

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.2849 OF 2018

1.Periyammal
2.Sankar
3.Sangeetha
4.Sanghiya Minor Appellants/Applicants

Vs

Union of India owning
Southern Railway rep. by its
General Manager,
Chennai. Respondent/Respondent

Prayer:-

Civil Miscellaneous Appeal filed under Section 23 (1) of the Railway Tribunal Act to set aside the order passed by the Railway Claims Tribunal, Chennai Bench in OA (II-U) No.55/2017 dated 27/02/2018 and allow the appeal.

For Appellant : Mr.S.Parthasarathy

For Respondent : Mr.M.Vijay Anand

JUDGMENT

The appellants/claimants have preferred this Civil Miscellaneous Appeal against the order passed by the Railway Claims Tribunal, Chennai Bench in OA (II-U) No.55/2017 dated 27/02/2018 on various grounds.

2.The 1st appellant is the wife of the deceased Selvaraj. The 2nd appellant is the son and the 3rd and 4th appellants are the daughters. They have filed a claim petition before the Railway Claims Tribunal claiming compensation for the death of Selvaraj, who died in the untoward incident on 31.03.2016.

3.The case of the appellants/claimants is that on 31.03.2016, the deceased Selvaraj boarded in Pallavan Super Fast Express from Chennai-Egmore Railway Station to reach Ariyalur. During the said travel, due to rush in the compartment, the deceased had accidentally fell down from the running train in between R.S.Mathur and Sendurai Railway Station and sustained grievous injuries and died on the spot. The deceased was working as a Coolie in Koyambedu vegetable market and his family members are residing at Sendurai Taluk, Ariyalur District. Hence, a case has been registered in Crime No.100/2016 by the Ariyalur R.P. under Section 174 of the Code of Criminal Procedure.

4.It is the case of the respondent that on 01.04.2016 at 09.00 hours, one K.Kolanchi, Gang mate, SM/Senthurai informed the officials that a male dead body was found at 08.30 hours at KM 253/1-3 between Senthurai and Mathur Railway Station near Senthurai Railway Station Home Signal. But, the appellants herein has stated that the deceased travelled from Chennai-Egmore to Ariyalur in Pallavan Fast Express train on 31.03.2016. The said train would reach Ariyalur by 19.45 hours on 31.03.2016 itself. If he would have fallen down from the train, his body would have been noticed much earlier. Therefore, the deceased might not have travelled in the said train and the ticket might not be used by the deceased. On seeing the nature of injuries, it is clear that the alleged incident is other than fall from train. The said accident will not come under the definition of "untoward incident" within the meaning of Section 123(c)(2) of the Railways Act, 1989, for which the respondent is not liable to pay compensation under Section 124-A of the Railways Act, 1989.

5.The respondent further submitted that the appellants herein are not entitled to claim any amount moreo than Rs.4 lakhs with interest @ 12% per annum and the Railway is not liable to pay any compensation.

6.After analysing the oral and documentary evidence, the Railway Claims Tribunal came to a conclusion that the deceased was not a passenger and the death was not on account of any untoward incident and dismissed the claim of the appellants. Challenging the same, the appellants/claimants are before this Court.

7.The learned counsel for the appellants submitted that admittedly, the 1st appellant's husband had met with the railway accident and died on the spot. The said deceased while boarding

the train, due to over crowd, speed and jerk, fell down and sustained grievous injuries and died on the spot. The Tribunal failed to note that the deceased was a bonafide passenger and he was holding a valid ticket and also to prove the manner of the accident, the appellants had examined witnesses on their side, whereas, the respondent had not examined any witness to prove the contra. Further, the Tribunal has erred in coming to the conclusion that the witnesses were not clear in their evidence that the deceased was travelling in the train and the ticket which was found during inquest was a document, subsequently, brought to the place of the inquest. The Tribunal has passed an order based on surmises and without any basis and stated that the injury was not due to fall from the train. Even though the said accident squarely attracts the provisions under Section 124 of the Railways Act, the Tribunal failed to note the same.

8.The learned counsel for the appellants further submitted that the post-mortem conducted on the deceased was with a finding that the death could have been caused 12 hours to 14 hours prior to autopsy. The autopsy was done at 04.00p.m on 01.04.2016. If the person died on the previous night, it would come within the estimation made by the Doctor.

9.The learned counsel for the appellants represented that the ticket was purchased on 31.03.2016 at 02.00p.m. before the departure of the said Pallavan Express. It has been stated by the Authorities that the ticket has been purchased or taken from somewhere, which was not substantiated with any evidence.

10.Per contra, the learned counsel for the respondent contended that if a person was travelling by train and had fallen down, somebody would have watched the same and the persons, who are residing in the said Village near the track would have noticed immediately and it is inconceivable that a body remained lying without anyone's notice for nearly 12 hours. As there was no stopping at Sendurai, while the deceased was travelling in Pallavan Express, it must have been either a case of an attempt to get down from the train or it must be a case of being hit by a train and the parties dealing with inquest, still were able to create an evidence of travelling in a train and falling from the train. It is also the case of the Railways that the appellant could have happened to purchase a ticket from the nearby station for travel from Chennai which has come in handy to explain that he had fallen from the train on the previous night, but no one has noticed the body.

11.The learned counsel for the respondent submitted that the ticket that was produced and said to have been recovered at the time of inquest was surely a document that had been brought

subsequently to the place where the inquest was done.

12.The learned counsel for the respondent further contended that the ticket has not been recovered from the spot when the body was found at 08.30 hours on 01.04.2016 which would surely have been the case whether the deceased had the ticket on his body. Invariably, if the person is already dead and if according to the appellants the death would have happened on the previous night itself, the body would not have been lying without carrying out inquest and without checking all the belongings and a seizure Mahazar prepared at the same spot. The absence of such Mahazar is an additional point to the fact that the deceased did not travel in the train.

