

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.1590 of 2017

1.S.Revathi

2.S.Divyabharathi

.. 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  
Railways Claims Tribunal Act against the judgment dated  
03.09.2015 made in O.A. (II-U) 314/2014 on the file of the  
Railway Tribunal, Chennai Bench.

For Appellants : Mr.M.Selvam

For respondent : Mr.M.Vijay Anand

JUDGMENT

The claimants have come to this Court with this appeal  
challenging the correctness of the impugned order dated  
03.09.2015 made in O.A. (II-U) 314/2014 passed by the Railway  
Tribunal, Chennai Bench.

2.Learned counsel appearing for the appellants would submit  
that when the deceased was returning back from Andhra Pradesh on  
20.07.2014 prior to 19.45 hrs., after attending the relatives  
family function, he accidentally fallen down from running train  
along with suitcase between Perambur Loco and Perambur Carriage  
Works Railway Station and sustained grievous head injury and  
died on the spot. Immediately, an F.I.R. No.136 of 2014, marked  
as Ex.A1, was registered by GRP/Chennai Perambur RP Station on  
20.07.2014 and thereafter, inquest report, marked as Ex.A1, was  
prepared on 21.07.2014 and post mortem, marked as Ex.A2, was  
conducted on the said date and it was opined that the cause of  
death was head injury. Learned counsel appearing for the

appellants would further submit that the wife of the deceased/applicant No.1, who was examined as AW1, filed her proof affidavit dated 23.07.2015 stating that her husband was a car driver and they are native of village Molugulupadu and migrated from Andhra Pradesh to Tamil Nadu and settled in Sivalingapuram, K.K.Nagar, Chennai and she further stated that the deceased left house on 18.07.2014 to go to his native village at Andhra Pradesh and in cross examination, she denied the fact that the deceased travelled near the doorways, standing carelessly and negligently and she pleaded that she is entitled to get the compensation from the Railways. Learned counsel appearing for the appellants would further submit that as the deceased had fallen down from a running train between Perambur Loco and Perambur Carriage Works Railway Station, which is an untoward incident within the meaning of Section 123(c) (2) of the Railways Act, 1989, the claimants, namely, wife and daughter of the deceased are entitled to get compensation. Learned counsel appearing for the appellants would further submit that when the investigation report of the Railway Protection Force dated 08.06.2015 clearly admits the case of the claimants that the deceased while travelling in the doorways on the running train, fallen down from the train and got head injuries and died on the spot at KM 7/3-7/5, the claimants are entitled to get compensation as the death of the deceased in the case of running train has been established, which is clearly falling under Section 124A of the Railways Act to satisfy the conditions of untoward incident. According to the learned counsel appearing for the appellants, the conclusion arrived at by the Tribunal that the deceased was not a bonafide passenger because it was not an untoward incident as defined under Section 123(c) of Railways Act, 1989 is wholly contrary to the ratio laid down by this Court in the case of A.Thanikachalam and others vs.Union of India reported in 2016 (6) MLJ 24. Therefore, the claimants are entitled to get compensation for the death of the bonafide passenger and hence, the impugned order is liable to be set aside by allowing the appeal.

3.Learned counsel appearing for the respondent would submit that when the claimants have not proved the vital aspect that the deceased was a bonafide passenger while travelling on the running train by purchasing a ticket from the respondent, the findings given by the learned Tribunal that the appellants are not entitled to get compensation cannot be found fault with. Moreover, there was no witness to the said incident produced before the Tribunal. When no ticket was produced to prove the fact that the deceased was a bonafide passenger, the claimants are not entitled to claim compensation as the alleged death would not come under the purview of Section 123(c) (2) of the Railways Act. In support of his contention, learned counsel appearing for the respondent has relied upon a judgment in the

case of Union of India vs Rina Devi reported in CDJ 2018 SC 524 wherein in para 17.4 it has been held as under:

'17.4 We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bonafide passenger for which claim for compensation could be maintained. However, 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 claimant 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. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.'

4. Referring to the above judgment, the learned counsel appearing for the respondent would submit that mere presence of a body on the railway premises will not be conclusive to hold that the deceased was a bonafide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such deceased will not negative the claim that he was a bonafide passenger and 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. Therefore, he prays for dismissal of the appeal.

