

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2020

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2979 of 2019

1. A.Settu
2. Visalakshi, W/o A.Settu ... Appellants/Applicant

-vs-

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

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act, 1989 against the order dated 25.4.2019 made in O.A.(II-U)No.162 of 2018 on the file of the Railway Claims Tribunal, Chennai Bench, be set aside granting an award for the statutory compensation of Rs.8,00,000/- with interest at 12% p.a from the date of filing of the claim application Viz., 20.09.2018 till the date of payment and the costs of the proceedings.

For Appellants :: Mr.R.Sekaran

For Respondent :: Mr.M.Vijay Anand
Standing Counsel

JUDGMENT

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

2. This civil miscellaneous appeal has been directed against the impugned order dated 25.4.2019 passed in O.A.(II-U)No.162 of 2018, in and by which the Railway Claims Tribunal, Chennai Bench, giving a finding that there was no proof that the death of the victim was only on account of an untoward incident by a fall from the train, refused the prayer of the appellants/claimants for payment of compensation.

3. Mr.R.Sekaran, learned counsel appearing for the appellants, assailing the impugned order, submitted that the son of the appellants, since deceased, was travelling in an EMU train on 11.1.2018 along with his friend from Guindy to Kancheepuram. Since there was a bus strike and all the trains were heavily crowded, Mr.Muruganandam, a co-passenger, who has given evidence as A.W.2, deposed before the Railway Claims Tribunal that due to the crowd, the son of the appellants boarded one compartment and he boarded another compartment, on the premise that the deceased had purchased the ticket for both of them. However, when Mr.Muruganandam arrived at Kancheepuram station, he found that the son of the appellants was not available and therefore he tried to reach him over cellphone for more than 20 times. But he was not able to get any response. Hence, he informed his brother that the son of the appellants did not arrive at Kancheepuram. Later on, Mr.Muruganandam, co-passenger (A.W.2) came to know that the body of the victim was found at K.M.17/4-6 at St. Thomas Mount railway station. At the time when the body was found, through a message received from the Station Superintendent, by the police, the following documents were seized, namely, (i) train ticket from Kancheepuram to Guindy purchased on the same day, (ii) Cell phone, (iii) 03 nos. of ATM cards, (iv) cash of Rs.1,900/-. Whereas the ticket for travel from Guindy to Kancheepuram was said to have been lost.

4. Arguing further, learned counsel appearing for the appellants submitted that when the first message was received by the Sub Inspector of Police, Railway Police Station, Mambalam, Chennai on 11.1.2018 from the Station Master, St. Thomas Mount through one P.Sumathi, Pointsman informing that a male dead body was lying near the track on platform no.4 at MS end at KM No.17/4 at 20.20 hours, the First Information Report also restated the same thing that a male body was found near the track on platform no.4 at MS end at KM No.17/4 at 20.20 hours. Even the final report dated 3.5.2018 submitted by the Tahsildar, Alandur also clearly says that the son of the appellants died of haemorrhage shock due to multiple injuries sustained due to the fall from the running train. Therefore, when the First Information Report and the final report submitted by the Tahsildar, Alandur consistently speak that the cause of death of the son of the appellants was only due to the fall from the running train due to crowd and the body was found near the track on platform no.4 at MS end at KM No.17/4 at 20.20 hours, that was also fortified by the evidence of a co-passenger Mr.Muruganandam (A.W.2) who was also travelling in the same train on 11.1.2018, the conclusion reached by the Railway Claims Tribunal that the son of the appellants was not a bona fide passenger, is far from acceptance.

5. In support of his submissions, referring to a judgment of this Court in Union of India owning Southern Railway represented by its General Manager, Chennai v. G.Loganayaki and others, 2008 (1) TCJ 108, learned counsel appearing for the appellants pleaded that when a similar question on whom the onus of proof lies and whether any presumption under the Evidence Act can be raised, came up for consideration before this Court, this Court has answered in favour of the claimant holding that the burden of proof that the deceased held a valid ticket, pass or permission during his journey, in which he died in accident, cannot be placed on his dependants, obviously, for the reason that such burden of proof is impossible to be discharged by the dependants, who can have no means of knowledge, whether the deceased, before boarding the train, had purchased a valid ticket, pass or permission from the Railway authorities. Thus, it has been presumed that if a passenger is found to have fallen down from the running train, it is likely that such a deceased passenger held a valid ticket, pass or permission, but the same is lost in the accident with the death of person and loss of his belongings, if any.

