

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1786 of 2013

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

Vs

1.Kumarasamy
2.K.Shanmugasundari ..Respondents/Applicant

Prayer : Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987 against the order of the Railway Claims Tribunal, Chennai Bench dated 08.04.2009 made in O.A.No.39 of 2007.

For Appellant ... Mr.M.Vijay Anand
For Respondents.. Mr.S.Parthasarathy for R1
No appearance for R2

JUDGMENT

The award dated 08.04.2009 passed in O.A.No.39 of 2007 is under challenge in the present Civil Miscellaneous Appeal.

2. The vital grounds raised by the appellant/Railways are that the respondents/claimants had committed an act of negligence and therefore, they are not entitled for compensation as awarded by the Railway Claims Tribunal. Further, it is contended that the Tribunal has granted an excess amount of compensation of Rs.4 lakhs on the ground that the claimants are the dependants of the deceased. Further, they have questioned the bonafide of the passenger travelled in the train No.S.85 at the time of accident.

3. The facts in nutshell reveals that the application under the Railways Act, 1989, was filed by the parents of the passenger (Late) K. Ramakrishnan. The deceased was working in IT Sector, more specifically, hardware repairing work independently. On 01.02.2006 at 14.30 hours the Railway Police, Egmore, received an information through a written complaint from

the Station Master, Kodambakkam Railway Station that the deceased was travelling in EMU bearing No.S.85 and due to crowd and jerking and jolting of the said train, he had accidentally fallen down at Km.8/800 between Nungambakkam and Kodambakkam Railway stations and died on the spot. The Railway filed a reply stating that as per the mandatory DRM's report, the accident occurred due to the negligence of the deceased and, therefore, the Railways are not liable to pay compensation under Section 124A(b) of the Railways Act, 1989.

4. The Railway Claims Tribunal adjudicated the issues with reference to the documents as well as the evidence produced. With reference to the issue of award, the applicants proved that they are the dependants of the deceased (Late) K. Ramakrishnan. The Tribunal arrived to the conclusion that the respondent Railways have not filed any evidence contrary to the evidence of the applicants. Thus, the Tribunal held that the applicants/claimants are the only dependants under Section 123 (b) (i) of the Railways Act, 1989. As far as the issue regarding the genuinity of the passenger, the Tribunal considered the fact that the travel and fall from the EMU train bearing No.S-85 between Nungambakkam and Kodambakkam on 1.2.2006 prior to 14.30 hours was not in dispute as the same was admitted by the respondent Railways in the report of the Divisional Railway Manager at Col.Nos.3,4 and 6. Thus, the dispute was whether the deceased was a bonafide passenger or not. As per the judgments of the Apex Court, the burden lies on the Indian Railways to disprove the genuinity of the passengers. