

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.368 OF 2016

1.Ch.Krishna
2.Ch.Garamma

...Appellants

Vs.

The Union of India owning
Southern Railway
rep. By General Manager,
Chennai - 600003.

... Respondent

PRAYER: Civil Miscellaneous Appeal under Section 23 of the Railway Claims Tribunal Act 54 of 1987 praying to set aside the order dated 03.11.2015 passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U) 329/2014.

For appellants : Mr.T.Raja Mohan

For respondent :Mr.C.V.Ramachandramurthy

J U D G M E N T

This appeal is filed by the appellants seeking to set aside the order dated 03.11.2015 passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U) 329/2014.

2. The appellants are the claimants. The claimants are the parents of the deceased who travelled in a train from Chennai Central and fell down between Ambatur and Thirumullaivayal Railway station.

3. According to the claimants, their son Chidipilli Narasimmalu, aged about twenty years was studying in a College at Chennai and was staying in hostel. On 05.06.2014, at about 11.00 hours in morning, he informed the claimants that he is coming to Andhra by train. On 06.06.2014, at about 09.30 hrs, the father of the deceased received information from Railway Police, Avadi that their son fell down from running train between Ambattur and Thirumullaivayal Railway Station, suffered grievous injury on the head and succumbed to the same. In that

untoward incident he lost his life and therefore they filed their claim between the Railway Claims Tribunal on the death of their son.

4. The Railways denied the claim and stated that it is not the case of accidental fall from the running train but the death could have occurred otherwise. There was no eye witness and that no incident was reported to have taken place and there was no chain pulling and no one have complained to the Station Master regarding the incident. Therefore, the claim that there was an untoward incident was denied and the deceased had not travelled in the train and he cannot be treated as a bonafied passenger.

5. After going through the materials placed before the Railway Claims Tribunal, the Tribunal came to the conclusion that the victim was not a bonafide passenger who travelled and fallen down from the train. Since, the claimants have failed to discharge the initial burden to prove that the death of the victim was on account of the accidental fall during a train journey as a bonafide passenger, the claim was rejected. Aggrieved over the same, the claimants are before this Court.

6. I have heard the rival submissions and perused the materials place before this Court.

7. It is the case of the claimants that their son was studying in Chennai and stayed in a hostel. He was aged about 20 years at the time of the accident. To prove the statement, the first claimant / father of the deceased examined himself as A.W.1 and marked Exs.A1 to A6.

8. On 06.06.2014, the Station Master of Avadi Railway Station messaged to Railway Protection Force that a male body was found at Km 162A-4A near ABU ROB. The Railway Police conducted inquest and found that the victim, while travelling in a train going towards Arakkonam, accidentally fell down from the same and suffered death. The final report also suggested that it is a case of falling down from the running train during journey. Based on this information, an untoward accident was recorded in the register on 12.03.2015 wherein in column 4 it is mentioned that "Nature of occurrence fallen down from the train run over, killed" and answer was recorded as "might have been fallen down from the train".

9. The Divisional Railway Manager also filed a report dated 11.03.2015, that since there is no material or oral evidence to contrary to the report of the Railway Police Force, it was concluded that the victim had fallen down from the running train and killed on the spot. Since he was not holding any

ticket, he was construed not to be a bonafide passenger and might have travelled without valid travelling ticket.

10. From the above, it is clear that as per the reports of the Divisional Railway Manager, Inquest Report, Final Report and information on untoward incident, it is confirmed that the victim suffered death due to accidental falling from the running train during his journey.

11. In Chief Examination, the claimant has categorically stated that the victim informed him that he was going to travel from Chennai Central Station to native place by train and that he further stated that he has taken second class travelling ticket. During cross examination, a suggestion was put by the Railways that the deceased did not purchase the ticket. But A.W.1 / first claimant has denied the suggestion that the deceased did not purchase the ticket and that none of the belongings of the deceased including the ticket was handed over to him.

12. The Hon'ble Supreme Court in UNION OF INDIA VS. RINA DEVI [2018 AIR (SC) 2362] has held that mere absence of ticket with such injured or deceased will not negative the claim that he was a bonafide passenger. Initial burden will be on the claimants which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances.

13. In the absence of any contrary evidence, it has to be concluded that the deceased had travelled in the train after purchasing the second class journey ticket. In so far as the non recovery of the travelling ticket is concerned, the case of the claimants is that it was lost at the time of accident. When there are two different views possible that the deceased passenger travelled without taking a travelling ticket and another view is that he had purchased the ticket but it was lost at the time of accident, the one which is in favour of the beneficiary, has to be taken into account.

14. So far as the issue of bonafide passenger is concerned, a presumption has been raised in the claim petition as well as through oral evidence that the deceased had purchased a second class journey ticket for his travel. In any untoward incident during train journey, it is always probable that the tickets and belongings of the deceased go missing or untraced. It is to be presumed that the deceased had travelled with a ticket and that he was a bonafide passenger. The burden is on the Railway Administration to disprove the same by adducing suitable

evidence that he had not purchased ticket. In the instant case, though Railways have clearly made a statement that the deceased is not a bonafide passenger, but failed to prove the same by adducing suitable evidence both oral and documentary. In the absence of any evidence that the deceased was not a bonafide passenger, the rejection of claim by the Tribunal is not sustainable in law. Therefore, this Court has no hesitation to set aside the order passed by the Railway Claims Tribunal dated 03.11.2015 and holds that the respondent is liable to pay compensation to the claimants/legal representatives of the deceased.

15. As per the Notification of the Ministry of Railways (Railway Board) dated 22.12.2016 in G.S.R.1165 (E), wherein, Part-I of the Schedule under Rule 3 of the Rules prescribes Rs.8,00,000/- as compensation for death and accordingly, the claimants are entitled to a sum of Rs.8,00,000/-. The Notification has come into force with effect from 01.01.2017. Till 31.12.2016, the compensation due was Rs.4,00,000/-. Therefore, interest shall be calculated proportionately for the compensation prevailing prior and after 2017.

16. In fine, the impugned order dated 03.11.2015 passed by the Railway Claims Tribunal, in O.A.(II-A) 329 of 2014, is set aside and a sum of Rs.8,00,000/- (Rupees Eight Lakhs Only) is awarded to the claimants. On this amount, the claimants are entitled to interest at the rate of 6% per annum, on Rs.4,00,000/- from 23.02.2010 till 31.12.2016, and thereafter, at the rate of 6% per annum, on Rs.8,00,000/- with effect from 01.01.2017 till the date of deposit. This amount shall be deposited by the Railway within a period of six weeks from the date of receipt of a copy of this order.

17. The Civil Miscellaneous Appeal is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The General Manager
Government of India
Southern Railway
Chennai.

2.The Presiding Officer,
Railway Claims Tribunal,
Chennai.

+2cc to Mr.T.Rajamohan, Advocate Sr.32219
+1cc to Mr.C.V.Ramachandramurthy, Advocate Sr.33222

C.M.A.NO.368 OF 2016

ks[col]
srg 02/07/2019



WEB COPY