

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.1437 OF 2014

1. Uma Maheswari
2. Subramani
3. Dhanam

... Appellants/Claimants

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(1) of the Railway Tribunal Act to set aside the order passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U)97/2013 dated 28.02.2014 and allow the appeal.

For Appellant : Mr.Shivakumar for
Mrs.F.Terry Chellaraja

For Respondent : Mrs.T.P.Savitha,
Standing Counsel for Railways

J U D G M E N T

The appellants/claimants, who are wife, father and mother respectively of the deceased, aggrieved by the order passed by the Railway Tribunal, has come forward with the present Civil Miscellaneous Appeal.

2. The case of the appellants / claimants is that on 10.10.2012 around 14.00 hrs, the deceased person, came to Ponpadi railway station and he boarded a unit train in order to proceed to Thiruthani Railway Station with a valid train ticket. While travelling, the deceased person fell down from the running train in between Ponpadi Railway Station and Thiruthani Railway Station, due to heavy crowd in the said train and sustained fatal injuries and died on the spot. In consequence, a case was registered by the Arakonam Railway Police in Crime No.526 of

2012 under Section 174 of Cr.P.C., The journey ticket was lost during the accident and the CMO Ward Doctor, Arakkonam Government Hospital, Arakkonam had witnessed that the deceased person as dead. Hence the appellants / claimants have filed a claim petition claiming a sum of Rs.4,00,000/- [Rupees four lakhs only] .

3. In contrary, the respondent / Railways had filed a counter affidavit stating that they deny the statement of the appellants that the deceased had died in an untoward incident and the appellants have not furnished any documents to prove the same. The appellants have filed a claim petition before the Tribunal with false statements and as per Divisional Manager Investigation report, the deceased had not travelled in the train from Ponpadi to Thiruttani Railway Station and that he is supposed to have committed suicide. Further, the Head constable/Arakkonam, who enquired this case had stated that the dead body was found in the centre of the track cut into two pieces and one photo of a woman, viz., deceased brother's wife was recovered during the inquest.

4. The counter of the respondent proceeds to state that the contention of the appellants was that deceased had travelled in EMU Train on 10.10.2012 at about 14.00 hrs from Ponpadi station to Thiruttani station, whereas, as per the train signal register / ponpadi railway station dated 10.10.2012, after departure of T.No.56041 Pondicherry Passenger at 6.56 hrs, there is no stopping trains at and from Ponpadi upto 18.54 hrs. The alleged incident had happened due to tress-pass or some other cause and the same do not amount to untoward incident, as there was no fall from train and the respondent contends that they are not liable to pay any compensation to the claimants.

5. The Tribunal after considering the averments and counter averments on either side had framed three issues for consideration:-

'(i) Whether the deceased Nagaraj, s/o Subramani was a bonafide passenger, as alleged?

(ii) Whether any untoward incident as defined under Section 123 (c) (2) of the Railways Act, 1989 occurred to the deceased Nagaraj, s/o Subramani, while travelling by electric train on 10.10.2012 at about 14.00 hrs between Ponpadi and Tiruthani Railway Station at Km 81/32-34 down line and died at the spot?

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

6. Before the Tribunal, the wife of the deceased / 1st appellant was examined as A.W.1 and marked certain documents and on the side of the respondent, B.Kanniah, Head Constable,

RPF was examined as R.W.1 and no documents were marked on their side. After hearing the oral arguments, the Tribunal had decided all the issues against the appellants / claimants herein. As against the same, the appellants are before this Court.

7. The learned counsel for the appellant submitted that the dead body of the deceased was found on the upline KM81/31-33 between Thiruthani Railway Station and Ponpadi Railway Station and hence it can be learnt that the deceased was travelling as a passenger and in a running train, he fell down due to the crowd in the train. Also the deceased was grievously injured and succumbed to death. The post mortem report as well as the report of the panchayatars reveals the same, but the court below failed to consider these aspects.

8. The learned counsel for the appellant contends that during the cross examination, R.W.1 had deposed that he had not brought any records and that he is giving evidence from and out of his memory, which is contrary to the entire facts of the case. Further, it is an admitted fact that he is not an eye witness, he has not given any statement before the Railway Police, he has not signed as mahazar witness. Hence the testimony of the witness has to be tested and rejected.

9. Apart from the above, the learned counsel for the appellant contended that the Tribunal erred in relying upon the findings of the DRM report and evidence of R.W.1, who is not an eye witness. Further, the Tribunal cannot come to a conclusion based on the report of the respondent, who will obviously support the case of the respondent. Therefore, he had pleaded to set aside the award passed by the courts below.

