

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.03.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.1095 of 2015

and

M.P.No.1 of 2015

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

.. Appellant/Respondent

Vs.

1.R.Muniammal
2.Minor Ramya
3.Minor Raji
4.K.Kolakatha

(2nd and 3rd Minors represented by 1st Respondent)

All residence at No.4/1544 Rajiv Gandhi 4th Street,
Thiruvallur)

.. Respondents/Applicants

PRAYER : Civil Miscellaneous Appeal is filed under Section 23 of the Railway Claims Tribunal Act, against the order passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U)No.184 of 2013 dated 31.01.2014.

For Appellant : Mr.Mutharasan
for Mr.M.Vijayanand

For Respondents : No appearance

J U D G M E N T

Appellant herein is the respondent in O.A(II-U).No.184 of 2013 filed by the respondents herein / applicants before the Railway Claims Tribunal, Chennai Bench, who are the legal heirs of the deceased Ramesh, claiming compensation for the fatal death of deceased 'Ramesh', while he had travelled in the train between Singaperumal Koil to Park Railway station accidentally fallen down and died on 11.03.2013.

2. The Railway Authority has also contested the claim petition.

3. After full trial, the Railway Tribunal has not accepted the defence taken by the railway and decreed compensation in favour of the respondents / petitioners.

Aggrieved by the same, the Railway Authority preferred this appeal before this Court.

4. The question of Law that arises for consideration is as to "whether the Tribunal has erred in holding that the Railway Authority are liable to pay the compensation ignoring the fact that the deceased was not a bonafide passenger as well as the death was occurred on his own fault ?".

5. The facts reveals that the deceased Ramesh along with his wife / 1st respondent herein were jointly travelled in a train from Singaperumal Koil to Park Railway Station, after a short while his wife was boarded in the ladies compartment and he informed that he would travel in the general compartment in the same train. When she get down at the Tiruninravur Railway Station she found that her husband was missing. Subsequently, she received information that her husband was accidentally fallen down from the train, sustained grievous injuries and died on the spot itself. So, she along with her children filed the said claim application they seeking for compensation before the Railway Tribunal.

6. Before the Tribunal, to prove their claim on the side of the respondents / applicants P.W.1 was examined and they adduced documents, Exh.A-1 to Exh.A-7 were marked. On the side of the Railway, a Report of the Constable/RPF, Avadi marked as R.W.1 on 03.12.2013 and I.O. marked as R.W.2 on 03.01.2014.

7. Based upon that the Railway Tribunal awarded the compensation in favour of the respondents / petitioners. Aggrieved by the same, the Railway Authorities preferred this appeal.

8. At the time of arguments, the learned counsel for the respondents submitted that the deceased was not a bonafide passenger and he was not travelled in any of the train. He died some where else and also not accidentally fallen from the train, as stated by the respondents herein. But without appreciating the fact the Tribunal awarded compensation erroneously, so he prayed to allow the appeal.

9. Per contra, the learned counsel for the respondents argued that on the date of the said accident on 11.03.2013 the deceased along with his wife travelled in the train in two different compartments between Singaperumal Koil and Park station. While she get down from the train she came to know that her husband was missing. Thereafter, she received information from the Railway police, that her husband died due to the fatal injuries sustained in the accident. Though the Railway authority denied that the deceased was not a bonafide

passenger on that day but as per the inquest report it was stated that ID card for season ticket with Railway seal, Ex.Tiruninravur to Saidapet with validity from 04.02.2013 to 03.03.2013 and a ticket Ex. Singaperumal Koil to Tiruninravur for having travelled in the EMU train found in possession of the deceased. From the deceased body they recovered train ticket which is sufficient to conclude that he was a bonafide passenger on that fateful day. To prove their travel the wife of the deceased was examined as P.W.1. The Tribunal has rightly appreciated the evidence and facts, and awarded the claim. So they prayed to dismiss the appeal as no merits.

10. On perusal of the records, it clearly proves that immediately came to know about the incident, an FIR was lodged and thereafter, investigation was conducted and all the documents were produced on the side of the respondents. But, the Railway Authorities denied that he was not at all a passenger on the alleged date of incident. As per the inquest report, it reveals that the deceased person had fallen down from any one of the EMU train when he was travelling in doorways in the train. So on the day of the alleged incident the deceased travelled in the train and his body also recovered from the Railway track. Therefore, the objection raised by the Railway Authority is that he was not at all a passenger on that day is unsustainable one.

11. Further, there is no evidence on the side of the Railway to prove that the deceased died while he trespassed the Railway track. It is admitted fact that the FIR was received as per the information given by the Station Master, Avadi. Based upon the oral and documentary evidence, prima facie proves that the deceased travelled and he fallen down from the train and died. But there is no evidence on the side of the respondent to prove that while he was trespassing the Railway track, met injury and died on the spot itself.

12. Considering the facts and circumstances of the case, the Tribunal relied on the following judgments,

(i) "Jameela and others v. Union of India reported in AIR 2020 SC 3705, held that the fact that he was standing at open doors of compartment of running train may be negligent act or even rash act, but it is certainly not criminal act and negligence of passenger does not have effect on liability of railways."

(ii) Union of India Vs. Prabhakaran Vijaya Kumar and others" reported in (2008) 4 MLJ 323 (SC)" held that Section 124 lays down strict liability or no fault liability in case of railway accidents and if a case comes within the purview of Section 124-A,

it is wholly irrelevant as to who was at fault." are also squarely applicable to the facts of the case.

13. Based upon all the facts and circumstances, the Tribunal has rightly awarded the compensation in favour of the respondents herein. Accordingly question of Law is answered against the appellant herein and the order passed by the Railway Claims Tribunal, Chennai Bench, is confirmed. Accordingly, this Civil Miscellaneous Appeal is dismissed. Hence, the appellant is directed to deposit the award amount, if not already deposited, after 30 days from the date of accident till the deposit of amount at the rate of 9 % within a period of four weeks from the date of receipt of a copy of the judgment. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

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To

1.The Railway Claims Tribunal,
Chennai.

2.The General Manager,
The Union of India owning Sourthern Railway, Chennai

+lcc to Mr.M.Vijayanand, Advocate, SR.NO. 17653

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and
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AAB (CO)
KKN 17.04.2021