

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 10-01-2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.Nos.1990 & 1991 OF 2009

The Union of India, owning
Southern Railway,
rep.by its General Manager.

... Respondent/Appellant in both appeals

-vs-

Pavunammal ... Appellant/Respondent in C.M.A.No.1990/2009
A.Ramadas ... Appellant/Respondent in C.M.A.No.1991/2009

C.M.A.No.1990 of 2009 is filed against the order, dated
30.09.2008, passed in O.A.No.2004 00083, by the Railway Claims
Tribunal, Chennai Bench.

C.M.A.No.1991 of 2009 is filed against the order, dated
18.04.2008, passed in O.A.No.2005 00007, by the Railway Claims
Tribunal, Chennai Bench.

For appellant : Mr.M.Vijay Anand

For respondent in C.M.A.No.1990/2009 : No appearance

For respondent in C.M.A.No.1991/2009 : Mr.B.Gandhi

JUDGMENT

C.M.A.No.1990/2009 :

On the basis of an accidental death that had happened
on 02.11.2004, mother of the deceased filed an application
before the Railway Claims Tribunal, Chennai, for compensation
against the Railway. According to her, due to overcrowding, her
son had fallen down from the train; in that untoward incident,
he suffered death and since he is a bona fide passenger, she is
entitled to compensation. To prove her claim, she examined
herself as A.W.1. and Exs.A-1 to A-13 were marked. Ex.A-1 is
F.I.R., Ex.A-2 is Inquest Report; Ex.A-4 is Post-mortem
Certificate; Ex.A-5 is Final Report filed by police; Exs.A-7 to
A-9 are Statements and Ex.A-10 is Sketch, showing the position
of the deceased. On the side of respondent-Railway, Senior

Clerk, who has received information about the accident, was examined. Based on the evidence, both oral and documentary, the Tribunal awarded a sum of Rs.4,00,000/- towards compensation. The Tribunal has held that Railway is not entitled to exemption under Section 124-A of the Railways Act, as it has not been specifically pleaded and proved. Aggrieved over the said award, the Railway has preferred this appeal, controverting the burden of proof fixed on it, to disprove the case of the respondent-applicant.

2. According to the appellant-Railway, no ticket was produced by the respondent to show that the deceased was a bona fide passenger and there is no evidence to show that the accident was an untoward incident through accidental fall. According to it, the Tribunal ought not to have awarded compensation in the absence of prudence by the deceased.

3. It is well settled that in cases of untoward incident, it is presumed that the deceased is a bona fide passenger. In so far as the accident is concerned, it is amply proved by the applicant through the First Information Report, Inquest Report, Statements of Police and Sketch, showing the position of the body of the deceased, that he suffered death due to the accidental fall from the train and, therefore, the finding of the Tribunal that the Railway is liable to pay compensation need not be interfered with.

4. As rightly held by the Tribunal, the exemption under Section 124-A of the Railways Act was also not specifically pleaded nor any oral or documentary evidence was let in before the Tribunal to that effect. In the absence of any contra evidence to disprove the case of the respondent-applicant, this Court is inclined to confirm the order passed by the Tribunal and the same is, accordingly, confirmed. Learned counsel for the appellant would submit that they have already deposited the amount before the Tribunal. None appears for the respondent. The respondent is permitted to withdraw the amount.

5. Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected M.P.No.2 of 2009 is closed.

C.M.A.No.1991/2009 :

6. Aggrieved over the award of compensation passed by the Railway Claims Tribunal, the Railway has preferred this appeal.

7. According to the respondent-applicant, he suffered injury in an untoward incident that had taken place on 19.02.2004, and, in the said incident, both his legs were crushed and amputated. In support of his claim, he himself was examined as A.W.1 and documents Exs.A-1 to A-7 were marked.

Ex.A-1 is Accident Register; Ex.A-2 is General Diary Extract of Railway Police; and Ex.A-3 is Certificate, issued by S.I. of Police. In so far as the injury is concerned, the respondent has marked Ex.A-4, Discharge Summary, issued by Government General Hospital, Chennai; and Ex.A-5, Disability Certificate. He has let in evidence as to the nature of accident and the injuries suffered by him. On the side of appellant-railway, none was examined and no document was also marked.

