

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2020

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.864 of 2020

The Union of India  
owning Southern Railway  
represented by its General Manager  
Chennai 600 003 .. Appellant/ Respondent

-vs-

M.Monish .. Respondent/ Appellant

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act, 1989 to set aside the order dated 11.12.2019 made in O.A.(II-u)/MAS/185 of 2018 on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellant :: Mrs.T.P.Savitha

For Respondent :: M/s Rohini Ravikumar

JUDGMENT

Heard learned counsel for the parties through video conferencing due to the Covid-19 pandemic.

2. The Union of India owning Southern Railway represented by its General Manager, Chennai has filed this civil miscellaneous appeal against the impugned order dated 11.12.2019 passed by the Railway Claims Tribunal, Chennai Bench made in O.A.(II-u)/MAS/185/2018 directing the appellant to pay Rs.4,20,000/- to the respondent/victim. Two grounds have been taken by the appellant for assailing the impugned order of the Railway Claims Tribunal. As per the provisions of the Railways Act, no passenger is permitted to get down from the running train and if he sustained injuries due to the fall from the running train, it cannot be termed as an 'untoward incident'. Yet another ground raised in the appeal shows that the respondent/injured having not possessed a valid ticket, cannot be construed as a bona fide passenger. Therefore, it was claimed that the Tribunal has committed a serious error in not considering the contention of the appellant that the respondent himself has admitted that he made an attempt to alight from the moving train, hence, the fall

from the running train cannot be considered as an 'untoward incident' as defined under Section 123(c)(2) of the Railways Act.

3. Answering the above, learned counsel for the respondent/victim submitted that the victim, while going to Ernakulam with his neighbourhood friend Manikandan to carry on fishing, after completing the work on 7.3.2017, started their journey from Ernakulam to Kuzhithurai after boarding the train with a valid journey ticket. Thereafter, when the train reached their destination at about 23.30 hours, both of them were sleeping. Later on, when one of them woke up and asked the respondent to come immediately to alight from the said train, the respondent, realising that the destination has reached and they both slept before getting ready to get down at the appropriate place, ran towards the exit gate. But, due to more passengers standing on the way, he was unable to reach the exit gate. However, as the train started moving, the respondent got down and in that process, he fell down due to the jerk in the train between the train and platform and sustained injuries, as the train ran over his right foot and crushed it entirely. Besides, his teeth were also completely damaged. Thereafter, he was rushed to the hospital. The treatment particulars issued by Kanyakumari Medical College Hospital also would show that the victim suffered injuries and after treatment, he was also discharged on 2.5.2017. But when he was taking treatment from the date of admission on 8.3.2017 till 2.5.2017, he also underwent surgery on his right leg below knee. This has been properly explained before the Tribunal and the Tribunal also, in its order, on the basis of the evidence adduced by both sides, has come to the conclusion that the right leg of the victim was cut down from the wheel of the train and the victim sustained grievous injuries on the face and his teeth. Immediately thereafter, even the Station Master, Kuzhithurai also called the 108 Ambulance. That clearly shows that it is not a mere accident and it is an 'untoward incident' as covered by Section 123(c)(2) of the Railways Act in respect of a bona fide passenger. He has also further argued that when it is the admitted case of both parties that the victim along with his friend were travelling in the train from Ernakulam to Kuzhithurai, on 7.3.2017, they were travelling only as bona fide passengers by purchasing the journey ticket. This has been proved beyond all reasonable doubt, for the reason that Sri Upendra Kumar, Post Commander/RPF/NCJ being investigation officer, submitted a note which has been approved by the Divisional Railway Manager in hierarchical position on 29.8.2018. Although certain contradictions were found, it could be seen that the train ticket was available in the pant pocket of the injured and the same was lost during the treatment at the hospital. The further note submitted by Sri Upendra Kumar, Post Commander/RPF/NCJ

being investigation officer, shows that as per the treatment summary of Medical College Hospital, Asaripallam, the right leg of the victim was amputated below knee. That note further shows that there is no negligence on the part of the Railway. But the enquiry reveals that the injured fell down from the train and sustained severe injuries while trying to get down from the moving train in a careless and negligent manner. Since the railway ticket was available with the injured as per the Government Railway Police, Nagercoil, it was construed that he was a bona fide passenger.

4. Having heard learned counsel for the parties, this Court is of the view that the case of the respondent needs to be accepted, as the relevant portion of the note submitted by Sri Upendra Kumar, Post Commander/RPF/NCJ reads thus:-

"5. According to the records available with GRP/Nagercoil, train ticket was available in the pant pocket of the injured and the same lost during the treatment in hospital.

6. As per the treatment summary of MCH, Asaripallam, his right leg was amputated below knee.

7. There is no negligence on the part of Railway. Enquiry reveals that the applicant fell down from the train and sustained severe injury while trying to get down from moving train in a careless & negligent manner. Since Railway ticket was available with the injured as per the record of GRP/Nagercoil, it is construed that he was a bona fide passenger. However, Railway is no way responsible for the incident."

5. A reading of the above note submitted by the investigation officer Sri Upendra Kumar, Post Commander/RPF/NCJ clearly admits the case of the respondent/victim that he fell down from the running train and sustained severe injuries while trying to get down from the moving train. Secondly, the note also further confirms the purchase of the ticket by the injured. When the note establishes that the respondent is a bona fide passenger, the contention of the appellant that the respondent was neither a bona fide passenger nor the incident can be termed as an 'untoward incident', is wholly without any merit, because the grounds of appeal filed totally runs contrary to the note submitted by the investigation officer Sri Upendra Kumar, Post Commander/RPF/NCJ. Therefore, this Court finding no merits whatsoever in the appeal and finding no infirmity in the impugned order passed by the Railway Claims Tribunal, Chennai Bench, is inclined to dismiss the appeal. Accordingly, the civil

miscellaneous appeal stands dismissed. The respondent/victim is entitled to withdraw the entire amount deposited with accrued interest. Consequently, C.M.P.Nos.5574 & 8146 of 2020 are also dismissed. No costs.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ss

To

1. The Additional Registrar  
Railway Claims Tribunal  
Chennai Bench

2.The Section officer  
VR Section,  
High Court, Madras

1 cc to Mrs.T.P.Savitha , Advocate, Sr. 29338

C.M.A.No.864 of 2020

KJ (CO)  
kk 19/10