13.The learned counsel for the respondent also submitted that insofar as the injuries are concerned, the injuries were severe and if a person fell down from the train in mid-section when the train was going at a speed, it would have only catapulted to a distance and the blunt impact, as such, a velocity would not have caused the type of injuries as noticed. But, the injuries, as noted, were crush injuries of the head and neck exposing bone, the skull had been open and brain had been exposed. There was a total amputation of the left ankle joint and the amputation cannot take place to a person who had fallen down from a mid-section unless a person was crossing the track or got under the wheels of the train at a platform or a person fell in between Platform and the train. The said amputation could have happened when the train runs over the body. The nature of injuries also leads to a conclusion that he was not travelling in the train and the death had not resulted from falling from the train.

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

15.It is seen that the wife of the deceased/1st appellant had given a statement that her husband has been travelling from Chennai to Ariyalur to attend an ear boring ceremony to he held in one of the relative's house. When he travelled he had fallen down from the train. It is further seen that the ticket has been purchased in Chennai and no evidence was produced by the Authorities to show that the ticket was not purchased by the deceased.

16.The respondent has relied on the evidence of two persons, namely, Seenuvasan and Shankar, who were signed in the Mahazar witnesses and they have stated that the accident has been taken

place in the year 2016 and the VAO given his report that the said Seenuvasan has left to foreign Country six months earlier and recorded the statements of other person who has signed in the Mahazar that there is no such place in the name of Nathamudi Colony in Ariyalur. Further, one Nagaraj has stated that on the fateful day, on 01.04.2016, while he was going for the job he was called as Mahazar witness and has given a statement regarding the same. This was recorded under Section 161 of Cr.P.C. but the Railways have not taken steps, to verify whether the place Nathamudi Colony is available or not. However, whether the said statement of the Mahazar witness was correct or not, the same will not vitiate the entire procedure as true or false.

17.It is also the statement of the wife of the deceased that her husband was the priest of Ellai Karuppasamy Temple in Pottaveli Lake and she has not known that her husband came to town from Chennai and also he did not inform her about the travel. She further stated that her husband's co-parcener previously told that the priest of the said temple was called for the ear boring ceremony for his children. Therefore, he travelled from Chennai to Ariyalur for a function to be held on 01.04.2016 around 11.00 a.m. The village people had informed about the death of her husband and the 1st appellant confirmed the same and sent the body for post-mortem. In the observation made by the Tribunal it is seen that the time of death of the said person has been disputed and the Tribunal have also raised a question that if the said person fell down from train in the evening on 31.03.2016, for 12 hours whether there was no message given to anyone who had seen the body and the Tribunal suspected that the deceased person while crossing the railway track would have fallen down and sustained injury and expired. In the absence of any evidence that the person tried to trespass into lines and expired, also the said body was found only in the morning, the Tribunal cannot take it as a valid reason for denying the claim of the appellants.

18.If the contents in observation Mahazar, signature of the parties, the ticket recovered under the recovery mahazar are doubtful, the Railway Officials can very well seek the assistance of the authorities to find out from where the ticket has been issued. A perusal of the ticket would reveal that the same was purchased in Chennai and he is really a bonafide passenger in the said train, however, the Tribunal simply stated that the ticket has been brought and inserted in the report. These documents are the department documents and if at all any doubt over the documents, the Railways could have enquired the said officer. Without enquiring them, the Authorities/Tribunal

simply came to the conclusion that the person was not a bonafide passenger. The claim of the appellants/claimants by possessing a valid Railway ticket in order to establish that the incident comes under the purview of Section 16 of the Railway Claims Tribunal Act, cannot be brushed aside. In the absence of evidence and witnesses, the Railways simply stated that the ticket was not purchased by the deceased and the same is only an after thought and it does not hold good. The said ticket number has been inserted in the report. It is also further to be seen that the witness Mahazar is being a bogus person, cannot turn the case to the different stage because the person who was available near the place was called for witness and the statements and signatures have been obtained from him.

19. In the absence of these points, this Court is not ready to accept the version of the Railways that the deceased is not a bonafide passenger and the person who had travelled with the valid ticket cannot be penalized. The observation by the Tribunal that when there is no stopping at Sendurai, the deceased would have got down from the running train by inflicting self injury, is only a presumption. There is no contra evidence shown by the Authorities that the deceased had self inflicted injury and this case is a false case could not fall under the definition "untoward incident". As the appellants had proved that the deceased is a bonafide passenger by producing valid tickets, definitely the death is "untoward incident" comes within the purview of Section 123(c)(2) of the Railways Act, 1989. Therefore, in the considered opinion of this Court, the appellants are entitled to compensation.

Accordingly, the present C.M.A. is allowed and the order passed by the Railway Claims Tribunal in OA (II-U) No.55/2017 dated 27/02/2018 is set aside. The respondent is directed to deposit a sum of Rs.8,00,000/- along with interest at the rate of 6% per annum from the date of petition till the date of realisation within a period of four weeks from the date of receipt of a copy of this order and on such deposit being made, the 1st appellant, being wife of the deceased is entitled to half share of the compensation amount and the remaining half share of the amount shall be shared equally between the appellants 2 to 4. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mps

To

1. The Railway Claims Tribunal,
Chennai Bench.
2. The General Manager,
Union of India Owing,
Southern Railway,
Chennai.

Copy To
The Section Officer,
VR Section, High Court,
Madras.

C.M.A.No.2849 of 2018

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