

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

CMA NO.1315 OF 2017

1.G.Poungani

2.S.Gopal

... Appellants/Applicants

Vs.

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

... Respondent/ Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 23 of Indian Railways Claims Tribunal Act, 1989, against the judgment dated 08.12.2015 and made in O.A.(II-U) 268/2014 on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellants : Mr.M.Selvam

For Respondent : Ms.T.P.Savitha

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the judgment dated 08.12.2015 passed in O.A.(II-U) 268/2014 by the Railway Claims Tribunal, Chennai Bench.

2. The claimants are the appellants. The claimants laid a claim petition before the Railway Claims Tribunal on the death of their son in an accident on 26.09.2013. The Railway Police informed the appellants/claimants that the body of their son was found between Perambur Carriage Railway Station and Perambur Loco Works Railway Station. First Information Report was registered by the Police and inquest was conducted. The witnesses opined that the deceased should have travelled by some train towards Arakkonam and fell down from the train and suffered death. To prove the claim, the second claimant / father of the deceased examined himself as A.W.1. He would state that his son left home on 22.09.2013 to see his friend at T.Nagar. On 25.09.2013 at 08.30 pm, he telephoned his father that he is going to attend an interview at Coimbatore and that he was proceeding to Coimbatore on the next day morning i.e., on 26.09.2013 by

train. The police have handed over the properties belonging to the deceased to the second respondent / claimant viz., sim card, mobile phone, Re.2/- and one empty purse. Because the second respondent was in grief, he did not enquire about the train ticket. On the basis of the same, he marked Exs.A1 to A7. On the side of the respondent/Railways, DRM report was filed and no witnesses were examined. The Tribunal rejected the claim of the claimants on the ground that the deceased was not a bonafide passenger. Aggrieved over the same, the appellants/claimants are before this Court.

3. Heard the submissions made on either side and perused the materials available on record.

4. 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.

5. In the instant case, the evidence of the appellants / claimants goes to show that the deceased left the house on 22.09.2013. Thereafter, his whereabouts between 22.09.2013 and 26.09.2013 were not spoken of. Oral evidence of A.W.1 would only state that the deceased called him on 25.09.2013 at about 08.30 pm and informed him that he is going to Coimbatore on the next day morning by train. But the time of death was at 11.25 am and the information was given by a retired employee of Railways by 11.45 am. There is no evidence on the side of the appellants/claimants that some train from Chennai to Coimbatore crosses that place of accident around 11.00 am. Further, when money and the empty purse were recovered, there is no evidence as to the ticket. The second appellant / father, who examined himself as A.W.1 would depose that he was not aware as to whether his son purchased ticket or not. When the purse is recovered with money, normal presumption should be that the ticket should also be available in the purse. When there is no explanation for purchase of the ticket and no evidence for travel by train, it cannot be presumed that the deceased was a bonafide passenger. The DRM report filed by the Railways projects the case as "suicide". The postmortem report reveals that the deceased sustained traumatic amputation of the right upper limb at the level of shoulder joint with limb detached from the body; crush injury of both lower limbs with surrounding soft tissue severed and crush injury of head with multiple comminuted

fracture of the skull bone, brain matter found in piece meal. The injuries suffered by the deceased shows that the head got crushed by train and legs were amputated and this could not rule out the case of run over by train. In that event, the Tribunal cannot come to a definite conclusion without evidence that it is an untoward incident, due to the falling down from the running train.

6. This Court is also of the considered opinion that the appellants / claimants have not discharged their initial onus to prove that the deceased had travelled by a train and that he was a bonafide passenger. In the absence of specific details, the Tribunal came to a right conclusion that there is no evidence as to the travel as well as bonafide passenger. Therefore, this Court confirms the findings of the Railway Claims Tribunal that the appellants / claimants have failed to prove the untoward incident and that the deceased is a bonafide passenger.

7. In fine, the Civil Miscellaneous Appeal merits no consideration and accordingly, dismissed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

TK

To

- 1.The General Manager
Government of India
Southern Railway
Chennai - 600 003.

- 2.The Railway Claims Tribunal
Chennai Bench
Chennai.

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

+1cc to Mr. M.Selvam, Advocate SR.No. 22157

CMA NO.1315 OF 2017

A.SK(25/06/2019)