weeks from the date of receipt of a copy of this order.

16. In the result, this Civil Miscellaneous Appeal is allowed with the above directions. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

The Railway Claims Tribunal, Chennai Bench.

+ 1 cc to M/s. Gridhar & Sai, Advocate SR.14156

+ 1 cc to M/s. K. Vijay Anand, Advocate sr.13601

C.M.A.No.1723 of 2010

CNR(CO)
EU(04/04/2018)

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