6. Again referring to a judgment of the Division Bench of the Madhya Pradesh High Court in Raj Kumari and another v. Union of India, 1993 ACJ 846 (MP), learned counsel appearing for the appellants submitted that when the provisions of Sections 113 and 122 of the Act make travelling without ticket punishable under certain circumstances and liable for payment of fare and fine and that the scheme and the Act seen as a whole makes it evident that the entry into a railway carriage required of a person to obtain a ticket, pass or permission and in absence thereof, his action or omission is punishable with imprisonment or fine, including removal from the carriage, it goes without saying that if a person is found dead as a result of accident in a railway carriage, in which he was travelling, a presumption may be drawn under Section 114 of the Evidence Act, keeping in view of the prohibition under Section 68 of the Act against boarding a train without ticket, that the deceased was a bona fide passenger. In the light of the above judgments, learned counsel appearing for the appellants further submitted that the provision contained in Section 82-A of the Act is a beneficial piece of legislation to compensate monetarily at a fixed sum in favour of the victim and his dependants. Therefore, the argument of the Railways that the deceased in this case, although fell down from the running train and died, but he cannot be considered as a bona fide passenger, as he was not found in possession of the train ticket in his pocket, cannot be accepted, for the simple reason that when the deceased fell down from the running train, a presumption may be drawn that the ticket was lost in the accident with the death of person.

7. Mr.M.Vijay Anand, learned standing counsel appearing for the respondent, opposing the above contentions, stated that when the son of the appellants, since deceased, is said to have travelled in the train on the fateful day along with a co-passenger Muruganandam, who has given evidence as A.W.2, even the said Muruganandam also did not support the case of the appellants that either he had purchased the ticket for himself to say that he was travelling along with the son of the appellants on the fateful day. When there was no ticket found in possession of the deceased and moreover when the said Muruganandam, who has deposed as A.W.2, also was unable to produce his ticket, the Railway Claims Tribunal has rightly come to the conclusion that when several documents like the train ticket from Kancheepuram to Guindy purchased on the same day, a cellphone, three numbers of ATM cards and cash of Rs.1,900/- were found, it cannot be presumed that the deceased had purchased the ticket. Therefore, the findings and conclusions reached by the Railway Claims Tribunal cannot be overlooked.

8. But this Court finds it difficult to accept the arguments advanced by the learned standing counsel for the respondent, in view of the settled legal position. As mentioned above, it is an admitted case of both parties that the son of the appellants, since deceased, fell down from the running EMU train on 11.1.2018 and his body was lying near the track on platform no.4 at MS end at KM No.17/4-6 at 20.20 hours at St. Thomas Mount railway station. The fact that the deceased fell down from the running train has been admitted in the final report submitted by the Tahsildar, Alandur dated 3.5.2018. When the final report of the Tahsildar, Alandur clearly says that the son of the appellants, who was travelling with the co-passenger Mr.Muruganandam, on 11.1.2018, boarded the Tirumalpur fast train to go to Kancheepuram and due to the crowd, he fell down at KM No.17/4-6 on the "B" line of St. Thomas Mount railway station platform no.4 and suffered severe injuries on the head with brain coming out, injury on the left leg, fracture on the left hand, scratches on the back and died on the spot. Even Dr.Narayanan, who conducted post-mortem to ascertain the medical reason for the death of the deceased under PM No.94/18 dated 12.1.2018, has given his opinion that the deceased would appear to have died due to the aforesaid injuries on account of the fall from the running train. Therefore, when the cause of death was due to the grievous injuries sustained by the deceased due to accidental fall from the running train, the burden of onus of proof in such claim cases does not fall on the dependants of the deceased. In this context, useful reference can be made to the Division Bench judgment of the Madhya Pradesh High Court in Raj Kumari and another v. Union of India, 1993 ACJ 846 (MP), wherein it has been held as follows:-

