

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1404 of 2018

B.Babu

... Appellant/Applicant

Vs.

The Union of India,
Represented by the General Manager,
Southern Railway, Chennai. ... Respondent/Respondent

Civil Miscellaneous Appeal is filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987, to set aside the order dated 18.12.2017 passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U) 24/2017, granting an award for the statutory compensation of Rs.8,00,000/- (vide Gazette Notification with effect from 01.01.2017) together with interest at 12% p.a. from the date of filing of the Claim Application viz., 07.02.2017 till the date of payment and the costs of the proceedings.

For Appellant : Mr.T.Rajamohan

For Respondent : Ms.P.Sobana Devi
For Mr.M.T.Arunan

Judgment

This Civil Miscellaneous Appeal has been filed challenging the order dated 18.12.2017 passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U) 24/2017.

2. The case of the appellant is that his son, namely, Srinivasan, was residing in Chennai and was studying B.Com 1st year in Veltech College at Avadi. He used to travel by train between Perambur to Avadi with monthly season ticket. On 26.07.2016 in the evening, while he was travelling in train between Perambur and Pattabiram Railway Station by holding II Class Monthly Season Ticket Bearing No.86931743, due to heavy rush, speed, jerk and jolt of the train, accidentally fell down from the train and suffered grievous injury all over his body. Immediately, he was admitted in Government Hospital, Avadi and thereafter, he was shifted to Rajiv Gandhi Government General Hospital, Chennai, for further treatment.

But he succumbed to the injuries on the same day at about 14.30 hours. Due to the incident, the appellant who is the father and only legal heir of the deceased filed an Application before the Railway Claims Tribunal, Chennai Bench, claiming a sum of Rs.8,00,000/- as compensation for the death of his son.

3. Denying the mode of accident, the respondent has filed a Reply Statement and has submitted that the deceased was not a bonafide passenger and he had not died due to any untoward incident. The alleged untoward incident was not reported to SM/Avadi on 26.07.2016 either by any general public or Railway staff. The Accident Report issued on 26.07.2016 by the Government Hospital, Avadi, where the deceased was admitted states that the deceased had hit on the post and fell down while travelling in Train. The Post-mortem report states that the deceased would appear to have died due to the effects of head injury. So the accident occurred only due to the activities of the deceased who had exposed his body outside the entrance of the train which ultimately got hit on the post and it was not a case of accidental fall as defined under Section 123(c) (2) of the Railways Act 1989. Hence, they are not liable to pay any compensation under Section 124A(b) of the Railways Act 1989. Further, the Monthly Season Ticket Bearing No.86931743 is valid only with Identity Card, but the deceased at the time of incident was not holding any Identity Card, therefore, the applicant is not entitled to claim any compensation from them.

4. The Tribunal while analysing the facts has considered the deposition of the appellant who had deposed that his son was studying in Vel Tech College Avadi, the alleged incident happened when his son was returning from college. He do not know how the incident happened, but the Police informed him that his son fell down from the train. He deny the statement that his son was hit by the post and fell down while traveling in train and he also deny that the incident happened due to the negligence of his son and the railway is not liable to any compensation.

5. The Tribunal has also considered the DRM report filed along with the documents, wherein, it has been stated that in this case, it is clear from the available evidence that the deceased was in possession of a valid season ticket, and as per the statement of his friend Naveen Balaji, it was established that the deceased was hit by an electric post. It is incumbent upon the traveller to take sufficient care and caution while traveling in train. Crowd in the coach cannot be a ground to justify the travel by hanging. The witness of Naveen Balaji confirmed that, upon their arrival at Annanur, they approached a Motorman of an EMU train bound towards Avadi and sought his assistance to take the fallen student from the fallen spot. The Motorman who assisted them was examined and he corroborated the version of Naveen Balaji to the extent

that he stopped the train opp. to approx. 300 meters beyond the AVD up station. Since he could not say the exact post where he stopped, the exact place of fallen down could not be ascertained and hence no observation was possible.

