

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.09.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1488 of 2017

1. D.Thyagarajan

2. Meena

... Appellants/Applicants

Vs.

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

... Respondent/Respondent

Civil Miscellaneous Appeal is filed under Section 23 of Railway Claims Tribunal Act, 1987 to set aside the dismissal order dated 13.07.2015 in OA(II-U) No.246 of 2014 passed by the Railway Claims Tribunal, Chennai Bench and to grant an award for a sum of Rs.4,00,000/- with interest.

For Appellants : Mr.R.Sekaran

For Respondent : Mr.C.V.Ramachandramoorthy

J U D G M E N T

The appellants / claimants have claimed a sum of Rs.4,00,000/- for the death of Angammal w/o late Duraisamy Chettiar, who died in the accident, near Erode Railway Limits and to set aside the dismissal order dated 13.07.2015 in OA(II-U) No.246 of 2014 passed by the Railway Claims Tribunal, Chennai Bench.

2. The appellants, who are the son and daughter of the deceased, viz., Angammal, have filed a Claim Petition before the Railway Claims Tribunal stating that their mother, aged 78 years, had informed to her son, viz., 1st appellant that she is going to Coimbatore to visit her granddaughter and left the house. On 27.09.2013, in the evening, the death of their mother was informed by the Erode Railway Police. The Claim Petition further proceeds to state that their mother by purchasing a second class ticket reached Erode and thereafter, inadvertently boarded in another train, which was going towards Karur. Having

come to know that it was not going towards Coimbatore, in a hurry, she came near the entrance for alighting at the next station and when the train was proceeding between Erode and Savadipalayam Railway stations, due to speed, jerk and jolt of the train, she accidentally fell down from the running train, suffered grievous injuries on the head and died. The death was noticed by the railway trackman on the next day, on 28.09.2013 and it was an untoward incident. The second class ticket purchased by the deceased for her travel from Salem was lost, at the time of accident and the same could not be retrieved by the police. By stating the said reasons, the appellants have claimed a sum of Rs.4,00,000/- as compensation.

3. A reply statement has been filed by the respondent before the Railway Claims Tribunal, wherein they had denied the averments mentioned by the petitioners therein stating that the said Angammal had travelled from Salem to Coimbatore and fallen down between Erode and Savadipalayam Railway Station on 27.09.2013, as she did not possess any travel ticket at the time of accident, she cannot be treated as a bonafide passenger. Further, in the application itself, the applicants had submitted that the deceased had met with the said incident due to her own negligence and carelessness, which act of her comes under the definition of 'self inflicted injury' and the respondent is not liable to pay any compensation under Section 124A(b) of the Railway Act, 1989.

4. The respondent, before the Tribunal, taking shelter of the report of the Divl. Security Commissioner / RPF, Salem dated 08.01.2015, Office of the DSC /SA dated 12.12.2014, had stated that the deceased had wrongly boarded in train towards Karur instead of Coimbatore and when she was trying to get down, she had fallen down from the running train and died on the spot. Also there was no ticket found with the deceased and hence, the claimants are not liable to pay any compensation.

5. The Railway Claims Tribunal after accepting the contention of the claimants and the respondent, had framed three following issues :

(i) Whether the deceased was a bonafide passenger as alleged?

(ii) Was there any untoward incident as defined under Section 123C(2) of the Railways Act, 1989 as alleged?

(iii) Whether the applicants are entitled for the compensation as claimed and other relief if any?

After the materials available on record, the Railway Tribunal had rejected the claim of the claimants stating that the deceased was not at all passenger and there was no document produced by the appellants to show that she was a bonafide passenger. The report of DRM report also proves that no ticket

was recovered, she has detrained while the train was moving and fallen down and inflicted injury. There was no eye-witness for the said accident.

6. The Claimants have stated that it was an 'untoward incident' and the 2nd Class Ticket purchased by the deceased for her travel from Salem was lost at the time of accident and the same could not be retrieved by the Police. Further, A.W.1 has deposed that he was informed by police about the incident, based on old age pension card, which was found in the possession of victim. He also reiterated the same when PO had posed the query during cross-examination. However, in the inquest report, there is no mention of recovery of any old age pension card and recorded that the deceased had no proper address. Further, the Tribunal recorded the findings of the inquest report, wherein it is stated that the address of the deceased was found over a slip of paper available in the small bag available with the deceased. However, it is also stated that advertisements have been released in three newspapers and there are contradictions in the evidence let in by the claimants and that the victim was proceeding from Salem to Coimbatore and had got down at Erode and wrongly boarded another train proceeding towards Karur.

