

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2501 of 2015

V.C.Harish Raja,
Minor -rep. by his
Mother Hemalatha

...Appellant/ Applicant

-Vs-

The Union of India owning
Southern Railway
rep. by its General Manager,
Chennai-3.

...Respondent/Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Section 23 of the Railway Tribunal Act against the order passed by the learned Railway Claims Tribunal, Chennai Bench in O.A. (II-U) 31 of 2014 Chennai dated 01.10.2015.

For Appellant :: Mr.S.Parthasarathy

For Respondent :: Mr.M.Vijay Anand.
Standing Counsel

JUDGMENT

This Civil Miscellaneous Appeal has been directed against the order passed by the learned Railway Claims Tribunal, Chennai Bench in O.A. (II-U) 31 of 2014 Chennai dated 01.10.2015.

2. According to the mother of the minor appellant, her minor son V.C.Harish Raja left her house on 12.01.2014 to go to Chennai to meet his friend. Thereafter, he came to Avadi Railway Station, purchased train ticket and boarded EMU Train. While travelling near doorway of the said train, he had accidentally fell down from the running train in between Avadi and Annanur Railway Stations. Consequently, he suffered grievous injuries in head, fracture in left hand and multiple injuries all over the body. Immediately, he was rushed to the Apollo Hospital, Greams Road, Chennai where after First Aid, he was shifted to Apollo Hospital, Teynampet, Chennai for better treatment. Subsequently, he was again shifted to Brain & Spine Hospital, T.Nagar, Chennai. At that time, he has lost his consciousness and memory and an F.I.R. was registered by GRP/Chennai Avadi RP

vide Crime No.17/2014 dated 12.01.2014. After marking a copy of the Railway Journey Ticket as Ex.A.1, a Discharge Summary was also placed on record which was issued by Dr.NSGP B- Vincent Thambura, Neuro Surgeon and a claim was made.

3. A Proof Affidavit dated 05.08.2014 reiterating the factual aspects has been filed stating that the injured lost consciousness for more than six months and he was inpatient for three months due to the said head injury and he has become incapable to perform the day-to-day job and lost his memory. The mother of the injured was examined as A.W.1 and thereafter, she was cross-examined.

4. Learned Counsel for the appellant would submit that when the injured suffered various injuries and some of them are non-scheduled injuries, to recover from the said grievous injuries, the family members of the injured spent about Rs.10,00,000/- for his treatment. Therefore, the Tribunal should have been lenient in the matter not granting just compensation. But taking hyper-technicality, purely relying on the Discharge Summary of the Hospital showing that the injured was travelling on the foot board of the train and was hit on the lamp post, consequently, he injured fell down would clearly show that the injured exposed his body outside the train leading to self-inflicted injuries, the Railway Tribunal is unable to make compensation for the employer.

5. Adding further, the learned Counsel for the appellant would submit that when the injured was able to show that he was a bonafide passenger and travelling on 12.01.2014 from Avadi Railway Station to Chennai and he accidentally fell down from the running train in between Avadi and Annanur Railway Stations as a result, suffered grievous injuries on his head, fracture in left hand and multiple injuries all over his body, the learned Tribunal ought not to have rejected his claim citing unjustifiable reasons. The only yardstick the learned Railway Tribunal should apply is whether the injured was a bonafide passenger travelling on the date of accident with the ticket purchased from the Railway Station.

6. In the present case, when the appellant was able to prove that the injured was a bonafide passenger and fell down while travelling on a running train, as a result, he had sustained multiple injuries all over his body, he is entitled to receive the compensation. Hence, according to the learned Counsel for the appellant, the impugned order is liable to be set aside. In support of his claim, the learned Counsel for the appellant has relied on my decision in A.Thanikachalam and 2 others vs. Union of India owning Southern Railway rep. by its General Manager, Chennai reported in 2016 (6) CTC 820.

7. Opposing the above prayer, the learned Standing Counsel for the respondent would submit that the injured who was aged about 17 years was irresponsibly travelling on foot board and consequently was hit by a lamp post. The Discharge Summary issued by the Hospital also clearly indicates the case of the appellant that the 17 years old male came with alleged history of railway accident travelling on foot board of train and was hit by a lamp post and fell down. Taking note of the history of the illness shown in the Discharge Summary dated 'Nil' issued by the Apollo Multi Specialty Hospital, the learned Railway Tribunal has rightly examined the claim in the light of an earlier order dated 16.9.2019 passed in O.A.(II-U) 20/2015 by the learned Railway Tribunal wherein it has been held that any passenger travelling on foot board leading to self-inflicted injuries and finally fell down due to hit by lamp post is not entitled to any compensation. The reason being the injury sustained by any such person was not an untoward incident as defined under Section 123 (c) (2) of the Railways Act 1989.

8. In support of his argument, the learned Counsel for the respondent has also placed reliance on a decision of this Court dated 04.12.2018 in CMA.No.698 of 2008 (M.Devaki and two others vs. Union of India owning Southern Railway rep. by General Manager, Chennai-3 and another). In this matter, this Court while examining the similar issue upheld the order passed by the Railway Tribunal holding that "'Passenger'" means a person travelling with a valid pass or ticket and travelling by sitting safely inside the train and not travelling on foot board.

9. Thus, I find justification in the contention raised by the learned Counsel for the respondent that it was a careless and negligent travel by exposing his body outside the train leading to self inflicted injuries. Besides, the injured in the present case is of tender age of 17 years. The age of the injured clearly shows that there remains a tendency to do some extraordinary activities as if one is undertaking aerobic exercise which itself carries the risk of an incident costing life and putting not only his own life in danger but may also cause serious concern to others. In this regard, it is pertinent to extract relevant portion of the Discharge Summary showing the cause of the accident here under :

''HISTORY OF PRESENT ILLNESS:

This 17 years old male came with alleged history of railway accident travelling in foot board of train and was hit by a lamp post and fell down. History of loss of consciousness since the time of injury. Details at the time of injury not available. He was initially treated at Apollo Hospital where he was

intubated in view of low GCS and shifted here for further care the scalp laceration was attended by the history of co-morbidities.''

The above clearly shows that the injured while travelling on the date of incident, wrongly travelled only on foot board and was hit by a lamp post and if the injured has not exposed his body outside the compartment, which is abnormal, there is no possibility of hitting by a lamp post. Thus, the Discharge Summary of the Apollo Specialty Hospital, Chennai gave a clear picture that it was a case of railway accident travelling on foot board and hit by a lamp post leading to self-inflicted injuries. In view of all the above, this Court finds no infirmity in the order in O.A. (II-U) 31 of 2014 Chennai dated 01.10.2015 passed by the learned Railway Claims Tribunal, Chennai Bench.

10. In the result, the Civil Miscellaneous Appeal fails and the same is accordingly dismissed. No costs.

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Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Railway Claims Tribunal,
Chennai Bench.

2. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.M.Vijay Anand, Advocate, SR.No.71237

+1cc to Mr.S.Parthasarathy, Advocate, SR.No.70642

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Kak(31/10/2019)

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