

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.3755 of 2013

Karthik

... Appellant/Applicant

Vs.

The Union of India Owning
Southern Railways,
Rep. by its General Manager,
Chennai.

... Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 23(1) of the Railway Claims Tribunal Act 54 of 1987, against the order dated 13.09.2013 in O.A.(II-U) 103/2013 passed by the Railway Claims Tribunal, Chennai Bench.

For Appellant : Ms.J.Kavitha
for M/s.S.Parthasarathy

For Respondent : Ms.J.Bhavani
for Mr.M.Vijay Anand,
Railway Standing Counsel

J U D G M E N T

Aggrieved over the dismissal of the claim petition by the Railway Claims Tribunal, Chennai Bench, dated 13.09.2013 in O.A.(II-U) 103/2013, the appellant has come before this Court with this Civil Miscellaneous Appeal.

2. The case of the claimant/appellant is that he was travelling from Manaparai to Tiruverunbur on 05.03.2013. He purchased a ticket, which was exhibited as A2. Due to heavy crowd, jerk and jolt of the train, he fell down from the running train near Trichy Railway Station and sustained grievous injuries on his legs, which is evident from Ex.A1, case summary & discharge record. On the basis of injuries, the claim petition was filed before the Tribunal.

3. The Railways disputing the claim, have filed a reply statement, wherein, it has been stated that the appellant/claimant acted with criminal negligence. As a person of ordinary prudence, he ought to have known the danger involved in travelling by sitting at doorways hanging his legs outside

the compartment. Having acted negligently, the case cannot be construed as "accidental fall", but, it falls under the definition of "self-inflicted" injury. The Railways is exempted as per the 124-A(b) of the Railways Act, 1989 and the claimant is not entitled to get any compensation.

4. The Tribunal, after having examined the appellant as A.W.1 and the discharge summary and Railway ticket, marked as Exs.A1 and A2 and also the report of the Divisional Railway Manager, Trichy, dated 27.06.2013, dismissed the claim petition holding that the travelling on the footboard is criminal negligence and held that the injuries sustained by the appellant would not come under the definition of untoward incident as defined under Section 123-C(2) of the Railways Act.

5. Heard the learned counsel appearing for both parties.

6. On a perusal of the materials available before this Court, the accident dated 05.03.2013 is admitted. The injury sustained by the appellant is also admitted. The appellant purchased the ticket and thereby, he is a bona fide passenger is also admitted. Now, the issues to be decided in this appeal are (i) as to whether the appellant has acted negligently; and (ii) as to whether the accident will fall under the definition of untoward incident or not.

7. On the side of the appellant, the appellant let in evidence as A.W.1 and stated that due to heavy crowd and sudden jerk and jolt of the train, he fell down from the train and suffered injuries. But, on the side of the respondent/Railways, there is no evidence other than filing Divisional Manager's Report. There is no cross examination on the side of the respondent to disprove the claim of the claimant that he accidentally fell down from the train.

8. The Railways Claims Tribunal is given the power of the Civil Court after commencement of provisions of Section 124-A of the Railways Act, that is to say with effect from 01.08.1994.

9. In such circumstance, the duty is cast upon the Railways to prove the negligence of the appellant/claimant that he has indulged in criminal negligence, he has done prohibited acts and has invited the accident. But, in the instant case, the appellant/claimant's version was not at all controverted through cross examination. The report of the Divisional Railway Manager was also not filed along with reply statement of the Railways and none has deposed before the Tribunal either to prove the statement made in the reply statement or in the report of the Divisional Railway Manager.

10. In the absence of any evidence adduced by the Railways to prove their case, the claim ought to have been ordered by the Tribunal. The Tribunal has dismissed it on the ground that the claimant has indulged in criminal negligence based on reply statement. On a perusal of the records, it is clear that the pleadings of the Railways were not proved. In the instant case, the Tribunal has erroneously relied on the reply statement without any proof and dismissed the claim petition. In these circumstances, this Court persuaded to set aside the order of the Railway Claims Tribunal, dated 13.09.2013 made in O.A. (II-U) No.106 of 2013 and accordingly, it is set aside. There is no evidence as to the injuries other than discharge summary. As per the Notification of the Ministry of Railways (Railway Board), Part III of the Schedule under Rule 3 of the Rules dated 22.12.2016, a sum of Rs.64,000/- (Rupees Sixty four thousand only) is ordered for fracture on ankle of the claimant.

12. With the above observations, this Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The Railway Claims Tribunal, Chennai Bench.

+1 CC TO MR.S.Parthasarathi, Advocate SR. No.12610

+1 CC TO MR.M.Vijay anand, Advocate SR. No.12674

C.M.A.No.3755 of 2013

GJ(CO)
RMP(03/04/2018)