

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 09-02-2018

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THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.950 OF 2013

and

MP.No.1 of 2013

The Union of India owning
Southern Railways,
Park Town,
Madras-600 003,
rep.by its General Manager.

..Appellant

-vs-

C.Vishalachi

... Respondent

Appeal under section 23 of Railway Claims Tribunal Act,
against the order, dated 24.01.2013, passed in O.A.No.(II-U) 246
of 2012, on the file of Railway Claims Tribunal, Chennai Bench.

For appellant : Mrs.T.P.Savitha

For respondent : Mr.V.K.Vijayaraghavan

JUDGMENT

Aggrieved over the award of Railway Claims Tribunal,
Madras Bench, dated 24.01.2013, passed in O.A.No.(II-U) 246 of
2012, the Railway is before this Court in this appeal.

2. The case of the claimant was that the deceased
Nirosha, daughter of the applicant, was a college student of
Alagappa University, Karaikudi. She boarded a train at Arantangi
with a valid ticket bearing No.58605 and when the train was
nearing Karaikudi Railway Station, due to overcrowd and sudden
jerk, she fell down from the train and, in the untoward
incident, both of her legs were crushed. She was taken to
Government Hospital, Karaikudi, on the first day, and,
thereafter, she was referred to Madurai Rajaji Hospital, for
further treatment. She died on 14.01.2010. On the death of her
daughter, the mother filed the claim application.

3. The Railway denied the averments made in the claim application and attributed negligence and carelessness on the part of the deceased and, therefore, claimed exemption under Section 124-A (b) of the Railways Act, as if it amounts to self-inflicted injury.

4. The Tribunal, after framing appropriate issues, has decided that the injury suffered cannot be a self-inflicted injury and, relying on the judgment of the Hon'ble Supreme Court in Union of India v. Prabhakaran Vijaya Kumar, 2008 (4) MLJ 323, and another judgment of the Andhra Pradesh High Court in Union of India v. Yadagiri, III 2005 ACC 839, has held that the injury is not self-inflicted and it will not fall under the exemption under Section 124-A of the Act and also that the Railway has not discharged its liability of proving negligence on the part of the deceased. Accordingly, the Tribunal has held that it was an untoward incident and awarded a sum of Rs.4,00,000/- as per the prevailing rate, along with interest at the rate of 12% per annum.

5. The Railway has filed this appeal, challenging the award, on the grounds that the Divisional Railway Manager filed a report, stating that the deceased jumped from an empty rake at the time of shunting from Platform No.6 and it is not disputed by the claimant. In the absence of any denial of the report submitted by the Divisional Railway Manager, the Railway Claims Tribunal should have accepted the report and found that it was a self-inflicted act under the provisions of Section 124-A (b) of the Act and not an untoward incident. Therefore, the finding of the Tribunal is erroneous. Further, no eye witness was examined to speak about the incident and the Railway should not have been fastened with the strict liability or no fault liability and, as such, the order is liable to be set aside.

6. I have heard the rival contentions and given my consideration to the records and the material available before this Court.

7. To prove her case, the claimant has examined herself as A.W.1 and marked Exs.A-1 to A-7. On the side of respondents, the report of Divisional Railway Manager, Trichy Division, dated 06.11.2012, was marked. Ex.A-1-F.I.R. has recorded the accident as an accidental fall from the train. Ex.A-6-inquest report would state that the deceased fell down from the train, while talking to her friends. Ex.A-3-death certificate and Ex.A-2-post-mortem certificate go to show that the injury suffered by the deceased was due to the fall from the train. These documents were marked and supported by the evidence of A.W.1. On the other hand, the Railway propels the case as one of negligence and self-inflicted injury, through the report of Divisional Railway

Manager. But, unfortunately, no witnesses were examined on the side of Railway to prove the statement made in the report filed vide Ex.R-1.

8. As held by the Hon'ble Supreme Court in Union of India v. Prabhakaran Vijaya Kumar, 2008 (4) MLJ 323, as per Section 124, strict liability or no fault liability casts on the Railway in case of railway accident and even if the case falls within the purview of Section 124-A, it is irrelevant as to who is at fault.

9. In the instant case, the Railway failed to prove the negligent act attributed by it to the deceased. In the absence of any proof and evidence to the contrary, the finding of the Tribunal is very much legal and based on evidence. Therefore, I am not inclined to interfere with the award passed by the Tribunal.

10. Civil Miscellaneous Appeal is dismissed. No costs. The respondent-claimant is permitted to withdraw the money deposited by the Railway, along with accrued interest. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

Railway Claims Tribunal,
Chennai Bench.

Copy To

The Section Officer,
VR Section, High Court,
Madras. (2 Copies)

+1cc to Mrs.T.P.Savitha, Advocate, S.R.No.10368

C.M.A.No.950 OF 2013

VGII (CO)
CS/18/04/18