

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.394 of 2010 and
M.P.No.1 of 2010

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

... Appellant/Respondent

Vs.

1. Gopal - Died1st respondent/1st Applicant
2. Salammal2nd Respondent/2nd Applicant
(R2 recognized as Legal Heir of the
deceased R1 viz., Gopal vide court order
dated 18.06.2019 made in M.P.No.1 of 2012
in C.M.A.No.394 of 2012 by TRJ)

Civil Miscellaneous Appeal is filed under Section 23 of
Railways Claims Tribunals Act, 1987 to set aside the award dated
26.09.2008 made in O.A.No.2006 00074 on the file of Railway
Claims Tribunal, Chennai Bench.

For Appellant : Ms.P.Shobana Devi for
Mr.M.T.Arunan

For Respondents : Mr.T.Rajamohan for R2
R1 - Died.

J U D G M E N T

The appellant has filed the present Civil Miscellaneous
Appeal under under Section 23 of Railways Claims Tribunals Act,
1987 to set aside the award dated 26.09.2008 made in O.A.No.2006
00074 on the file of Railway Claims Tribunal, Chennai Bench.

2. The case of the respondent / claimant is that the
deceased, viz., Krishnan, who was an army man is the son of the
claimant and due to annual leave, he was proceeding to his house
on 20.08.2002 in train no.2639 from Chennai Central to

Bangalore. While the train was crossing at Arakonam Junction in Platform No.1 at about 8.40 hrs, due to heavy rush and train speed and jerk, the deceased fell down from the running train and died on the spot. Since the deceased is a bachelor, the respondents being parents, pleaded to grant a sum of Rs.4,00,000/- as compensation before the Tribunal.

3. Per contra, the appellant / respondent has filed a reply statement stating that the deceased had actually travelled by train no.2639 Brindavan Express on 20.08.2002 from Chennai central station, which had no stopping at Arakonam junction and thereby states that the deceased had accidentally fallen down from the running train and sustained injuries. Further, the Government Railway Police, Arakonam had registered a case in Crime No.335/2002 under Section 174 Cr.P.C., only based on the inquest report and not based on any facts or on any eye-witness report. The counter would also proceed to state that the alleged incident might be due to careless and negligent act or any other act of the deceased, for which the appellant is not liable to pay compensation under Section 124-A of the Railway Act, 1989 and that the alleged death of the deceased will not come under the definition of 'Untoward Incident' of the said Act. Also, the deceased was not a bonafide passenger, because the journey ticket has not been produced along with the application. Therefore, prayed to dismiss the claim petition filed by the respondent / claimant.

4. Before the Railway Claims Tribunal, the 1st respondent was examined as A.W.1 and marked Exhibits A.1 to A.7 on the side of the respondent / claimant. On the side of the appellant / respondent, One witness, namely Muniappa was examined as R.W.1 and no documents were marked as exhibits.

5. The Tribunal after considering the arguments and documents produced on record including the enquiry report and by taking note of the decision of the Madhya Pradesh High Court reported in AIR 2008 (NOC) 2201 (MP) has held that it could not be expected from the dependents to prove that the deceased had a valid ticket. That apart, the Tribunal by stating that the deceased person, who is from defence services, could not have ventured to travel in the concerned train without a valid ticket, has given a finding that the deceased is a bonafide passenger. Further, upon considering Ex.A.4, death report and Ex.A.6, death certificate, the Tribunal has stated that the deceased is the son of the respondent / claimant. Also, by stating that the accident is not clearly covered by the proviso to Section 124-A, whereas covered only by the main body of Section 124-A and the incident will come under the definition of 'Untoward Incident', granted compensation of Rs.4,00,000/- to

the respondents / claimants. Aggrieved against the same, the appellant/ Railway has come up with the present appeal.

6. The learned counsel for the appellant contended that the deceased was not a bonafide passenger because of the fact the journey ticket and concession form have not been produced by the respondent, but the Tribunal had erred in finding that the deceased is a bonafide passenger. The alleged incident had occurred due to careless and negligent act or any other act of the deceased, for which the appellant is not liable to pay any compensation under Section 124 of the Railway Act, and the incident will not come under the definition of 'untoward incident'.

7. The learned counsel for the appellant submitted that the deceased was issued with a concession form from Delhi to Arakkonam, but, when the deceased travelled by train no.2639, viz., Brindavan Express from Chennai Central Station, the said train had no stopping at Arakkonam, where the alleged accident had happened and hence, pleaded to set aside the award passed by the Tribunal.

8. Heard the learned counsel for the respondent on the submissions of the learned counsel for the appellant. The learned counsel for the respondent has relied on the Judgment of Lucknow Bench Dinesh Kumar Singh Maurya V. Union of India in F.A.F.O. 1023 of 2010 wherein it is held as follows:

'The argument of the counsel for the applicant / appellant, is that usually whenever an accident takes place, it is not very uncommon that tickets are not found or recovered from the body of the deceased but that cannot be the conclusive proof that the deceased was not a bonafide passenger and was not travelling on the particular date in the train in question.

True, may be in certain cases the ticket of bonafide passenger is lost, snatched or taken away by some criminal and unscrupulous persons but there cannot be a presumption that the ticket of every deceased necessarily is taken out or it is lost or mutilated. In case ticket is not found from the body of the deceased or from its vicinity, the presumption would be that such a person was not a bonafide traveller, of course, evidence can be led to prove otherwise.

