

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.295 OF 2016

1.V.Bakthavachalam

2.B.Parameswari

... Appellants/Applicants

Vs.

The Union of India Owning
Southern Railway
rep. by General Manager,
Chennai-600003.

... Respondent/Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987, praying to set aside the order dated 18.01.2015 passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U) 16 of 2015.

For Appellants : Mr.T.Rajamohan

For respondent : Mr.C.V.Ramachandramurthy
Senior Panel Counsel

J U D G M E N T

The appellants are the claimants before the Railway Claims Tribunal. Short facts as stated are that the deceased was working in a private company at St.Thomas Mount and used to travel by EMU train from Meenjur to Palavanthangal. He was holding a quarterly season ticket bearing No.590239133 which is valid from 28.07.2014 to 27.10.2014. Due to heavy rush, speed and jolt he fell down from the train on 17.10.2014 near Park Railway Station and got injured. Then he was taken to Government General Hospital, Chennai and found alive in an unconscious stage and admitted in ward No.2 and 4. He died not responding to the treatment on 17.10.2014 at 20.30 hrs at the Hospital.

2. In order to prove the claim, the father of the claimant examined himself as A.W.1 and marked Exs.A1 to A7. The

respondent denied the untoward incident through counter affidavit and filed DRM's report at the time of arguments. Certain document were also produced as directed by the Railway Claims Tribunal. Based on those documents, the Railway Claims Tribunal held that the victim tried to catch the fast moving train near the Park Railway Station which resulted in death. Therefore, the act of the deceased would not fall within the purview of Section 123 (c) (2) of the Railways Act, 1989, but it would attract proviso (b) & (c) of Section 124 -A of the said Act and that the respondent is not liable to pay the compensation. It was also held that the deceased was not a bonafide passenger.

3. Heard both sides. I have perused the materials available before this Court.

4. At the threshold, it is seen that the claim petition was filed along with the First Information Report, Post Mortem Report, Final Report, Death Certificate, Legal heir certificate and also attested copy of the season ticket valid through 27.10.2014.

5. The first claimant who is the father of the deceased examined himself as the witness. He would depose that his deceased son was a diploma holder and was working in a Private Company at Guindy. He used to travel by purchasing season ticket from Beach station to Guindy. During cross examination, he would further depose that he also marked the season ticket as an exhibit. There were no questions raised as to the validity of the season ticket. The suggestion by the Railways was that the victim tried to board the running train carelessly and therefore the Railways is not liable for any compensation.

6. From the above, it is very clear that the said incident had happened on 17.10.2014 and the deceased died consequent to the incident. Further it is the case of the Railways that the deceased tried to board the running train at Park Station, which had no stoppage. Even though, it is stated that the deceased attempted to board the running train which does not stop at Park Station, there is no evidence on the side of the Railways to show that the deceased attempted to board the running the train at Park Station. There were no specific details as to which train he attempted to board. No witnesses were examined to speak about these facts. In the absence of any evidence, the finding of the Tribunal that the victim attempted to board a non stopping train is absolutely baseless and thereby perverse. Further, the Judgment reveals that the documents were called

from Southern Railways and documents were submitted by the Railways at the time of arguments wherein the statement issued by the police constable was relied on for deciding the issues. Curiously, the police constable was also not examined by the Railways.

7. Further, the DRM report also goes to show that it is an untoward incident. All that the DRM report shows that the deceased attempted to board the running train but it does not reveal specifically in which train the victim attempted to board with its numbers and that there is no stoppage for that train at Park Station. Further, neither the station master nor police or any other official working at Park Railway station have come out with a statement that the deceased attempted to board the train which does not have stoppage at Park Station. Therefore, it is very clear that the judgment was passed on no evidence and passed without following the settled legal procedures. Therefore, the judgment on the face of it perverse, illegal and not sustainable in the eyes of law. Accordingly, the judgment of the Railway Claims Tribunal in O.A. (II-U) 16/2015 dated 18.11.2015, is set aside. In view of the decision, the claim petition stands allowed.

8. The claim, on the date of filing the claim petition was Rs.4,00,000/- for death as per the notification issued by the Railways. From 01.01.2017, it has been enhanced as Rs.8,00,000/- for the case of death.

9. The Hon'ble Supreme Court judgment reported in Civil Appeal Nos.1265-1266 of 2019 [Union of India Vs. Radha Yadav], wherein it is held as under:-

" 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. As per the judgment of Hon'ble Supreme Court, the claimants are entitled to interest from the date of the claim petition either on Rs.4,00,000/- with interest or Rs.8,00,000/- which ever is higher. The Railways is directed to deposit appropriate amount which ever is higher within a period of eight weeks from the date of receipt of a copy of this order along with 9% interest from the date of receipt of a copy of this order. On such deposit, the claimants are entitled to withdraw the same on production of appropriate identification. The civil miscellaneous appeal is disposed of accordingly. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Union of India Owning
Southern Railway
rep. by General Manager,
Chennai-600003.

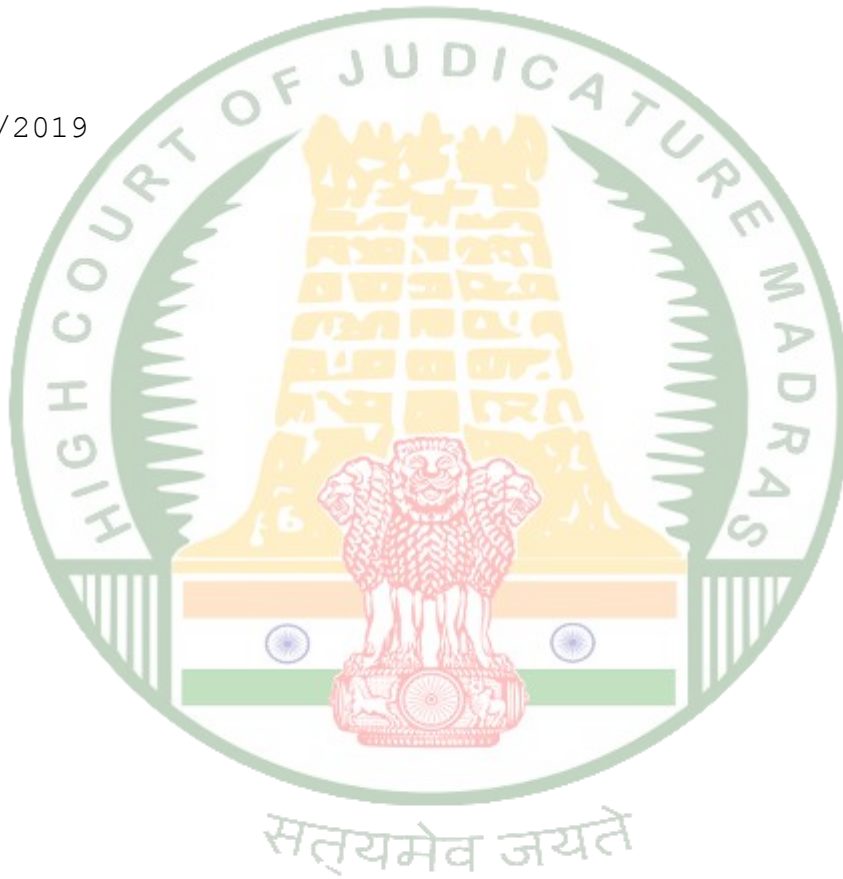
2.The Railway Claims Tribunal,
Chennai.

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

+2cc to Mr.T.Raja Mohan, Advocate Sr.19882

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