"7. The provisions of Sections 113 and 122 of the Act make travelling without ticket punishable under certain circumstances and liable for payment of fare and fine. The scheme and the Act seen as a whole makes it evident that the entry into a railway carriage required of a person to obtain a ticket, pass or permission and in absence thereof, his action or omission is punishable with imprisonment or fine, including removal from the carriage. In our opinion, when a person is found dead as a result of accident in a railway carriage, in which he was travelling, a presumption may be drawn under Section 114 of the Evidence Act keeping in view of the prohibition under Section 68 of the Act against boarding a train without ticket that the deceased was a bona fide passenger. Since ticketless travel is an illegal act and exposes such traveller to penal action, the presumption is of innocence in favour of such one of the travellers or passengers in a train. It is for the railway administration to prove contrary and the burden in such circumstances that the deceased was a ticketless traveller or was not a bona fide passenger, should be on the railway administration which has special means of knowledge as to whether any ticket was issued to that deceased or whether at any point, before or at the end of journey, he was checked and detected by staff of the railway as an unauthorised person without ticket, pass or permission. We have to keep in mind that the provision contained in Section 82-A of the Act is a beneficial piece of legislation to compensate monetarily at a fixed sum each victim involved in railway accident. The argument of the learned counsel for the Railways cannot be accepted that the burden is on the dependants of the deceased passenger to prove that the deceased, who died in railway accident, possessed a valid ticket or pass. To place such onus of proof on the dependants would amount to denial of the benefit of such legislation to them for reasons beyond their control because such onus is impossible to be discharged.

8. We fully agree with the views of the Patna and Allahabad High Courts that

compensation under Section 82-C is payable only to the dependants of bona fide passenger who died in an accident and not to every traveller of the ill-fated train. The aforesaid views of Patna and Allahabad High Courts are, however, distinguishable on facts because there existed evidence on record in these cases to show that the deceased passenger possessed no valid permission, pass or ticket. Such is not the case before us. The decisions, however, do not discuss or decide the question of any presumption and of onus of proof under the Evidence Act in such cases.

9. In the case before us, the presumption has to be drawn that the deceased was a bona fide passenger who lost his life in the railway accident. The contention of the learned counsel for the Railways is too hyper-technical that no specific plea in that behalf was raised in the claim petition. We find that the parties were fully alive to the issue and the evidence was led by them on the question whether the deceased was a bona fide passenger or not.

10. The lower court although rejected the claim on the ground that the deceased was not a bona fide passenger but has assessed the quantum of compensation payable at Rs. 50,000/-, which is the maximum limit of amount of compensation fixed in Section 82-A of the Act, as it stood at the relevant time on the date of accident. In view of our finding that the presumption could be raised in favour of the deceased, being a bona fide passenger, the full amount of compensation of Rs. 50,000/-, as quantified by the lower court, cannot be denied to the dependants."

9. The above view has also been fortified by this Court in the judgment in Union of India owning Southern Railway represented by its General Manager, Chennai v. G.Loganayaki and others, 2008 (1) TCJ 108, wherein it has been held as follows:-

"13. The Tribunal has referred to the decision of the Madhya Pradesh High Court reported in Raj Kumari & Another v. Union of India, 1993 ACJ 846 MP, which was also a case where compensation for death of a passenger in an accident was being considered. The question that was considered by the Division Bench was

whether burden lies upon the dependants to prove that the deceased was a bona fide passenger. Considering the question on whom the burden of proof lies in such claim cases, the Madhya Pradesh High Court has held as follows:-

"(5). The main question that arises in this case is on whom the onus of proof lies in such claim cases and whether any presumption under the Evidence Act can be raised. Normally under Sections 101 and 102 of the Evidence Act, the burden to prove such facts, on which the legal right or liability depends, is on such person who asserts existence of these facts. But the question before us is whether the burden of proof that the deceased held a valid ticket, pass or permission during his journey, in which he died in accident, can be placed on his dependants. Obviously, such burden of proof is impossible to be discharged by the dependants, who can have no means of knowledge, whether the deceased, before boarding the train, had purchased a valid ticket, pass or permission from the railway authorities. It is likely that such a deceased passenger held a valid ticket, pass or permission, but the same is lost in the accident with the death of person and loss of his belongings, if any.

(6). The provisions of Sections 66, 68, 113 and 122 of the Act do indicate that the person is deemed to be a 'passenger' when he travels either on ticket, pass or with permission of the authorised officer of the Railways. Section 68 contains prohibition against travelling without pass or ticket or permission."