If any untoward incident takes place within the meaning of section 124-A of the Evidence Act, initial burden lies upon the Railways to prove that the passenger was not a bonafide passenger, but the same having been discharged, onus shifts on the person claiming compensation, to establish by some believable

evidence, that such passenger was a bonafide passenger more so when contrary admissible evidence is produced by the Railways.'

and stated that the award passed by the Railway Tribunal does not require any interference in the hands of this Court.

9. This Court, on 16.02.2010, while admitting the present Civil Miscellaneous Appeal has framed the following substantial questions of Law :

(i) Whether the claimants have proved that the deceased Krishnan sustained and succumbed to injuries in an untoward incident on 20.08.2002 at about 8.40 hrs at Arakkonam, when the deceased was travelling by Train No.2639 Brindavan Express from Chennai Central Station, while the said train had no stop at Arakkonam.?

(2) Whether the deceased Krishnan was a bonafide passenger at the time of incident?

(3) Whether the Railway Claims Tribunal is empowered or competent to award interest?.

and granted interim stay in M.P.No.1 of 2010 on condition to deposit the entire award amount with interest and costs to the credit of O.A.No.2006/00074 dated 26.09.2008 within a period of eight weeks from the date of receipt of copy of this order, failing which, the interim stay was directed to be automatically vacated.

10. It is seen from the records that the said deceased was working in the army for more than 8 years. At that point of time, he was working in Rajasthan and was travelling back to his home town by availing his annual leave. It is also seen that the deceased person was travelling with the military pass from his work spot to his residence alone. The deceased while nearing Arakonam Station had fallen down due to the sudden jerk and jolt of the train. The deceased was having military pass from Delhi Junction to Arakkonam Junction and hence, the Railway Authorities has taken the decision that the deceased is a bonafide passenger. Even assuming that he had possessed ticket only up to Arakonam junction, it cannot be stated that he was not a bonafide passenger, due to the fact that he was found dead near Arakonam Junction. The deceased had travelled in Brindavan Express, but the Railway Authorities have stated he being from disciplined force, had no ticket for his journey, cannot be accepted. A person, who is serving in military force and who had military pass from Rajasthan to Arakonam, cannot be termed as a passenger without a valid ticket.

11. During the accidents, merely what happens is, while shifting the body the small ticket /pass would have been lost or at times when the wallet has been taken away by third

parties, they would throw away the materials which are not useful to them, other than the valid materials, therefore, the deceased cannot be treated as a person, who is not holding the valid ticket. The allegation that the train was not stopping at Arakkonam and due to his negligence, he has fallen down from the train was not proved by producing any evidence. The negligence or lack of production of the ticket by the deceased person was not proved by the railway authorities. In the absence of any material to show that it was self inflicted injury by the deceased person and it has been presumed that the said deceased person was negligent. If at all the train was not stopping in the Arakonam station, the person, who had travelled from Delhi to Chennai and from Chennai to Arakkonam, would not be in a haste to jump out of the train. The Railway Administration cannot take a stand, as if the deceased has fallen from the train on his own, because the said Brindavan Express is a non-stopping train at Arakkonam.

12. Further, when the Station Master, viz., R.W.1, who was appearing for Railways was not in a position to say how the accident has taken place, he has simply stated that 'the said express had stopped at the middle of the platform No.1 and in order to know the reason for stopping, he went there and found a male body about 40 years was run over by the train and the body was on the track of plat form no.1 and during cross examination, he has stated that he is not aware as to how the incident in question took place. He further stated that he went to the spot and found that a person was lying dead underneath the train in between the platform and the rail' and when there no materials produced to show that there was any negligence on the part of the deceased person, it cannot be stated that the deceased is not a bonafide passenger.

13. Also, when there is no evidence that the deceased was trying to get down from the moving train in the Arakonam Junction, the report of the concerned officer is only on probability and cannot be accepted in toto. It is also seen from the documents that the residence of the deceased is situated near Katpadi and not at Arakonam Junction, that being the case, the deceased would not be in a hurry to get down at Arakonam junction and to kill himself. There is a chance of falling down from the train due to the jerk and jolt while the train was moving.

14. When A.W.1, [father of the deceased] has informed that the deceased had fallen down from the train due to jerk and jolt, the same was not denied or contested by the authorities concerned. This being a benevolent act and when there is no

materials pleaded and proved, on the contrary, which would fall under proviso to Section 124-A of the Railways Act, the present case is clearly covered by the main body of Section 124-A of the Railways Act and hence, the liability is on the Railway Administration to pay the compensation. The respondent has not established a clear case that the deceased had inflicted self injury and succumbed to the same, when that being the case, it is clearly established by the claimants that the incidence occurred is an 'untoward incident' and accordingly, the Tribunal has rightly held that there is no negligence on the part of the deceased person. Since there is no error committed by the Tribunal while deciding the case on merits, this Court is not inclined to interfere with the order passed by the Tribunal. Accordingly, this Court is of the opinion that the claimant is entitled for compensation and the substantial question of law raised are answered in favour of the respondent/claimant.

In fine, the present Civil Miscellaneous Petition is dismissed and the order of the Tribunal dated 26.09.2008 made in O.A.No.2006/00074 is confirmed. Since the father of the deceased, 1st respondent died, the 2nd respondent, mother of the deceased is permitted to withdraw the amount deposited by the Railways. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

ssd
To

1. The Chairman,
The Railway Claims Tribunal,
Chennai Bench.

Copy to: The Section Officer,
VR Section,
Madras High Court,
Chennai.

+1cc to Mr.M.T.Arunan, Advocate SR.91066
+1cc to Mr.T.Rajamohan, Advocate SR.91863

C.M.A.No.394 of 2010 and
M.P.No.1 of 2010

VGI (CO)
CB(11/12/2019)