8. The Tribunal below has elaborately considered the issue as to the untoward incident and the injuries suffered by the injured-applicant, which resulted in amputation of both of his legs. As per the Schedule, for amputation of both legs, the respondent-applicant is entitled to a sum of Rs.4.00 lakhs. Accordingly, the Tribunal awarded the sum of Rs.4.00 lakhs with interest at the rate of 6% per annum from the date of petition till the date of deposit. Of the said sum of Rs.4.00 lakhs, the Tribunal directed a sum of Rs.2.00 lakhs to be kept in fixed deposit in a scheduled bank for a period of three years, whereupon the bank should pay interest to the respondent once in every three months.

9. According to the railway, it has filed a reply statement before the Tribunal, stating that the applicant has suffered injury due to his voluntary and negligent act in boarding a moving train; he also failed to produce a valid ticket and, therefore, he cannot be considered as a passenger. Even though such a reply statement was filed, none was examined as a witness before the Tribunal on behalf of the railway to substantiate the statement.

10. In order to prove its case, the railway should have examined any of its staff as a witness. In the absence of any oral evidence, the averment made in the reply statement cannot be taken as a proof. Therefore, the Tribunal has rightly rejected the contention and also rendered a finding that the injury suffered by the respondent-applicant was due to the untoward incident. In the considered opinion of this Court, the Tribunal has also rightly awarded the compensation as per the Schedule. Hence, this Court finds no merit in this appeal to interfere with the order passed by the Tribunal.

11. Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected M.P.No.2 of 2009 is closed.

Sd/-
Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

dixit

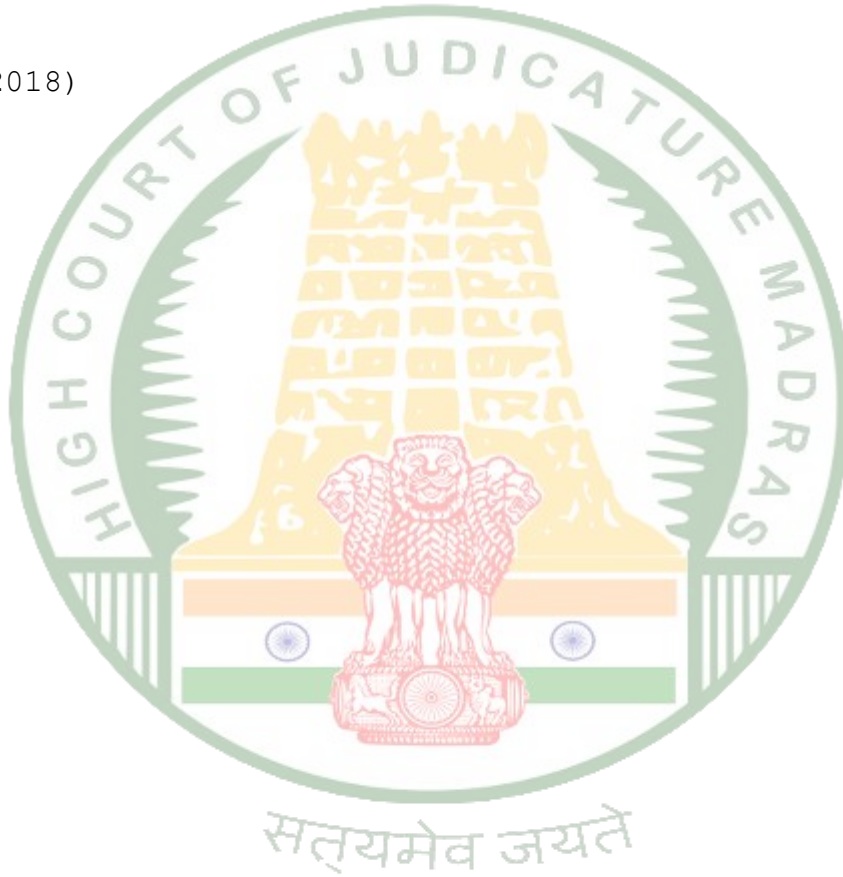
To

Railway Claims Tribunal,
Chennai Bench,
Chennai.

+1cc to Mr.M.Krishnmurthy, Advocate SR.No.1973
+2cc to Mr.Vijay Anand, Advocate SR.No.2432, 2433

C.M.A.Nos.1990 & 1991 OF 2009

SJ(CO)
GN(10/04/2018)



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