6. The Tribunal based on the pleadings raised and the documents filed has held that unless the deceased would lean his body quite outside the compartment, firstly he would not have been hit by the post and fallen down. Further, the Accident Register Sl.No.760 dated 26.07.2016 stated that while the deceased was travelling in train, hit on the post and fell down at Avadi Railway Station". Thus, the basic ingredients which applicant was legally required is to establish safe travel and not leaning body outside compartment, making it a case of "Untoward incident" within the meaning of Section 123 (c)(2) of the Railways Act, has not been established at all, making him legally eligible for compensation. The Tribunal has also considered a case which was dismissed by the Bench on 22.07.2016 similar to this issue, wherein, it was averred in the reply filed that the deceased had travelled near doorway exposing his head outside of compartment and got hit by electrical post on head, fell down and died at the spot which falls under the category of 'self-inflicted injury'. Thus, the deceased fully exposed himself to the risk of life and hence, the railways are not liable to pay any compensation under Section 124-A(b) of Railways Act, 1989. Based on the above observation, the Tribunal has come to the conclusion that the death was caused due to the carelessness and criminal negligence on the part of the victim, and dismissed the application filed by the applicant. Aggrieved by the same, the appellant/applicant has preferred this appeal before this Court.

7. The learned counsel for the appellant would submit that Clause 9 of the Inquest Report states that due to heavy rush, the deceased had fallen down from the train. The final report filed by the Sub-Inspector of Police, Railway Police Station, Avadi, also states that the deceased had fallen down from the train due to overcrowd. Hence, it is an untoward incident and not a self inflicted one. But the tribunal only based on the DRM Report has come to conclusion that the death was caused due to self-inflicted injury by the deceased.

8. The learned counsel for the appellant would further submit that the statement of the Naveen Balaji in the DRM Report i.e. the deceased while travelling with him had hit on an electric post and had fallen down from the train, and upon their arrival at Annanur, they approached a Motorman of an EMU train bound towards Avadi and sought his assistance to take the fallen deceased from the fallen spot, cannot be taken into account, because the said person was not examined before the Tribunal. Moreover, he would submit that the Motorman who

assisted and was examined before the Tribunal, could not say the exact post where he stopped the train when he was sought for assistance, while that being so, the Tribunal based on his statement has come to the conclusion that the deceased had died by self infliction. In addition, he would submit that in the proforma for information on untoward incidents filed along with the Divisional Railway Manager's Report, it is specifically stated in Column 4 as "fall down, injured, later succumbed" and in Column 16 as "accidental death". But the Tribunal has failed to note the same while coming to the conclusion.

9. In contrary to the submissions, the learned counsel appearing for the respondent would submit that, firstly, the deceased was not a bonafide passenger, because his season ticket was not supported by Aadhar Card or any other card to prove his Identity. Further, when the investigation report states that he had fallen down from the train due to overcrowd, there is no any eye-witness to disprove the same.

10. Heard the learned counsel for the petitioner and the learned counsel for the respondent, and perused the materials available on record.

11. On perusal of the records, it is seen that the appellant's son, namely, Srinivasan, who was a B.Com student, had travelled in the train on 26.07.2019 between Perambur and Pattabiram Railway Station by holding II Class Monthly Season Ticket Bearing No.86931743 and at that time, he unfortunately fell down from the train. Due to the incident, he was admitted in the Avadi Government Hospital and then he was shifted to the Rajiv Gandhi Government General Hospital, Chennai, for further treatment. But he succumbed to the injuries on the same day at about 14.30 hours. Since the appellant who is the father is the only legal heir of the deceased, he filed an application before the Railway Claims Tribunal, Chennai Bench, claiming a sum of Rs.8,00,000/- as compensation for the death of his son. But the Tribunal has rejected his claim, therefore he is before this Court.

12. On perusal of the order dated 18.12.2017 passed by the Railway Claims Tribunal, Chennai Bench, it is seen that the Inquest Report and the Final Report filed by the Sub-Inspector of Police, Railway Police Station, Avadi, was not at all considered by the Tribunal while analysing the facts. In the said reports, it is clearly stated that the K.Pandian, Sub-Inspector of Police, Railway Police Station, Avadi, had investigated the case on the day of incident, and during the investigation, he found that the deceased while returning to home from college had fallen down from the train and sustained grievous injury on his head. But the Tribunal without considering the same has erroneously dismissed the claim of the applicant.

