

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

CMA NO.1432 OF 2017

1.S.Nalini
2.S.Sathiyasri (Minor)
3.S.Sathyanathan (Minor)
Minors rep. by mother and
natural guardian 1st appellant
4.S.Jayalakshmi Appellants / Appellants

Vs.

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

PRAYER: Civil Miscellaneous Appeal filed under Section 23(1) of the Railways Claims Tribunal Act, 1987, against the judgment dated 25.08.2015 and made in O.A.(II-U) 294/2013 on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellants : Mr.M.Selvam

For Respondent : Ms.T.P.Savitha

सत्यमेव जयते
J U D G M E N T

This Civil Miscellaneous Appeal is directed against the judgment dated 25.08.2015 passed in O.A.(II-U) 294/2013 by the Railway Claims Tribunal, Chennai Bench.

2. The claimants are the appellants before this Court. The case of the claimants is that the deceased travelled in an EMU train from Ennore to Ponneri and suffered death due to the accidental falling from the train. The Tribunal dismissed the claim on the ground that the accident had taken place at Kavarapet, which is beyond the point of destination, as such the

deceased was not a bonafide passenger and dismissed the claim petition. 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. Ex.A1 is the train ticket. The ticket was purchased for travel between Ennore and Ponneri on 24.07.2013 around 05.58 am. But the body was said to have been found at 10.00 am. It is the case of decapitation and that both the skull and brain matters are completely exposed. All the limbs got cut and that the death was due to the injuries. Postmortem report leads to the conclusion that it is a case of run over by train. Be that as it may, the deceased had taken ticket only between Ennore and Ponneri, in an electric train. But he travelled beyond the point of destination and found dead between Ponneri and Kavarapet Railway Station. The travel beyond Ponneri was without any valid authority. The first claimant/first appellant examined herself as A.W.1 and state before the Tribunal that her husband was working as a Chargeman in the Tamil Nadu Electricity Board at Ponneri and they were residing at Ponneri. There is no explanation for the travel of the victim beyond the destination and there is no statement with regard to purchase of ticket for his travel. In that event, it is a clear case that victim was not a bonafide passenger for his alleged travel beyond Ponneri.

5. 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. However, the initial burden will be on the claimants to prove that the victim had travelled by train and that he had purchased ticket for his travel, 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. In the present case, the claimants have not filed any affidavit explaining the travel of the victim beyond Ponneri. On the contrary, the nature of injuries probabilise that they were not out of accidental fall, perhaps due to hit and run over by train. The postmortem report concludes that injuries were caused due to run over by train leading to an inference that it is a case of accident and not an untoward incident.

6. In such circumstances, this Court is 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

the bonafide travel. Therefore, this Court has no hesitation to confirm the findings of the Railway Claims Tribunal that the appellants / claimants have failed to prove the untoward incident and that the deceased was a bonafide passenger.

7. In fine, the Civil Miscellaneous Appeal is dismissed. No costs.

TK

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

2.The Railway Claims Tribunal
Chennai Bench
Chennai.

+1cc to Mr.M. Selvam, Advocate, S.R.No.22156 of 2019

+1cc to Mr.Ms.T.P.Savitha, Advocate, S.R.No.21957 of 2019

CMA NO.1432 OF 2017

NAM(CO)
VJI (28/05/2019)

WEB COPY