

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14 / 09 / 2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CMA NO.1504 OF 2018

1.S.N.Francis

2.F.Stella

... Appellants/Applicants

Vs.

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

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 23(1) of Railway Claims Tribunal Act to set aside the order passed by the Railway Claims Tribunal, Chennai Bench in O.A.No.(II-U) 326 of 2013 dated 16.07.2014 and allow the appeal.

For Appellants : Mr.S.Parthasarathy

For Respondent : Mr.M.Vijay Anand
Standing Counsel

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the claimants against the order dismissing the claim, by the Railway Claims Tribunal.

2.Son of the appellants, a student of Sriram Engineering College, possessing a second class monthly season ticket valid from 19.09.2011 to 18.10.2011 for his travel between Ambattur and Veppambattu met with an accident and died.

3.Whether the said incident that had happened within the Railway premises is an untoward incident or a hit and run and as to whether the Railways is liable to pay compensation or not? is the issue.

4.The Railway Claims Tribunal relied on the evidence of R.W.2 and Ex.R1, the Rough Journal and decided it as a case of hit and knocked down by the train and will not fall under

Section 123 of the Railways Act, 1989. Other than the evidence of RW2 and Ex.R1, the FIR, inquest report are all in favour of the claimants that the untoward incident had happened due to accidental fall. Therefore, it is suffice to analyse the evidence of RW2 and Ex.R1 to come to the conclusion. According to the Tribunal, RW2 has categorically stated during cross examination that he saw the victim on tracks. He immediately stopped the train and noted down the details in the Rough Journal, which was marked as Ex.R1. The Police in their inquest report have not examined the Driver and Guard and their report was only on presumption on the basis of opinion rendered by the Panchayatdars. From the evidence of RW2, it is clearly proved that the deceased was knocked down, run over and killed by the train supported by Ex.R1. The report was prepared by the Guard RW2 immediately after the incident. Therefore, there is no reason to discard the evidence of RW2. Hence, arrived at a conclusion that it is not an accidental fall.

5.Before examining the evidence of RW2, it is pertinent to note that the evidence of RW1 the Motorman / Driver of the train. He has stated that he was not the eye witness and he came to know of the incident only after he reached Chennai Beach Station.

6.Now, the evidence of RW2 in chief examination reveals that the train stopped at Veppampattu Railway Station. The train was crowded as there is a College at Veppampattu and several students were travelling by standing on the foot board of the Compartment. While the train was leaving the platform near EMU Stop Board, he heard a sound. He turned back to see what was it and found a person on the track in college uniform. He immediately gave the stop bell and Motorman stopped the train 250 metres ahead. Since next train was entering in the platform in the "up direction" and another train entering the platform in "down direction", he informed the other Guard to check the condition of the person and gave signal to start the train. He immediately informed the Station Master, Tiruvallur through Mobile phone and after stopping at Tinnanur Railway Station, he called someone student, who was wearing same uniform got his HOD number, contacted him and informed the deceased's parents and gave a written complaint to the Station Master, Tinnanur. He would further depose that the body was cut into two pieces lying on the right side of the rail, and off side of the platform. As body was found on the right side of the rail, there was no chance of falling from the train. He marked the Rough Journal as Ex.R1. In cross examination, he would initially state that he was the eye witness for the incident. Again in the course of cross examination he would state that while passing the train, he saw the incident. After hearing the sound, he turned back and saw the injured person on the track and in later part, he would

state that I did not witness the incident.

7. From the evidence of RW2, it is clear that he saw the deceased lying on the tracks, but he did not witness the incident. That means, he did not see that the deceased was hit and run over by the train. It is obvious that the Guard Van attached at the tail end, he could not have witnessed the incident. The best person who can speak about the hit and run is the Driver. He would depose that he came to know of the incident only after he reached Madras Beach Station. In that event, as opined by the Guard, the deceased must have jumped into the train in the middle from ground level from the off side or would have fallen from the train.

