

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.11.2019

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3280 of 2017

1. P.Rathinam

2.Mrs.P.Lakshmi

.. Appellants/Applicants

Versus

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

.. Respondent/Respondent

Appeal preferred under section 23 of the Railways Claims Tribunal Act, 1987 against the order passed in OA (II-U) No.145 of 2014 dated 17.08.2015 by the Railway Claims Tribunal, Chennai and pleaded to pass an award of Rs.4,00,000/-

For Appellant : M/s.R.Sekaran
For Respondent : Mrs.P.Sobana Devi for
Mr.M.T.Arunan

JUDGMENT

C.M.A.No.3280 of 2017 has been filed by the parents of the deceased R.Thirumurugan to set aside the order passed in OA (II-U) No.145 of 2014 dated 17.08.2015 by the Railway Claims Tribunal, Chennai, granting a sum of Rs.4,00,000/- as compensation.

2. The facts in brief leading to the filing of C.M.A.No.3280 of 2017 are as follows :-

(a) The parents of the deceased R.Thirumurugan filed O.A.No.145 of 2014 before the Railway Claims Tribunal, Chennai seeking for compensation of Rs.4,00,000/- together with interest on the ground that their son was a resident of Akkanur Village, Thittakudi Taluk and that he was a student of Nehru College at Coimbatore and was staying in college hostel; that he used to spend week-ends with his friend Sathyaraj, that their son stayed with his friend at sulur and on 23.09.2013, after informing his friend, he left for Ettimadai by Train from Coimbatore and left sulur and later, they came to know from the Railway police that

their son, while travelling in train from Coimbatore towards Palakkad, due to heavy rush, speed, jerk and jolt of train, had accidentally fallen down from the running train between Coimbatore and Podanur Railway Stations, suffered grievous injuries and died on the spot.

3. A detailed reply statement was filed by the respondent resisting the claim that the deceased had not fallen down from the train between Coimbatore and Podanur Railway Station on the alleged date of incident and that the respondent was not liable to pay any compensation under Section 124 A of the Railway Act, because the alleged death of the deceased would not come under the purview of Section 123(c) (2) of the Act. It was also pleaded that the deceased was not a bonafide passenger because the journey tickets were not produced, accordingly prayed for dismissal of the application.

4. Based on the pleadings of the parties, the Tribunal framed the following issues for consideration :-

a. Whether the deceased was a bonafide passenger as alleged?

b. Was there any untoward incident as defined under Section 123 (c) (2) of the Railways Act, 1989 as alleged.

c. Whether the applicant is entitled for the compensation as claimed and other relief if any.

5. The Tribunal after examining the entire evidence on record has held that the applicants have to satisfy two main ingredients viz., : the accidental falling of any passenger from a train carrying passengers and he must have purchased valid tickets for traveling by the train carrying passengers under Section 123(c)(2) and Explanation to Section 124A of Railways Act, 1989. But in this case, no evidence was let in by the applicants regarding purchase of a ticket. AW1/P.Rathinam/Father of the deceased in the proof affidavit has stated that his son was a student at the time of incident and travelled from Coimbatore to Ettimadai and purchased ticket for his travel. Since the alleged journey of the deceased even if true would have been too brief i.e the incident had occurred at KM 19.33 which is less than 2 kms from Coimbatore, and the ticket checking staff of the respondent would not have had adequate time and opportunity to do any checking and hence, the burden of proof cannot be shifted to respondent /railway in this case. It has to be borne in mind that railway stations are not guarded like fortresses and also that railway stations are not like airports with entry barriers. Of course, if a person has undergone a journey for quite a reasonable time the onus can be shifted to the respondent.

