

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	27.11.2019
Pronounced On	06.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2302 of 2009

and

M.P.No.1 of 2009

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

... Appellant/1st Respondent

vs

1.The Additional Registrar,
Railway Claims Tribunal,
Chennai Bench, Chennai.

..1st Respondent

2.G.Alagiri,

3.Sathyakumari ... Respondents 2 & 3/Claimants 1 & 2

Prayer: Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987, to call for the entire records leading to passing of the Final orders in O.A.No.2006 00060 dated 29.04.2009 on the file of the Railway Claims Tribunal, Chennai Bench and set aside the same.

For Appellant : Mr.S.R.Sundaram

For R2 & R3 : Mr.I.Paranthaman

J U D G M E N T

The appellant is the Union of India owning Southern Railway and is represented by its General Manager. The appellant is aggrieved by the impugned award dated 29.04.2009 passed the Railway Claims Tribunal, Chennai Bench in O.A.No.2006 00060.

2.By the impugned order, the Railways Claims Tribunal has awarded a sum of Rs.4,00,000/- as compensation to the 2nd and 3rd respondents who are parents of late A.Mohan who died in a railway accident.

3.The case of the appellant is that the claim itself was belated and filed with a delay of 499 days and after the delay was condoned, the claim petition was admitted by the Railways Claims Tribunal.

4.According to the learned counsel for the appellant, the deceased A.Mohan was not bonafide passenger and therefore, the 2nd and 3rd respondents/claimants were not entitled to the compensation under the provisions of the Railway Act, 1989.

5.In this connection, the learned counsel for the appellant submits that the 2nd respondent deposed as A.W.1 in his proof affidavit before the Railways Claims Tribunal and had undertaken to file a copy of the train ticket bearing No.92286 allegedly bought by his deceased son on 08.10.1999 to travel in EMU from Central to Tiruninravur/ return ticket and that there were no witness to corroborate the alleged accident resulting in the death of their son A.Mohan.

6.It is further submitted that the entire case of the claimants before the Railway Claims Tribunal was based on the inquest report dated 09.10.1999 which was marked as Ex.A-2 and FIR registered by the police after getting message from the Station Master which was marked as Ex.A1.

7.It was further submitted that the Railway Claims adopted unusual practice for directing the counsel to admit the documents and evidences which was contrary to the law. Since the Evidence Act enunciates that a person who relies on a document, to establish the contents or otherwise the nature of such documents and its execution, the Railways Claims Tribunal erred in granting compensation. It is submitted that the Railway Claims Tribunal proceeded to award aforesaid compensation based on the endorsements/admission on documents by the counsel for the railway.

8. The learned counsel for the appellant therefore submits that the order passed by the Railway Claims Tribunal is liable to be set aside.

9.Per contra, the learned counsel for the 2nd and 3rd respondents who are the contesting parties defended the order and stated that the Railway Claims Tribunal is not governed by strict rules of evidence but base their finding on preponderance of probabilities and that the death of A.Mohan was due to untoward accident as is contemplated under Section 123 of the Railway Act, 1989 which is not in dispute.

10.Further, the learned counsel for the 2nd and 3rd respondents submits that non production of railway ticket cannot be fatal as there is reference to it in the inquest report which states that the ticket was found along with the deceased A.Mohan and therefore deceased A.Mohan was a bonafide passenger.

11. Heard the learned counsel for the appellant and the 2nd and 3rd respondents.

12. The facts that the inquest report vide Ex.A2 itself shows that the deceased A.Mohan possessed a ticket. Therefore, the deceased A.Mohan was a bonafide passenger. No other evidence is required to corroborate death due to the accident.

13. There is no necessity for claimants to establish the death due untoward incident with the help of independent witnesses since the inquest report vide Ex.A2 and F.I.R. Vide Ex.A1 confirmed that the deceased A.Mohan died while travelling by train on 08.10.1999 and was in possession of ticket.

14. Further, claims Tribunal is not governed by strict rules of evidence. Its findings are based on preponderance of probabilities. The 2nd and 3rd respondents/claimants discharged the initial burden before the Railways Claims Tribunal. Therefore, it was for the respondent to establish that the deceased A.Mohan was not bonafide passengers by letting in other evidence.

15. The claimants are not expected to produce the tickets, if the tickets were taken by the police for their investigation. There are no contra evidence from the appellant regarding purchase of tickets and travel by the deceased A.Mohan with the train ticket bearing No.92286 from Central to Thiruvananthapuram on the date of accident.

16. In view of the above discussion, I do not find any reason to interfere with the impugned order passed by the Railways Claims Tribunal. Therefore, the present Civil Miscellaneous Appeal is hereby dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

1. The General Manager,
The Union of India owning
Southern Railways, Chennai.

2.The Additional Registrar,
Railway Claims Tribunal,
Chennai Bench, Chennai.

Copy To : The Section Officer,
V.R.Section. High Court,
Madras.

+1cc to Dr.S.R.Sundaram, Advocate SR.No.101932

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VBA(CO)

GMY(30/01/2020)