

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 11.02.2021
CORAM
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
C.M.A.No. 1094 of 2015

Union of India
Owning Southern Railway,
Rep. by its General Manager,
Chennai - 600 003.

..Appellant

Vs

1.R.Malar
2.V.Devi
3.R.Karthi

..Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987, against the order passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U) No.331 of 2013, dated 16.06.2014

For Appellant ... Mr.M.Vijay Anand
For Respondents... Mr.S.Parthasarathy

JUDGMENT

The Civil Miscellaneous Appeal on hand is preferred against the award dated 16.06.2014 passed in O.A.No.331 of 2013. The grounds raised mainly by the appellant/Railways is that the deceased was a trespasser and the said factor was not considered by the Tribunal. Thus, the Railways are constrained to file the present appeal.

2. The applicants/claimants are the wife, daughter and son of the deceased K.Rajendran, who was aged about 55 years, at the time of death. Application was filed seeking compensation of Rs.4 lakhs together with interest on the ground that the deceased K.Rajendran, on 03.04.2012, travelled from Tiruttani to Chennai to meet his relatives and at about 05.30 hours, the deceased had informed the third applicant that he would come home by Tirupati Fast Passenger from Chennai. On 04.04.2012 at about 08.00 hours, the applicants came to know from the Railway Police, Arakkonam that the deceased in order to reach Tiruttani travelled by Fast Passenger from Chennai with Ticket No.210958307 and when the train arrived at platform No.1 of Tiruttani Railway Station, the deceased had fallen down from the train at Km.81/14-16 and sustained grievous injuries and died on the spot.

3. The Railways filed the reply stating that the deceased was a trespasser. However, the Railway Tribunal adjudicated the issues with reference to the documents and evidences. The Tribunal considered the documents, more specifically, the FIR, Accident Register and other documents. The Tribunal, in its categorical finding at Para 5.2, arrived the conclusion as follows:-

"5.2 Legal presumption with regard to any of the exceptions cannot be drawn merely on taking a plea - rather the exception has to be taken only on the basis of concrete evidence - either oral or documentary. In this case, since the incident had occurred at the station premises, certainly records would have been available, but the respondent has not produced the rough journal of the train by which the deceased was hit nor produced the driver or the guard whose evidence would have carried much weight in deciding the case. In view of the above, I am of the view that the respondent has utterly failed to prove its case."

4. When the Railway Police report also reveals that the deceased died on account of the fact that he had fallen down when the train reaches the station and the other connected document also reveals that the death occurred while the deceased was travelling in train, the ground taken by the Indian Railways that the deceased was a trespasser was not accepted by the Tribunal. The burden lies on the Railways to establish that the deceased was a trespasser. When the Railways had not established that the deceased was a trespasser, then the Tribunal is right in awarding compensation in favour of the applicants/claimants.

5. This Court do not find any reason whatsoever to interfere with the findings of the Railways Tribunal and, therefore, the award dated 16.06.2014 passed in O.A.No.331 of 2013, stands confirmed and consequently, C.M.A.No. 1094 of 2015 is dismissed. No Costs. Consequently, connected M.P.No.1 of 2015 is closed.

WEB COPY

6. The respondents/claimants are permitted to withdraw the entire award amount with accrued interest by filing an application before the appropriate forum and the payments are to be made through RTGS.

Sd/-
Asst.Registrar (CS VI)

/true copy/
Sub Asst. Registrar

ssm

To

The Railway Claims Tribunal,
Chennai Bench.

+1 cc to M/s.M.vijay Anand advocate sr7933
+1 cc to M/s.S.Parthasarthy Advocate sr7757

C.M.A.No. 1094 of 2015

kv(co)
aa09/03/2021



WEB COPY