

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

CMA NO.1322 OF 2016

1.Allimuthu
2.Chokkammal

... Appellants/ Petitioners

Vs.

The Union of India
Owning Southern Railway
Rep. by General Manager
Chennai - 600 003.

... Respondent/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987, against the judgment dated 05.04.2016 passed by the Railway Claims Tribunal, Chennai Bench, in OA (II-U) 130/2014.

For Appellants : Mr.T.Rajamohan

For Respondent : Mr.C.V.Ramachandramoorthy

J U D G M E N T

Aggrieved over the judgment dated 05.04.2016 passed by the Railway Claims Tribunal, Chennai Bench, in OA (II-U) 130/2014, the appellants/claimants are before this Court.

2. The claimants are the appellants before this Court. The appellants/parents of the deceased filed a claim petition on the death of their son on 03.06.2013. The fact is that the deceased was an employee of the IT company and he used to travel from Perungalathur to Guindy everyday and purchased a monthly season ticket for his travel. On 03.06.2013, in the morning of 8.30 hours, the deceased informed the second appellant / mother of the deceased, that he is going to company at Guindy and left the house. The

appellants received an information from the Police Station, Tambaram that the deceased fell down from the train and suffered death while being transported to hospital. In order to prove their claim, the first claimant, the father of the deceased, examined himself as A.W.1 and marked Exs.A1 to A7. On the side of the respondent, one Shri V.C.Vergheese, Motorman was examined as R.W.1 and no documents were marked on the side of the respondent. The Railway Claims Tribunal wrongly applied a right judgment, came to a conclusion that the burden to prove that the deceased was a bonafide passenger is on the claimants and there cannot be any negative onus fastened to Railways. Therefore, it is held that since train ticket was not produced by the claimants, the deceased was not a bonafide passenger and rejected the claim petition. Aggrieved over the same, the appellants are before this Court.

3. I have heard the submissions made on either side and given my anxious consideration to the materials placed before me.

4. Ex.A1 is the First Information Report copy which was registered on the date of accident viz., 03.06.2013 at 02.00 pm. The accident is said to have taken place at around 09.15 hours in the morning. The passenger had fallen down from the train between Chrompet and Pallavaram and immediately taken to Government Hospital, Chrompet by 108 ambulance and the same was registered as AR No.4494794 dated 03.06.2013. He was treated at the Government Hospital, Chrompet, around 10.00 am and thereafter, shifted to Parvathy Hospital, and registered as Medico Legal Register No.11182 around 10.15 am and for further treatment to Rajiv Gandhi Government General Hospital, Chennai, at around 12.55 pm and declared dead enroute to the hospital. Thereafter, the body was sent to postmortem and the Doctor opined that the deceased would appear to have died of shock and hemorrhage due to head injury. Thereafter, the Divisional Railway Manager has filed a report. The conclusion of the report was that the deceased had travelled in an unknown EMU train without taking proper care. Thus, he had fallen down from the train and sustained injuries and later, died on the way to Rajiv Gandhi Government General Hospital, Chennai and the claim has no merit to be considered. Since no ticket was recovered from the body of the deceased, it was found that he was not a genuine passenger.

5. From the materials, it is seen that the accidental falling of the deceased was immediately reported to the

Police on the very same day. It is the case of falling down from running train near Pallavaram around 09.45 am on 03.06.2013. The body was first taken to Government Hospital, Chrompet for first aid and thereafter, shifted to Parvathy Hospital. In that event, it is clear that the deceased could have suffered death due to falling down from a running train. The inquest report as well as the final report reveal that it is a case of falling down from a running train. In that event, it shall be construed as an "untoward incident".

