

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.2668 OF 2013

1.A.Tamizhalagan @ Tamilarasan
2.Ida

... Appellants

Vs.

The Union of India
owning Southern Railway
Rep. by its General Manager
Chennai - 600 003.

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Order 23 of Railway Claim Tribunal Act, 1987, against the award dated 06.12.2012 made in O.A.(II-U) 197/2012 on the file of Railway Claims Tribunal, Chennai Bench.

For Appellants : Mr.S.Balasubramanian
For Respondent : Mr.Vijay Anand
Additional Standing Counsel for Railways

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the order of the Railway Claims Tribunal, Chennai Bench, in OA (II-U) 197/2012 dated 06.12.2012.

2. The claimants are the appellants. The son of the claimants had travelled in Train No.76815 Nagore - Thanjavur passenger along with his friends on 06.03.2011. While he was travelling in the train, he fell down at Thirumathikunnam Railway Station and died at Thanjavur Medical College Hospital at 10.30 p.m. on the same day. The claimants filed a claim petition on the grounds that the deceased was a bonafide passenger and due to crowd and jerk, he accidentally fell down from the train and succumbed to injuries. This statement was being denied by the railways and the act of the deceased was contended as one of falling under Section 124-A(b) of the Railways Act, 1989. The Tribunal, after going through the Divisional Railway Manager's report and the evidence of R.W.1

and R.W.2, came to a conclusion that the death had occurred due to the own negligence and reckless act of the deceased and therefore, the Railways are not liable to pay the compensation.

3. The learned counsel appearing for the appellants would vehemently contend that the deceased was travelling in Train No.76815 Nagore - Thanjavur passenger as a bonafide passenger and he fell down from the train due to crowd and jerk. There is no eyewitness who has seen that the deceased was falling down from the train. He would also contend that the contention of the Railways that he had boarded and alighted from the train at Thirumathikunnam Railway Station is not proved by evidence and therefore, compensation must have been awarded by the Tribunal.

4. In support of his contention, the learned counsel for the appellants would rely on the following judgments:-

(i) Judgment of the Orissa High Court in UNION OF INDIA VS. SMT. JSHNA KANHAR [AIR 2000 ORISSA 147]

(ii) Judgment of the Allahabad High Court in UNION OF INDIA VS. VIDYAWATI AND OTHERS [AIR 2008 ALLAHABAD 124]

(iii) Judgment of the Hon'ble Supreme Court in JAMEELA AND OTHERS VS. UNION OF INDIA [AIR 2010 SUPREME COURT 3705]

(iv) Judgment of the Delhi High Court in KIRAN VATI AND OTHERS VS. UNION OF INDIA [FAO NO.378/2017 DATED 22.09.2017].

In all these judgments, it is held that when an untoward incident happens, the onus of proof lies on the Railways and that the statutory compensation shall be given in favour of the victim.

5. The Hon'ble Supreme Court in JAMEELA AND OTHERS VS. UNION OF INDIA [AIR 2010 SC 3705] has observed as under:

"9. The manner in which the accident is sought to be reconstructed by the Railway, the deceased was standing at the open door of the train compartment from where he fell down, is called by the railway itself as negligence. Now negligence of this kind which is not very uncommon on Indian trains is not the same thing as a criminal act mentioned in clause (c) to the proviso

to section 124 A. A criminal act envisaged under clause (c) must have an element of malicious intent or mens rea. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. Thus, the case of the railway must fail even after assuming everything in its favour. "

Relying on the above said judgment, it is contended by the learned counsel for the appellants that in the absence of any proof that the deceased committed criminal act, the Railways shall pay the compensation and therefore, the order passed by the Railway Claims Tribunal is erroneous.