10. Ms.T.P.Savitha, learned standing counsel for the respondent, in support of her contention has produced a letter No.N/S.124A/3061300018/MAS/Accidt/RM-III dated 22.11.2019 from the Deputy Chief Commercial Manager / Claims, Southern Railway, wherein it is stated as follows and further, she pleaded to dismiss the present Appeal:

'In the above case, it is stated that the Train Signal register received from Ponpadi Railway Station for 10.10.2012 shows that only two trains viz., Train No.66022, Tirupathi - Chenani Central Passenger (Arr.06:39/Dep.06:41 hrs.) and Train No.56041, Tirupathi - Pondicherry Passenger (Arr.06:54/Dep.06.56 hrs.) which were the MEMU Trains stopping at Ponpadi Railway Station in the morning, after which there are no stopping trains till Train No.66014 Passenger at 18.54 hours. The original letter dated

20.05.2013 from Station Master / Ponpadi Railway Station is enclosed herewith for ready reference.

Further, it is stated that the applicants have not produced any ticket and the body of the deceased was found in the centre of the track and cut into two pieces.'

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

12. The specific averment in the claim petition is that at 14.00 hrs on 10.10.2012, the deceased had reached Ponpadi Railway Station and boarded the unit train with a valid ticket and while travelling, he has fallen down, due to which, he had succumbed to injuries, was proved to be false by stating that there was no journey ticket and the deceased did not travel in the said train. While on examination, the 1st appellant, wife of the deceased had come out with a fresh statement in the affidavit that her husband left home on 10.10.2012 by stating that he had to meet a client at Ponpadi and she had received a message at about 14.00 hrs that he had fallen down from a running train between Ponpadi Station and Tiruttani Station, due to heavy crowd.

13. From the perusal of the records it is seen that the appellants have relied on various documents, but the police, after enquiry, had come to a conclusion that the deceased had fallen down accidentally from a running train and died on the spot. The same was refuted by the respondent and they relied on the finding of the DRM Report. As per DRM report, it is clear that after departure of train No.56041 PDY Passenger at 6.56 hrs, there was no train stoppage at Ponpadi upto 18.54 hrs and tickets at Ponpadi will be issued only one hour before the departure of the train, ie., at 17.50 hrs and hence the appellants' claim that the deceased came to Ponpadi Station at 14.00 hrs and boarded a train to Thirutani proved to be a false one, because there is no train service between Ponpadi to Thirutani at that point of time and hence the claim of the appellants were not accepted by the Tribunal.

14. It is to be noted that the respondent's side witness, viz., R.W.1, Head constable had deposed that he got information from public around 1.30 p.m., and he had given information to the Station Master, Tiruttani and they rushed to the spot immediately. According to him, he found the dead body in the centre of the track, cut into two pieces and after departure of

Pondicherry Passenger, there is only one train, which is Garudathiri Express and the said train would pass at about 8 a.m., and one Sapthagiri Express at 10.30 or 10.45 am. and there is no other train up to 2.45 p.m.

15. It is the specific averment of the 1st appellant in the proof affidavit that the deceased had travelled by unit train, however, at the time of deposition, she had stated some other theory. Further, from the Post Mortem report, it is clear that if the deceased had fallen down from the train, the deceased would not have suffered such grievous injuries, which reinforces the case of the respondent because R.W.1 in his evidence has categorically stated that he found the dead body in the centre of the track, cut into two pieces and no journey ticket was recovered. Hence the death of the deceased was not on account of any accidental fall from a running train, therefore, the Tribunal below had rightly held that the death of the person do not amount to an untoward incident and the same does not come within the ambit of Section 123(c) read with Section 124-A of the Railways Act, 1989.

16. As discussed earlier, no valid ticket was produced by the claimants and the deceased was found in the centre of the track cut into two pieces and the deceased wife's statement that her husband informed her that he is proceeding to Ponpadi railway station and later on, a contrary statement issued by her before the trial court that he left in the morning, will prove that the death was not due to the accidental fall, but due to some other reason, therefore, this Court is not inclined to accept the contentions stated by the counsel for the appellants.

17. It is pertinent to note that the deceased was lying in the centre of the track and cut into two pieces, assuming for a moment that the deceased would have accidentally fallen from train, on account of heavy crowd, the passengers, would have informed the same to the next station (either to Station Manager or Railway Protection Force) and as an eye witness to the case, they would have given evidence or there should be a pulling of emergency chain, but there is no such evidence produced by the appellants to prove that the deceased had fallen from the train accidentally. Further, the evidence given by R.W.1, who was on duty has to be considered and letter dated 22.11.2019 from the Southern Railway, which is extracted supra, also to be taken into account and hence this Court is of the view that death of the deceased was not due to accidental fall and the same is not an untoward accident. In view of all the stated reasons, this

Court is not inclined to interfere with the order passed by the Tribunal.

18. Accordingly, the present Civil Miscellaneous Appeal is dismissed and the order passed in O.A.(II-U)97/2013 dated by the Railway Tribunal is confirmed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Officer in Charge,
Railway Claims Tribunal,
Chennai Bench.
2. The Section Officer,
VR Section,
Madras High Court,
Chennai.

+1cc to Mrs.T.P.Savitha, Advocate, S.R.No.560

C.M.A.No.1437 of 2014

maya/26/05/2020

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