

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.04.2018	Delivered on: 29.11.2018
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THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.No.607 of 2014

A.Karunakaran

.. Appellant

Versus

Union of India
Owning Southern Railway
rep.by General Manager,
Chennai - 600 003.

.. Respondent

Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987, against the Order dated 12.11.2013 passed by the Railway Claims Tribunal, Chennai Bench in OA (II-U) 83 of 2013.

For Appellant : Mr.T.Raja Mohan

For Respondent : Ms.A.Shrijayanthi

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the Order dated 12.11.2013 passed by the Railway Claims Tribunal in O.A.No.83 of 2013 O.A(II-U). The applicant has filed the above said O.A.No.83 of 2013 claiming compensation for the injuries sustained by him in an alleged untoward incident on 26.03.2013 during travelling by train.

2. The brief facts of the claim application is that on 13.02.2013 prior to 6.00 hours, the applicant / appellant herein travelled in a train by holding the season ticket No.797479020 for journey from Katpadi to Chennai Beach via Chennai Central. The said season ticket was valid from 26.01.2013 to 25.02.2013. He had boarded train No.12626 at Katpadi and due to overcrowding, he had accidentally fallen down from the train and sustained injuries and with the help of Railway authorities, he was shifted for treatment at C.M.C Hospital, Vellore wherein his both legs below knee were amputated. Hence the claimant / injured has claimed a sum of Rs.4,00,000/- as compensation.

3. The respondent in the counter statement has denied

injuries due to accidental fall from train at Katpadi Railway Station on 13.02.2013. The respondent also denied the fact that of travelling of the claimant in the said train as a passenger and hence the respondent is not liable to pay compensation under Section 124-A of the Railways Act, 1989. The Investigation of the Divisional Railway Manager/Chennai Division reveals that the applicant had fallen down from the running train and sustained injuries and therefore they come out with the defence that the injured person had fallen down while he was trying to board the running train from offside after getting down from the Platform No.1 and crossing railway track on Road Nos.2,3,4 and sustained injuries. Hence, the claim cannot be entertained.

4. The Tribunal after examining both sides and also the argument made before it, has observed that the incident though falls under Section 123(C) 2 of the Railways Act 1989, the respondent has to be exonerated of its liability under the Proviso under Section 124-A (b) and (C) of the said Act due to the fact that the act of the applicant amounts to criminal act by boarding the train from the offside after crossing the railway track and the injuries sustained by the claimant caused one of self inflicted injury. At the same time, the Tribunal has found that the applicant was a bonafide passenger on the fateful day. In view of the findings, the Tribunal has dismissed the claim petition. Aggrieved against the dismissal of the order, the appellant has preferred this appeal.

5. In the grounds of appeal, the appellant has stated that the Railway Tribunal ought to have allowed the claim application, when it has found that the claimant has accidentally fallen down from the running train. The finding of the Tribunal is that the injured man committed negligence while boarding the train and due to that the self-inflicted injury has caused to him.

6. The Tribunal has also not considered the Divisional Railway Manager's report Ex.R.1, which says that "fallen down from running train and sustained injury" and the report further says that the injured had met with an accident while boarding the train and it has to be termed as "untoward accident" and further when the claimant had a fall from the running train while boarding from the offside will amounts to self inflicted injury. Therefore, it is claimed that the respondent is liable and sought for relief by setting aside the Order of the Tribunal and to award a sum of Rs.4,00,000/- with 12% interest p.a from the date of filing of the claim application.

7. Heard both sides and perused the documents available on record.

8. On the side of the appellant/claimant, it is argued that on 13.02.2013, the claimant was holding a valid season ticket and the number is 797479020 for his journey from Katpadi to Beach via Chennai Central. It is the case of the appellant that due to over crowd, he had accidentally fallen down from the train and sustained injuries. Due to which, his both legs below knee were amputated and for which the claim was made before the respondent for a sum of Rs.4,00,000/- .