5. A perusal of the investigation report of the Railway Protection Force dated 08.06.2015 shows that the deceased person, while travelling in the doorways on the running train, without taking proper care, fallen down from the same. Since the investigation report of the Railway Protection Force admits the fact that while the deceased was traveling on the doorways in the running train, fallen down and got injuries and died on the spot, this Court is of the view that it is a clear case of untoward incident covered under Section 123(c)(2) of the Railways Act 1989. With regard to next issue as to whether the claimants have to establish the fact that the deceased was a bonafide passenger, as the report submitted by the Railway Authorities clearly shows that the deceased fallen down from the train and died on the spot, it is not necessary to go into the facts as to whether the deceased was holding any ticket or he was in possession of the ticket because it is not possible for him to hold the ticket safely at the time of death and the said issue has been considered in the judgment stated supra which is extracted as under:

'15. In the cases on hand, as mentioned already, when it is an admitted fact that both the deceased died in an untoward incident on the respective dates while travelling in the train, the onus is on the Railways to prove that the deceased were not bona fide passengers, since the normal presumption is that a passenger in a train holds a valid ticket. In fact, under similar circumstances, this Court in the case of The Union of India owning Southern Railway by its General Manager, Chennai v. G.Jayalakshmi and others, 2012 (3) CTC 741, while considering an identical issue, has held as follows:-

"15. This Court in similar circumstances in the case of S.Poonkodi and others v. The Union of India, Southern Railway, CDJ 2007 MHC 3784, observed as hereunder:-

"16....Moreover, if the deceased had travelled as a ticketless traveller, one would normally expect the Railway Authorities to have detected such ticketless travelling. When a person dies in an accident by falling down from train, it is not possible for the legal representatives to produce the ticket or valid authority to travel in the train. Depending upon the facts and circumstances of a given case, the Tribunal/the Appellate Court infer about the deceased being a bona fide passenger. In the present case, facts and circumstances prima facie indicate that the deceased was a bona fide passenger, who lost his life in the railway accident."

16. At this juncture, it is also relevant to point to the observation made by the Honourable Supreme Court reported in Bimla Devi and others v. Himachal Road Transport Corporation and others, 2009 (1) TN MAC 700 (SC) : AIR 2009 SC 2819, wherein while dealing with a claim arising under the Motor Vehicles Act, the Honourable Supreme Court observed that it was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the Claimants and the Claimants were merely to establish their case on the touchstone of preponderance of probability. It went on to observe that the standard of proof beyond reasonable doubt could not be applied in the case of Claim Petitions.

17. It is no doubt true that the position of law as provided in Section 106 of the Evidence Act is that if a fact is within the special knowledge of a person, the burden of proving such fact is on that person and as provided in Illustration (b) of that Section, if a person is charged with travelling on a railway without a ticket, the burden of proving that he had a ticket is upon him. But, such principle is not applicable to a case of a dead person, who was proved to have died in the course of railway travel and whose body was taken in custody of the Railway Police. In such a situation, it is the duty of the Railway Authority to first give evidence that he was without a valid ticket and if such evidence is given, the onus shifts upon the Claimants to prove that he was a bona fide passenger having a valid ticket. In this case, as no person on behalf of the Railways has given any such evidence nor as any person come forward to disclose as to what articles were found with the victim, I am of the considered view that the initial burden of proving the said fact had not been discharged. In such circumstances, in the absence of any evidence of the Railway Authorities asserting absence of valid ticket, I am of the opinion that there is no just reason to discard the evidence of the Claimants...."

16. In the light of the above, since the issue squarely falls within the definition of "untoward accident" under Section 123(c)(2) of the Railways Act, 1989 and that the appellants/claimants in each case are entitled to the compensation as provided in the Schedule to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, the impugned orders dated 10.9.2008 & 29.4.2008 passed in O.A.Nos.51 & 121 of 2006 by the Railway Claims Tribunal are set aside and both the civil miscellaneous appeals are allowed. The appellants/applicants in each case are entitled to the compensation of Rs.4,00,000/- (Rupees four lakhs only) with interest at the rate of 6% per annum from the date of petition till the date of award and thereafter at the rate of 9% per annum till the date of realisation. The respondent is directed to deposit the entire compensation amount along with interest in each case to the credit of the O.A.Nos.51 & 121 of 2006 on the file of the Railway Claims Tribunal, Chennai Bench within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellants are permitted to withdraw the entire compensation amount. No costs.'

6.It is seen that the F.I.R. 136/2014 registered by the GRP/ Chennai, Perambur RP Station on 20.07.2014, marked as Ex.A1 admits the case of the claimants that the deceased had fallen down from the running train. Even the inquest report, marked as Ex.A5 and the Post Mortem conducted on the deceased body, marked as Ex.A2 clearly show that the cause of death was head injury. In addition thereto, proof affidavit dated 23.07.2015 filed by the wife of the deceased would show that her husband was a car driver, they were native of village Molugulupadu, migrated from Andhra Pradesh to Tamil Nadu, settled in Sivalingapuram, K.K.Nagar, Chennai and he left home for attending a marriage and he had fallen down from the running train and died on the spot. Therefore, this Court finds no reason to refuse the claim for compensation, which has been completely ignored by the Tribunal.

7.Accordingly, the findings given by the Tribunal are 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 9% 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 order. On such deposit, the appellants are permitted to withdraw the entire compensation amount. No costs.

Sd/-

Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

vga

To

1.The Railway Tribunal,  
Chennai Bench.

+1 cc to Mr.M.Selvam Advocate sr54545

+1 cc to Mr.M.Vijay Advocate sr54736

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