7. The respondent had submitted that only for going towards Karur, a person would require to change train at Erode and there is no need for her to get down at that place and no credible evidence was produced by the claimants that they had given her Rs.200/-and that she always used to purchase ticket. As per the inquest report, the deceased had travelled by some train running via Karur and the incident occurred at KM 391/20-22. Even if it is to be presumed that victim had boarded a train at Erode as averred, the body was lying at KM 391/20-22, as reported by senior Trackman of Erode, this location is well within the Erode Yard itself and the journey, by a Karur Bound train would have been too brief (i.e. within Erode Yard limits) for the respondent to check and establish ticketless travel, if any. As such, the appellants had not let in any credible evidence to show that the deceased person had travelled or fallen or she has purchased the ticket and burden was on the appellants to have established that the deceased was a bonafide passenger of a particular train and then only, the question of factum of her death in an untoward incident can be considered.

8. The Railway Claims Tribunal, as per the Judgment of Karnataka High Court in Union of India V. Lakshmi & Others reported in 2014 ACJ 2505, has stated that 'if a person enters the train, his presence there should be presumed as a bonafide passenger with valid ticket, even if ticket is not found on his body for the reason that nobody substantiated that he did not purchase the ticket before he got into the train. This line of

reasoning is catastrophic. If the same is accepted and applied in any case, then it would be bad precedent to open flood gate of false and frivolous claim'' and further, proceeded to state that the 'claimants have failed to prove the bonafide of the victim as a passenger and only if it is established that a person has performed a journey for a quite reasonable time, the onus regarding bonafides of the victim as a passenger can be shifted to the respondent and therefore, the onus cannot be shifted to the respondent. Since the death of the deceased was on account of accidental fall was not proved, they dismissed the claim'.

9. Heard the learned counsel on either side and perused the documents placed on record.

10. On a perusal of the documents produced before this Court, it is seen that a complaint has been lodged by the SMR/ED to the Railway Police on 28.09.2013 stating that the deceased was found lying over track 391/20-22 towards ED-TPJ Side. Based on the same, FIR in Crime No.218 of 2013 was registered for offence under Section 174 Cr.P.C., and inquest was conducted and no eye witness was examined on the part of the respondent and no articles were recovered from the deceased on the spot, which in the considered opinion of this Court would show that deceased person has not possessed ticket.

11. In the inquest report conducted by the Sub-Inspector of Police, Railway Police Station, Erode dated 28.09.2013, it is found that the deceased was identified as Angammal, aged 78 years. Further, one Dr.V.A.Anandhakumar, M.B.B.S., who conducted postmortem had opined that the 'deceased would have appeared to die more than 72 hours prior to autopsy due to shock and hemorrhage due to injury on multiple vital organs' and on enquiry, it is found that the deceased on her way to meet her granddaughter, viz., Lakshmi at Coimbatore, boarded in a Erode bound train from Salem. On arrival of the train at ED, she detrained and boarded in another train. She wrongly boarded in train towards Karur instead of Coimbatore. On seeing the train moving towards Karur, she became upset and immediately rushed to the door ways and fallen down from the running train at KM 391/20-22 and the report would proceed to state that the deceased had accidentally fallen. Moreover, no ticket was recovered from the deceased by Hospital / Police Authorities. Hence came to the conclusion that the deceased is not a genuine passenger, which this Court finds no fault with.

12. At this stage, the learned counsel for the appellants submitted that no one has informed about the death of the deceased and the appellants have also agreed that the

information was given only by the railway authorities and the authorities had come to the inference that the deceased had jumped out of the train. Further, when there is no contradictory evidence, it cannot be stated that the deceased has jumped out of the train.