9. On the side of the respondent, it is argued that though the claimant was having valid season ticket on the date of accident, the accident was not occurred due to crowd. The learned counsel for the respondent also argued by pointing out the evidence of R.W.1 by stating that "one passenger tried to board the train from the offside, he slipped and fell down and both legs cut". Hence, the argument of the respondent is that the claimant tried to board the running train from offside and because of his own negligent act, he sustained injury and therefore, the respondent is not liable to pay any compensation to the claimant. Further, on the side of the respondent, R.W.1 who is the eyewitness was also examined. According to the respondent on 13.02.2013 Mr.R.Rajarajan Constable/ RPF/KPD, who was on duty had reported to the Inspector/KPD that one person had fallen down from train No.12626, while he was trying to board the running train from offside and sustained injuries and this is the earlier version reported by the Officer. The witness also deposed that he was on platform duty at 6 hours to 13 hours. He has deposed that the train No.12686 Express arrived at Plat form No.2 when the train had started, one passenger who had tried to board the train from the offside, he slipped and felt down and immediately informed the ASIPI/PF who was on duty at that time, But in the cross examination, he has given contrary statement that he had not seen the accident.

10. He has also further deposed that the injured person while he started at the time of departure, fallen down from the portico side and tried to board train from the offside, in the result, he had fallen down from the train. Hence, based on the evidence, the Tribunal has given a finding that the claimant had not come out with clean hands with supporting material evidence in the claim application. The Tribunal has also given a finding that the act of the appellant would be termed as serious self inflicted injury which disentitles the compensation. Hence, the Tribunal viewed the occurrence as the criminal act on the part of the appellant who boarded the train from the offside after crossing the railway track and the injuries sustained by him are self inflicted injuries.

11. On the side of the appellant, it is argued by

quoting the case law reported in AIR 2010 SC 3705 (Jameela & Ors. Vs. Union of India) in which it was held as under :

"passenger falling down from running train, while travelling on valid ticket. Fact that he was standing at open doors of compartments of running train may be negligent Act or even rash act, but it is certainly not Criminal Act. Negligence of passenger does not have effect on liability of railways and claimants are entitled to compensation with interest".

12. In the above said case, it is stated in the claim application, the deceased fallen down from the train and an untoward incident resultant for which claim was made for the same and compensation was paid. The Tribunal has also considered the claim by observing that the death was due to an untoward incident as defined under Section 123 of the Railways Act and the applicants are entitled for compensation. Against the judgment, the Railways has preferred the appeal has stated that by taking it more compensation is payable under Section 124A of by the Railway Administration, if the passenger died or suffered injury due to a) suicide or attempted suicide by him. (b) self inflicted injury or his own Criminal Act. But in the appeal, it was observed by the Court that when the said deceased at the time of travelling had a valid ticket, hence, he is passenger for the purpose of Section 124A as clarified by the explanation and it was also observed that the deceased in the said case is not a person on any of the above clause and it is also not the case that he died due to his own criminal act or he was in a state of intoxication or he was insane or he died due to any natural cause or disease. His falling down from the train was thus clearly accidental. Hence in the result, the appeal by the claimant was allowed.

13. Further it is argued by quoting the case law in 2008 ACJ 1924, (Union of India and another versus Deomani Devi) that as per sections 123 (c) (2) and 124 A of the Railways Act, 1989 - No case has been set up nor any evidence produced that incident is covered by any of the exceptions contained in section 124-A. Hence, in this appeal, the insured fell down from the train is fully covered by provisions of section 124A of the Act.

14. On the side of the respondent, it is argued that it is the self inflicted injury. When a person is standing in the foot board and fell down and sustained injury, the said injury sustained by the person cannot be considered as self inflicted one, for which the respondent relied upon a case law reported in 2009 ACJ 1630 (Union of India Versus Vidyawati and others), wherein it is held as under :

"Contention that passenger who was standing on footboard fell down and sustained injuries which are self-inflicted as per proviso to section 124-A - Whether passenger died due to accidental fall from the train and are entitled to compensation. Railways issuing tickets irrespective of seats available in unreserved compartment and falling of passenger from footboard of overcrowded unreserved compartment cannot be construed as self-inflicted incident".

15. It is the further argument of the respondent that based on the evidence of RW1 that the injured was boarding the train from the off side of the train, hence, he himself has committed the negligence and the Tribunal has also

considered the same as Criminal Act, when the passenger claimant had boarded the train from the off side.