8. Naturally, when a person jumping from off side of the platform would jump from ground level. The chances of very remote for any one to get in between the compartments to reach the rail to get the body cut into two pieces without the Head getting smashed. The Guard has seen the body from 250 metres, much less at a distance of 50 metres, while the train was passing. In that event, it is highly impossible for him to state that the deceased was knocked down by the train or accidentally fallen from the train. There is a high possibility of falling from the train from off side.

9. Secondly, the student of the same college, allegedly informed RW2 that the deceased was drunken. In that event, the same person if he had personally known would have informed as to how the deceased met with the said accident. Merely on hearsay, the evidence is inadmissible. Further, it is alleged that he gave a written complaint to the Station Master, Tinnanur, but the said complaint was not marked as exhibit and the said Station Master was not examined as a witness nor any statement was obtained by him.

10. Thirdly, the Rough Journal marked as Ex.R1 shows the names of two drivers of the train in the upward and downward directions; 43723 - V.Raghunathan and 43704 - Panchavarnam. But, nowhere the name of the Guard Sivaraman is found. In that event, it cannot be said that RW2 was on duty on that date without corroboration of any other witness.

11. Now that as per the evidence of RW2, it is crucial to note that there were two trains entering the platform from both sides. In that event, the driver of the next train must have seen the body lying on the track and in all probabilities he would not have run over the body. But, neither the driver of the next train, coming in minutes or the Station Master of Veppampattu Railway Station have deposed as witnesses. The other

Guard mentioned in the chief examination by RW2 had not also given any statement.

12.It is also strange to note that when an accident taken place at Vappampattu Railway Station, RW2 has not informed Station Master of Veppampattu Railway Station, over phone, but Station Master of Tiruvallur Railway Station and Tinnanur Railway Station. The evidence as such is not reliable and it is purely based on presumption after a period of three years of the accident and it is admitted by RW2 during cross examination that he did not witness the incident.

13.It is also mandatory to send the DRM report to the Railway Claims Tribunal within a period of two months. But in the instant case, it was filed only on 15.02.2014 after a period of three years. Therefore also, the defense of the Railways, contrary to the inquest and final report cannot be accepted.

14.This Court in UNION OF INDIA OWNING SOUTHER RAILWAY VS. G.LOGANAYAKI AND OTHERS [2008 (1) MLJ 1110] has laid down a ratio that in a claim for compensation, it is the duty of the Railways to prove that the deceased was not a bonafide passenger and the accident does not fall within the definition of untoward incident.

15.In the instant case, Railways has failed to prove the case that it is not a case of accidental fall, but one of hit and run. The witnesses do not speak about the deceased hit and knocked down by train, but would only opine that it would have been the case of run over by train. When there are two views possible, the view which is beneficial to the claim that too in a beneficial legislation like accident claims shall be taken.

16.Since the evidence of RW2 discloses that there was crowd at Veppampattu Railway Station, as there is a College nearby and the students travelled in foot board in the compartments, it leads to the probability and possibility that the deceased, a bonafide passenger, also travelled in the train and met with the untoward incident due to accidental fall on account of crowd and jerk.

17.Having come to the conclusion that the evidence of RW2 does not prove the case of hit and run over by the train, obviously the order of the Railway Claims Tribunal mainly relying on the evidence of RW2 is liable to be set aside.

18.Accordingly, the appellants / claimants are entitled to compensation at the present rate as per the latest amendment as on date along with interest at the rate of 6% per

annum from the date of claim petition till the date of realization. The respondent is directed to deposit the amount within a period of twelve (12) weeks from the date of receipt of a copy of this order.

19. In the upshot, the above Civil Miscellaneous Appeal stands allowed with the above direction. No costs.

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Assistant Registrar (CS)

//True copy//

Sub Assistant Registrar

To

1 The General Manager
Government of India
Southern Railway
Chennai.

2 The Railway Claims Tribunal,
Chennai bench.

• 1 cc to M/s.S.Parthasarathy, Advocate SR.NO.30208

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RR(CO)

RRI 23/12/2020

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