6. Further, it only remains to account as to whether the deceased was a bonafide passenger or not. The claimants filed a claim petition along with a sworn statement that the deceased was an employee of IT company. He leaves his house from Perungalathur to reach his office at Guindy by way of train and that he has taken a monthly season ticket for his travel. During the cross examination also, A.W.1 - father of the deceased, would state that the deceased was having a valid monthly season ticket and denied the suggestion that his son fell due to his negligence and that Railways is not liable for giving compensation. Other than his evidence, there is nothing on record to show the contrary. Once the initial onus is discharged by the claimants by filing an affidavit and also letting in evidence before the Railway Claims Tribunal, the burden of proof shifts to the shoulders of the Railways. Thus, the onus to prove that the deceased was not a bonafide passenger shifts to the Railways. But, the Railways have not examined the Station Master, who has seen the incident or any of the eye witnesses on their side. In that event, the presumption should be that the deceased has travelled with a valid ticket and thus, he is a bonafide passenger. But unfortunately, the Tribunal has relied on a decision, which states that there is no negative onus on the Railways to prove that the deceased was not a bonafide passenger and rejected the claim.

7. It is held in very many cases by the Hon'ble Supreme Court that once initial onus / burden is discharged by the claimants by filing some affidavit that the deceased was a bonafide passenger, the burden shifts on the respondent Railways to disprove the same. The Hon'ble Supreme Court, in the recent case in UNION OF INDIA VS. RINA DEVI [2018 AIR (SC) 2362] has categorically held that once initial onus is discharged, it is for the Railways to disprove the case. In that event, the finding of the Railway Claims Tribunal that the claimants have not discharged their initial onus to prove that the deceased was a bonafide passenger and the death happened is not due to accidental fall is not sustainable and without proper appreciation of evidence. The

finding given by the Railway Claims Tribunal is, in fact, without any legal evidence and thereby is perverse. Therefore, I have no hesitation to set aside the order passed by the Railway Claims Tribunal and hold that the claimants are entitled to compensation due to the untoward incident happened to their son.

8. Accordingly, the order dated 05.04.2016 passed by the Railway Claims Tribunal, Chennai Bench, in OA (II-U) 130/2014 is set aside.

9. The Hon'ble Supreme Court has clarified the payment of compensation with interest in respect of accidents that had taken place prior to amendment of the notification dated 31.12.2016, in its judgment in UNION OF INDIA VS. RADHA YADAV [2019 (2) SCALE 323]. The relevant portion of the said judgment reads as under:

"10. The issue raised in the matter does not really require any elaboration as in our view, the judgment of this Court in the case of Rina Devi is very clear. What this Court has laid down is that the amount of compensation payable on the date of accident with reasonable rate of interest shall first be calculated. If the amount so calculated is less than the amount prescribed as on the date of the award, the claimant would be entitled to higher of these two amounts. Therefore, if the liability had arisen before the amendment was brought in, the basic figure would be as per the Schedule as was in existence before the amendment and on such basic figure reasonable rate of interest would be calculated. If there be any difference between the amount so calculated and the amount prescribed in the Schedule as on the date of the award, the higher of two figures would be the measure of compensation. For instance, in case of a death in an accident which occurred before amendment, the basic figure would be Rs.4,00,000/-. If, after applying reasonable rate of interest, the final figure were to be less than Rs.8,00,000/-, which was brought in by way of amendment, the claimant would be entitled to Rs.8,00,000/-. If, however, the amount of original compensation with rate of interest were to exceed the sum of Rs.8,00,000/- the compensation would be in terms of figure in excess of Rs.8,00,000/-. The idea is to afford the benefit of the amendment,

to the extent possible. Thus, according to us, the matter is crystal clear. The issue does not need any further clarification or elaboration."

10. The respondent Railways is directed to deposit the appropriate sum whichever is higher in terms of the above mentioned order of the Hon'ble Supreme Court, for the untoward incident, which had taken place on 03.06.2013, in which the son of the claimants died, due to the accidental fall from the train, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are entitled to withdraw the amount, on production of proper identification.

11. With the above observations and directions, this Civil Miscellaneous Appeal is allowed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

TK

To

1.The Railway Claims Tribunal
Chennai Bench
Chennai.

2.The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr. C.V.Ramachandramoorthy , Advocate SR.No. 18167
+2ccs to Mr. T.Rajamohan, Advocate SR.No. 18538

CMA NO.1322 OF 2016

A.SK(27/05/2019)

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