

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.3104 of 2009 and
M.P.Nos.1 of 2009 and 1 of 2010

The Union of India Owning
Southern Railways,
Rep. by its General Manager,
Chennai - 600 003. Appellant/Respondent

Vs.

1.Vadivammal @ Vadivu
2.Janaki
3.Uma Mageswari
4.Ravikumar
5.Ramkumar Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 23 of the
Railway Claims Tribunal Act 54 of 1987, against the order dated
29.07.2009 in O.A.No.2008 000125 passed by the Railway Claims
Tribunal, Chennai.

For Appellant : Ms.T.P.Savitha

For Respondents : Mr.T.Rajamohan

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the
award passed by the Railway Claims Tribunal, Chennai, in
O.A.No.2008 000125 dated 29.07.2009.

2. The legal representatives viz., wife and four minor
children of one V.Murthy, who died in a train accident that took
place on 08.12.2007 laid the above claim petition. It is stated
that on 08.12.2007, the deceased left for his duties as usual
and in an untoward incident, he had fallen down from the train
between Hindu College and Pattabiram Railway Stations, due to
jerk and jolt and heavy rush. In that accidental fall, he

suffered grievous injuries and his body was found on 09.12.2007 at about 06:50 a.m by a passerby. While shifting him to Government General Hospital in an EMU train, he succumbed on the way.

3. The Railway has taken a plea that the incident was not an untoward incident, and it is exempted under Section 124-A of the Railways Act, 1989, and the deceased was not a bona fide passenger.

4. Before the Tribunal, to prove the claim, the first applicant has examined herself as A.W.1 and marked documents from Ex.A1 to Ex.A7. On the side of the respondent, the report of the Divisional Railway Manager dated 25.06.2009 was marked as Ex.R1 and none were examined as witnesses.

5. The Tribunal has found that the incident was proved by Ex.A1 - First Information Report (FIR); Ex.A2 - Inquest Report; Ex.A4 - Final Report. The death has proved through Ex.A3 - Postmortem Certificate; Ex.A5 - Death Certificate. The first applicant/A.W.1 stated that the deceased was fallen down in an untoward incident, in which her husband died and further stated that he has purchased a ticket, but, it was lost and could not be traced. The Tribunal relied on the judgment of the Full Bench of Andhra Pradesh High Court in the case of Union of India V. Kurukundu Balakrishnaiah, reported in 2004 ACJ 529 (AP), wherein, it has been held that the burden of proving that a passenger died or sustained injuries on account of self inflicted injury squarely rests upon the Railway and the judgment of the Hon'ble Apex Court in the case of Union of India Vs.Prabhakaran Vijaya Kumar and others reported in (2008) 4 MLJ 323 (SC) has held that that the claimants, who were informed of the incident would not be in a position to produce ticket. Hence, the burden lies on the Railway to prove that the deceased was not a bona fide passenger. In the absence of same, it shall be presumed that the deceased was a bona fide passenger. Observing so, the Tribunal has ordered the claim petition and awarded a sum of Rs.4,00,000/- as compensation.

6. On the side of the Railway, the report of the Divisional Railway Manager has been filed, which ought to have been filed along with the reply statement. But, the same has been filed belatedly. The appellant/Railway has not let in any evidence in support of their pleading and substantiated their case. In the absence of any evidence on the basis of the judgment, the finding of the Railway Claims Tribunal is sustainable and it is based on valid reasons.

7. Therefore, I do not find any infirmity in the award dated 29.07.2009 in O.A.No.2008 000125 passed by the Railway Claims

Tribunal, Chennai. In the result, this Civil Miscellaneous Appeal is dismissed.

8. The learned counsel for the appellant/Railway submitted that they have already deposited the award of compensation, along with interest, on 12.01.2010. The amount is lying with the Indian Bank, Head Office, Chennai - 600 001, in favour of the Registrar, High Court, Madras.

9. The learned counsel for the respondents would submit that all the minor children have now attained majority and they have to be permitted to withdraw the amount, in the same apportionment as given by the Railway Claims Tribunal.

10. Considering the submission made by the learned counsel for the respondents, a direction is given to the Indian Bank, Head Office, Chennai - 600 001, to disburse the money as per the ratio of apportionment made by the Railway Claims Tribunal, Chennai, to all the claimants. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To
The Chairman
The Railway Claims Tribunal, Chennai.

+1 cc to Mr.T.Rajamohan Advocate sr 5904
+1 cc to Mr.T.P.Savitha Advocate sr 5972

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