13. As per inquest report, the address of the deceased was found over a slip of paper available in the small bag [surrukupail] with the deceased, even assuming for a moment that if the deceased had taken a ticket and she is a genuine passenger, the ticket would have been available in that small bag, which is normally kept in their body partly inserted in the hip region, however, the ticket is not available in the said bag, hence this Court comes to conclusion that the deceased is not a genuine passenger, who did not possess a valid ticket.

14. On a perusal of the F.I.R. 218/2013, it is seen that the Sub Inspector of Police, Railway Police, Erode, on 28.09.2013, on the complaint given by the railway authorities only has registered the same and since no one claimed, the authorities had published the advertisements. Only after getting information, the claimants have visited the railway police, which would show that the claimants have not even bothered to verify about whether their mother has reached the alleged relative destination as per the statement given by them. The deceased lady was 78 years old. The travel by a 78 years old woman alone to a destination where she has to break the journey and take up another train raises a question and no son will allow their mother to travel alone at the age of 78. This raises a doubt in the minds of the Court about the truth and reason for travel by the deceased. There is no materials produced before this Court to show that the deceased person was a valid bonafide passenger, therefore, this Court accepts the view taken by the Railway Claims Tribunal and not inclined to interfere with the orders of the Tribunal.

15. Accordingly, the present Civil Miscellaneous Appeal is dismissed and the order dated 13.07.2015 in OA(II-U) No.246 of 2014 passed by the Railway Claims Tribunal, Chennai Bench is confirmed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

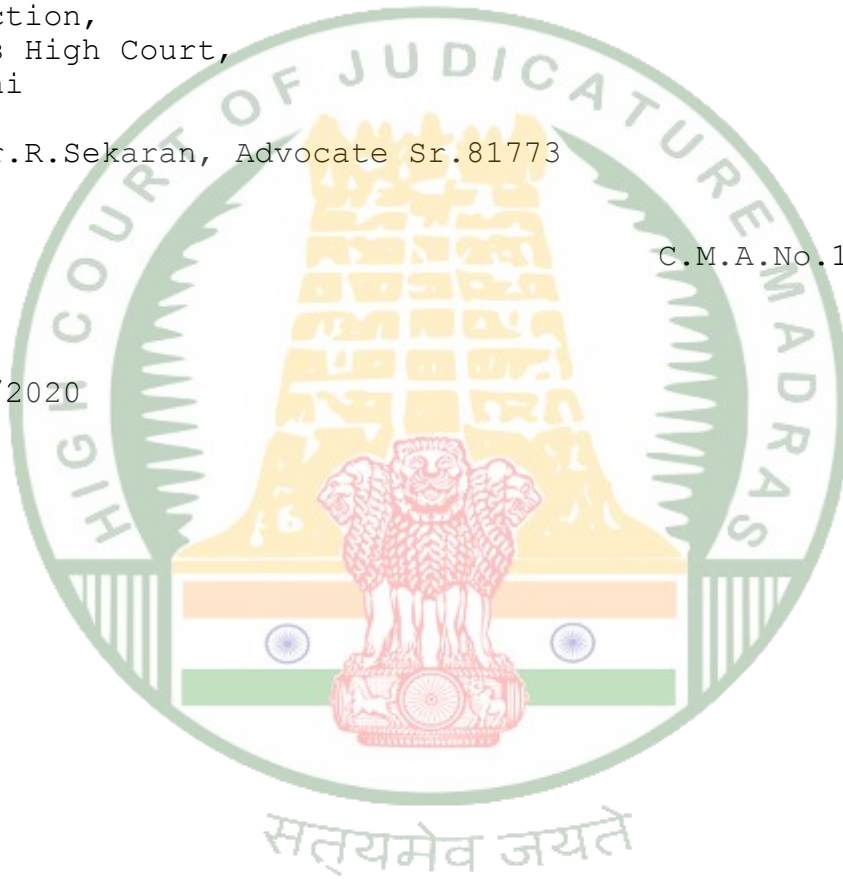
To

1. The General Manager,
Union of India Owning,
Southern Railway rep. by its
General Manager, Chennai - 600 003
2. The Railway Claims Tribunal,
Chennai bench, Chennai.
3. The Section Officer,
VR Section,
Madras High Court,
Chennai

+1cc to Mr.R.Sekarani, Advocate Sr.81773

C.M.A.No.1488 of 2017

ln[co]
srg 09/01/2020



WEB COPY