

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2018

CORAM

THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.M.A.No.3746 of 2008

1. M.Selvam
2. M.Johnson
3. Nesamani alias Nesam
4. S.Jancy
5. J.Victoria
6. M.Aalis ... Appellants / Appellants

vs.

The Union of India Owing
Southern Railway rep. by its
General Manager,
Chennai 600 003. ... Respondent/ Respondent

Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987 to set aside the order dated 07.08.2008 passed by the railway claim tribunal chennai Bench in OA.No.59/2007 granting an award for the statutory compensation of Rs.4,00,000/- with interest at 12% p.a. from the date of filing of the claim application viz., 01.10.2004 till the date of payment and the costs of the proceedings.

For Appellants : M/s.T.Raja Mohan

For Respondent : M/s.T.P.Savitha

J U D G M E N T

The present Civil Miscellaneous Appeal is directed against the dismissal of original application in OA No.59 of 2007 by an order of the Railway Claims Tribunal, Chennai Bench dated 07.08.2008.

2. The case of the claimants is that they are wife and children of the deceased person one S.Manuvel, who died on account of accidental fall from the train. In order to prove that it is an untoward incident and that they are entitled to compensation, the second applicant/son of the deceased examined himself as AW1 and marked Ex.A1 to Ex.A6. On the side of the respondent, the report of the Divisional Railway Manager was filed as Ex.R1. The Tribunal, after going through oral and documentary evidence, had come to a conclusion that the claimants are the legal heirs of the deceased Manuvel and he suffered death in a train accident due to accidental fall, thereby "untoward incident", entitling them for compensation. But the issue whether the deceased was a bonafide passenger at the time of incident is concerned, it was answered in the negative. Consequently, the claim petition was dismissed by the Railway Claims Tribunal, against which the claimants are before this Court.

3. According to the learned counsel for the applicant the incident is held to be an "untoward incident" under Section 123 (c) (2) of Railways Act and therefore benefit shall be given to the claimants. The claimants were not aware of the death of their father that had taken place due to the train accident. They came to know of the incident only through paper publication made by the Railway Police. In such circumstances it will not be possible for them to prove that their father had taken ticket to travel in the train. On the contrary, the onus is on the Railways to prove that the deceased was not a bonafide passenger. In the absence of any evidence that the deceased has not purchased ticket, it is presumed that he purchased the ticket and traveled in train. Benefit of doubt has to be given in favour of the claimants, as held in very many judgments and it is presumed that the deceased was a bonafide passenger. On a perusal of the records, it is seen that the FIR, inquest report, final report and identification of the body by the legal representatives would go to show that an "untoward accident" had happened and the deceased had suffered death. In such circumstances, the order passed by the Railway Claims Tribunal that the claimants failed to prove that the deceased was a bonafide passenger is not sustainable. Therefore, the order passed by the Railway Claims Tribunal is set aside and the claim petition is ordered as prayed for.

4. As per the notification of the Ministry of Railways (Railway Board) dated 22.12.2016 compensation in the cases of death is Rs.8 lakhs as per Rule (3) of the Railway Accidents and Untoward Incidents (compensation) Amendment Rules, 2016. Accordingly the claimants are entitled to a sum of Rs.8,00,000/- as compensation. The sixth applicant/appellant is

the wife of the deceased and she is entitled to Rs.2 lakhs. The balance amount shall be apportioned equally to the children of the deceased. The Railway is directed to deposit the award of compensation within a period of six weeks from the date of receipt of a copy of this order and on such deposit the claimants are entitled to withdraw the same.

5. In the result, this Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The Railway Claims Tribunal,
Chennai Bench.

2. The Section Officer,
V.R.Section,
High Court Madras.

+1cc to Mr.T.P.Savitha, Advocate, S.R.No.16418

+1cc to Mr.T.Rajamohan, Advocate, S.R.No.16367

+1cc to Mr.T.Rajamohan, Advocate, S.R.No.16367(26/04/2018)

C.M.A.No.3746 of 2008

RSY(CO)

RRK(25/04/2018)

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