14. It is for the Railway Administration to prove that the deceased Velayutham was not a bona fide passenger and that he died while crossing the Railway Track. The appellant/Railway has not adduced any evidence to substantiate its plea."

10. When an identical issue was considered in C.M.A.Nos.3508 & 2787 of 2008 dated 3.6.2016 - A.Thanikachalam and others v. Union of India owning Southern Railway represented by its General Manager, Chennai, I have also held that if a deceased passenger is found to have fallen down from the running train, it is not necessary that it should be proved that he possessed the ticket for the train travel, for the reason that while the deceased had fallen down from the running train, it is likely that the ticket purchased by him for the travel would have been lost due to the fall. Therefore, the ratio laid down by this Court holding that the burden of proof is impossible to be discharged by the dependants, who can have no means of knowledge, whether the deceased, before boarding the train, had purchased a valid ticket, pass or permission from the railway authorities, needs to be followed. Accordingly, I follow the same.

11. For all the aforementioned reasons, the impugned order is set aside and the civil miscellaneous appeal stands allowed. The respondent is directed to deposit the compensation amount of Rs.8,00,000/- along with statutory interest from the date of claim till the date of deposit, to the credit of O.A.(II-U) No.162 of 2018 before the Railway Claims Tribunal, Chennai Bench, within a period of four weeks from the date of receipt of a copy of this order and on such deposit, the appellants/claimants are entitled to withdraw the same. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ss
To

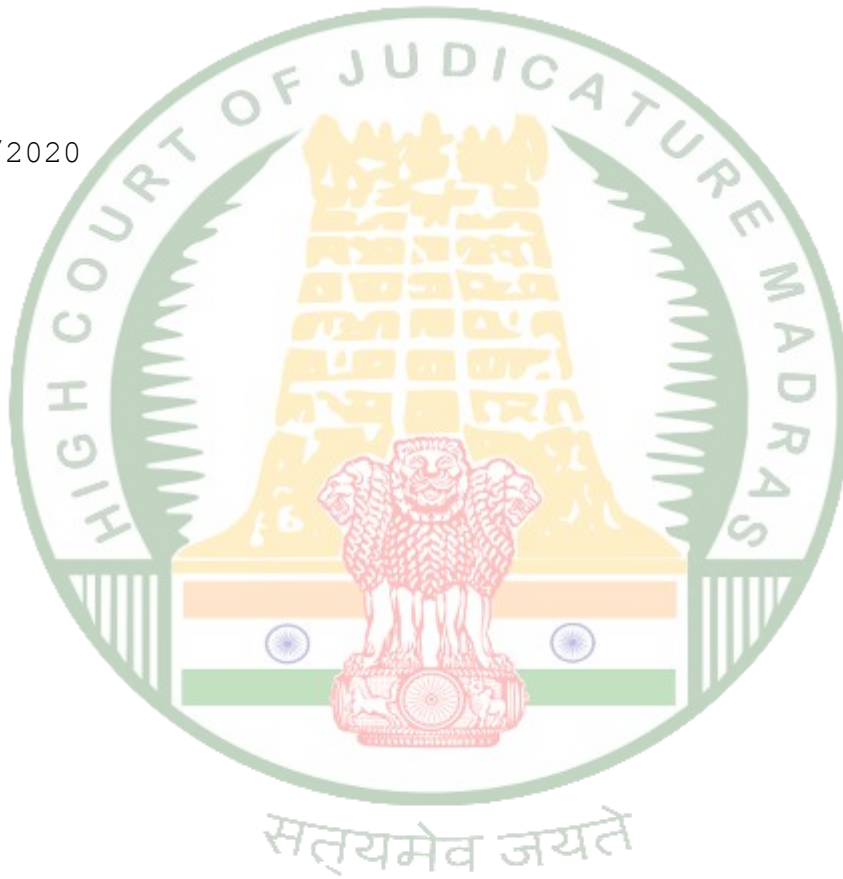
1. The Additional Registrar,
Railway Claims Tribunal,
Chennai Bench.

2. The General Manager, The Union of India,
Southern Railway,
Chennai 600 003.

+1cc to Mr.M.Vijay Anand, Advocate Sr.34462

C.M.A.No.2979 of 2019

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