6. The learned counsel for appellants submitted that the Tribunal failed to note that only the deceased can state whether he had purchased the ticket or not and in such circumstances, the presumption must be to the effect that the deceased had purchased the ticket. He would submit that the Tribunal failed to note that the accident will not come under the proviso to Section 124(A) of the Railways Act and that the accident was purely an untoward incident. The learned counsel further submitted that the Tribunal failed to note that there is every possibility of losing the ticket in the accident. According to the learned counsel, the deceased was a bona fide passenger and after purchasing ticket only, he had travelled in the train. In support of his submissions, the learned counsel relied upon the following decisions:

(i)Rathi Menon v. Union of India, reported in AIR 2001 SC 1333;

(ii)The Union of India owning Southern Railway by its General Manager, Chennai v. G.Jayalakshmi and others, reported in 2012 (3) CTC 741;

(iii)A.Thanikachalam and others v. Union of India, owning Southern Railway, rep. by its General Manager, Chennai, reported in 2016 (6) CTC 820; and

(iv)Union of India v. Rina Devi, reported in 2018 (7) SCALE 274.

7. Per contra, the learned counsel for the respondent submitted that the deceased was not a bona fide passenger and that the initial onus is on the appellants to prove that the deceased was a bona fide passenger and the same was not discharged by the appellants by producing the journey ticket. She would submit that there is no bona fide in the claim made by the appellants and that the Tribunal was right in dismissing the claim petition filed by the appellants. According to the learned Government Advocate, there is no necessity to interfere with the order of the Tribunal, which is a well-founded one.

8. Opposing the above prayer, Mrs.P.Shobana Devi, learned counsel for the respondent submitted that only the dependants of a bona fide passenger are entitled to get compensation in the event of death occurring in an accident. But in the case on hand, when the Tribunal has rightly held that the deceased was not a bona fide passenger, as he was not in possession of journey ticket or valid travel authority, the appeal cannot be entertained as such. In support of his submissions, he has relied upon a Full Bench judgment of the Allahabad High Court in the case of Smt.Sundri and others v. Union of India and another, AIR 1984 Allahabad 277, wherein the view taken by the Division Bench of the Allahabad High Court in the case of Smt.Yashoda

Devi v. Union of India, AIR 1979 Allahabad 287 holding that the word passenger as used in Section 82-A did not include within its ambit a person travelling by train from one place to another without ticket or some other lawful authority, was held to be the correct law.

9. Heard the learned counsel for the parties.

10. In the case on hand, it is an admitted fact that the deceased died in an untoward incident on the date while travelling in the train. The onus is on the Railways to prove that the deceased were not bonafide passenger, 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 Vs.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.

11. When the respondent was not in a position to establish that the boy had trespassed into the Railway area and the Tribunal has failed to consider the evidence of his relative/ friend who had given evidence regarding the journey. In the light of the above, since the issue squarely falls within the definition of the untoward accident under section 123(c)(2) of the Railways Act, 1989 and that the appellants / claimants in this case are entitled to the compensation as provided in the Schedule to the Railway Accidents and untoward incidents (Compensation) Rules, 1990, the impugned order passed in OA (II-U) No.145 of 2014 dated 17.08.2015 by the Railway Claims Tribunal, Chennai is hereby set aside and the civil miscellaneous

appeal is allowed. The appellants are entitled to the compensation of ***Rs.8,00,000/-** with interest at the rate of 9% per annum from the date of petition till the date of realization. The respondent is directed to deposit the entire compensation amount along with interest to the credit of the O.A.145 of 2014, on the file of Railways claims Tribunal, Chennai within a period of four weeks from the date of receipt of copy of this order. On such deposit, the appellants are permitted to withdraw the entire compensation amount. No costs.

Sd/-

Assistant Registrar

***Corrected as per order
of this court dated 10.02.2020
made in CMA.No.3280/17
-s/d-
Assistant Registrar(CO)
dt 09/03/2020**

// True Copy//

Sub Assistant Registrar

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To

- 1.The Railway Claims Tribunal, Chennai/To be Substituted order
already despatched on
07/02/2020
- 2.The General Manager,
Union of India Owing,
Southern Railway,
Chennai 600 003.

+1cc to Mr.M.T.Arunan, Advocate, SR.No.99294.
+1cc to Mr.R.Sekaran, Advocate, SR.No.94537.

RSI (CO)
CSR: 06.02.2020
aa09/03/2020

Judgment in
C.M.A.No.3280/2017

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