6. The learned counsel for the appellants would also rely on the judgment of the Allahabad High Court in UNION OF INDIA VS. VIDYAWATI AND OTHERS [AIR 2008 ALLAHABAD 124] wherein it was observed as follows:

"6..... We are of the view that a reserved compartments means the seats of the valid ticket holders are reserved, but unreserved compartment means seat are unreserved, who will come first he will occupy. In case of unreserved compartments Railways are issuing tickets irrespective of accommodations in case of unreserved seats. Even at the time of return of tickets without journey, certain amounts are being deducted by the Railways. Therefore, Railways are duty bound to discharge the responsibilities..... "

7. Controverting the contention of the learned counsel for the appellants, the learned counsel for the respondent would vehemently contend that the Railway has categorically proved and established the criminal negligence on the part of the deceased. The evidence of the Guard-R.W.1 on duty in the said train would go to show that the deceased was boarded the train along with his friends at Kulithalai Railway Station and was alighting and boarding the train in motion in each and every station. Repeatedly they were warned to go inside and sit properly inside the train where vacant seats were available. In spite of warnings, when the train was leaving at Thirumathikunnam Railway Station, the deceased, while boarding the moving train had fallen down from the train. Immediately, the train was stopped and the deceased was taken to the hospital. During cross examination, he affirmed the said statement and would further state that he informed the Police

Constable Malarvizhi to warn the passengers and in turn, she had also warned them. The Tribunal has considered the evidence of R.W.2, who is the Police Constable on duty in Train No.76815 - Nagore - Thanjavur passenger in the ladies compartment. She was examined as R.W.2 and in the cross examination would depose that she was giving warning and whistling and alerted the claimants son and his friends not to get down from the train while running and inspite of the same, they have boarded the Train at Thirumathikunnam Railway Station, after the warning and whistling given by the Railways officials. Therefore, it is categorically proved that the deceased was involved in illegal act and it will amount to criminal negligence.

8. In support of his contention, the learned counsel for the respondent would rely on the judgment of the Karnataka High Court in ANANTHIAH AND OTHERS VS. THE UNION OF INDIA [MFA NO.200767/2016 (RCT) DATED 10.11.2017] wherein it has been held that the deceased attempt to detrain while the train was moving slowly will fall under the definition of self-inflicted injury and the Railway is not liable to pay compensation. Likewise, in another judgment in THE UNION OF INDIA VS. SMT. LAKSHMI AND OTHERS [MFA NO.8501/2009 (RCT) DATED 03.04.2013] of the same Court, it has been held that an attempt to board and alight from the moving train was called as a dare devil attempt or suicidal attempt and it will not fall under the definition of untoward incident as contemplated under Section 123(c) (2) of the Railways Act and sought for dismissal of the appeal.

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

10. In the case on hand, the deceased was travelling as a passenger in the train is admitted. However, it is categorically proved that the deceased was boarding and alighting the moving train at each and every station. The evidence of R.W.1 in this regard was not impeached during cross examination. On the other hand, it was supported by the evidence of the Police Constable, who was on duty in the train was examined as R.W.2. R.W.2 would categorically depose during cross examination that she warned the passengers several times and that the deceased boarded the running train at Thirumathikunnam Railway Station after warning and whistling. As per Section 124 of the Act, standing on the footboard itself is a punishable offence and boarding and alighting in the moving train at the originating station or at the destination may be construed as negligence, but not a criminal negligence. But, as found by the learned Judge of the Karnataka High Court in THE UNION OF INDIA VS. SMT. LAKSHMI AND OTHERS [MFA NO.8501/2009 (RCT) DATED 03.04.2013] an

attempt to board or alight the moving train is a dare devil attempt or suicidal attempt. When the standing on the footboard itself is an illegal act as per Section 124 of the Act, boarding and alighting from the moving train that too when seats are available to sit and travel, certainly will amount to criminal negligence. A passenger who comes late to the Railway Station and in order to get into the train, if he boards the moving train, it may be construed as negligent act. In the same manner, if a person alighting from the moving train at the destination, can also be construed as negligence but entitling him for compensation. But the act of boarding and alighting at each and every station despite warning, even when there is vacant seats available in the train, would amount to criminal negligence and will fall under Section 124-A of the Act. In such view of the matter, the Civil Miscellaneous Appeal merits no consideration and the criminal negligence is well proved and established by the Railways.

11. In fine, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS v)

//True Copy//

Sub Assistant Registrar

TK
To

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

+2ccs to Mr.S.Balasubramanian , Advocate SR.No. 42116
+1cc to Mr.Vijay Anand , Advocate SR.No. 42196

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ASK(26/10/2018)

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