13. It is further seen from the order of the Tribunal that the Tribunal has considered only the DRM Report based on the statement of the Naveen Balaji who had given a statement that the deceased while travelling with him had hit on an electric post and fallen down from the train, therefore, they approached a Motorman of an EMU train and sought his assistance to take the fallen deceased from the fallen spot. But the said Naveen Balaji was not examined by the Investigating Officer. Even though a summon has been issued to him, he has not appeared before the Investigating Officer, therefore only his statement was taken into account in the DRM Report. The Motorman who assisted alone was examined by the Investigating Officer, but he could not say the exact place of post where he stopped the train when his assistance was sought for taking the fallen injured student. So when he was not in a position to say the exact place of fall by the deceased and there was no clear and clinching proof to show that the deceased was hit by an electric post, the Tribunal has erroneously come to the conclusion that the death was caused by self infliction. Hence, when the same is not proved beyond doubt by letting in proper evidence, this Court is of the view that the order of the Tribunal has to be set aside.

14. In view of the above findings, the order dated 18.12.2017 passed by the Tribunal in O.A.(II-U) 24/2017 is set aside and the appeal is allowed. The respondent is directed to deposit a sum of Rs.8,00,000/- along with interest at the rate of 6% per annum from the date of petition till the date of realisation within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/applicant is permitted to withdraw the entire amount. No costs.

सत्यमेव जयते Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

To

1. The Presiding Officer,
Railway Claims Tribunal,
Chennai Bench, Chennai.

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

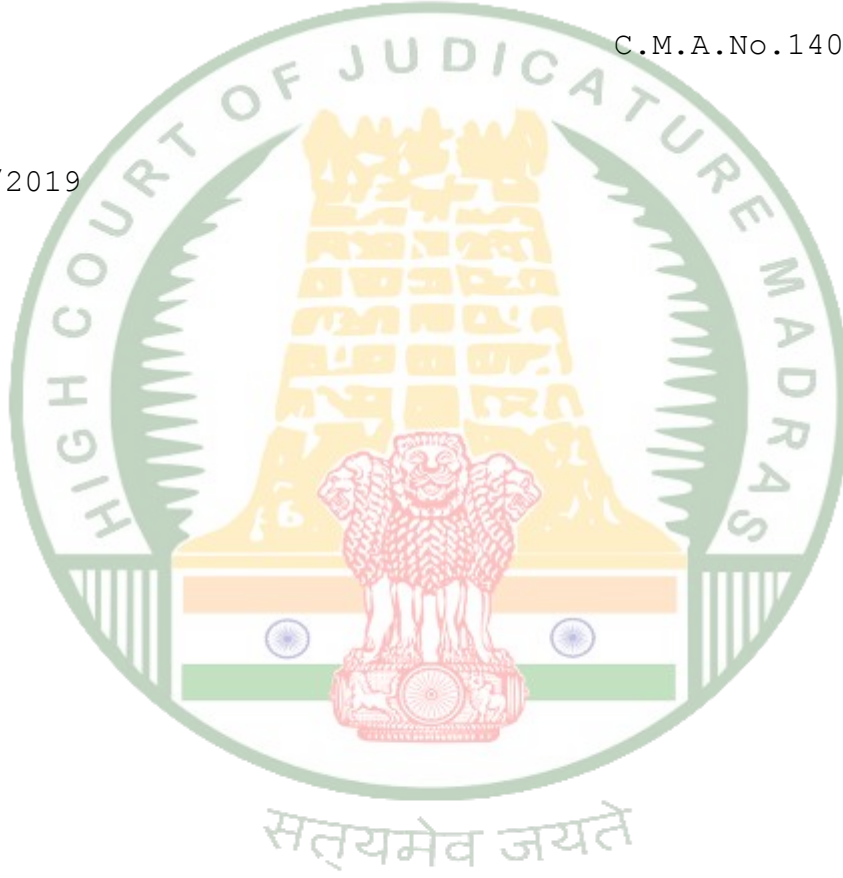
+1cc to Mr.T.Rajamohan, Advocate Sr.92885

+2cc to Mr.M.T.Arunan, Advocate Sr.92636

+2cc to Mr.T.Rajamohan, Advocate Sr.83138 [21/01/2020]

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