16. For the above said argument, on the side of the appellant, it has quoted the case law in AIR 2007 Madhya Pradesh 106 (Ramesh Kuraria Versus Union of India), it has been held as follows :-

"The railways has failed to adduce any evidence to show that it was a self-inflicted injury, merely that entry was made from offside of the platform, that is, from the non platform side, it cannot be said to be negligence of deceased".

17. Hence in the present appeal, it is vehemently argued by the appellant that when the passenger had an accidental fall from the train cannot be considered as a self inflicted incident and further even he boards the train in the off side of the train, it cannot be construed as the negligence of the passenger. Hence, the act of the injured person is only an untoward incident and the respondent railway is liable to pay compensation.

18. In view of the above discussion and the judgments cited supra, it is clearly proved that the injury sustained by the claimant is due to fall from the running train, which can only be termed as "untoward incident" and it cannot be termed as "negligence" on the part of the claimant. Hence, this Court finds that the claimant is entitled for compensation. Accordingly, this Civil Miscellaneous Appeal is allowed. The order of the Railways Claims tribunal, dated 12.11.2013 is set aside.

19. With regard to award of compensation, this Court, on considering the amputation in both the legs, below knee, of the claimant, grants the compensation of Rs.4,00,000/-

(Rupees four lakhs only) as claimed by the appellant/claimant/injured before the Tribunal along with interest at 10% per annum. The Tribunal is directed to pay the compensation to the claimant within a period of two months from the date of receipt of a copy of this order, along with interest and accrued interest, if any. No costs.

Sd/-
Assistant Registrar(CS)

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Sub Assistant Registrar

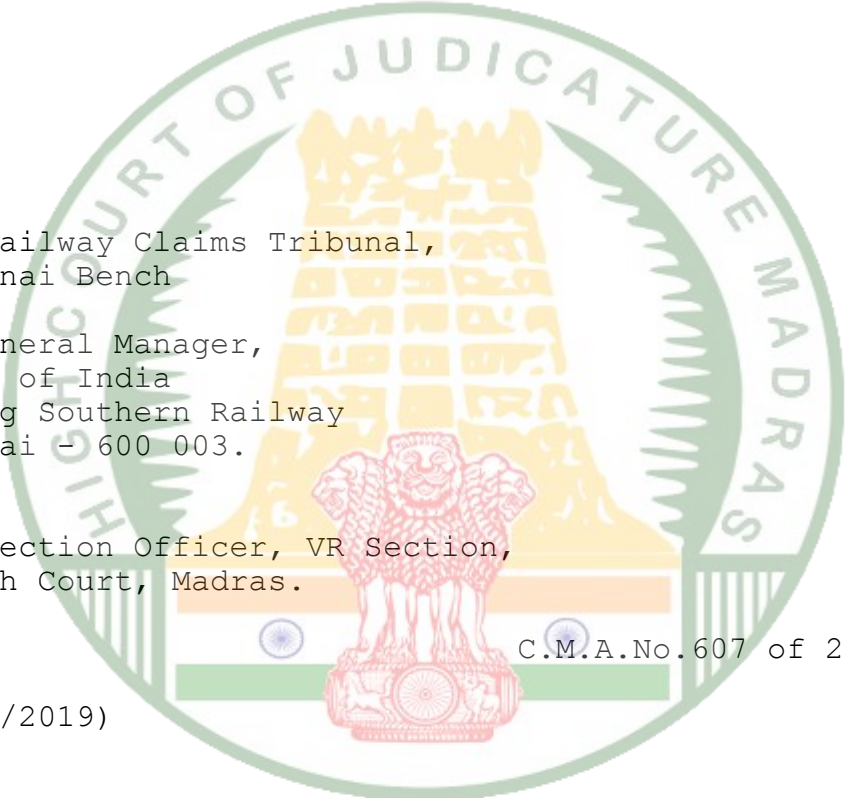
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To

1. The Railway Claims Tribunal,
Chennai Bench
2. The General Manager,
Union of India
Owning Southern Railway
Chennai - 600 003.
3. The Section Officer, VR Section,
High Court, Madras.

C.M.A.No.607 of 2014

ASK(02/01/2019)



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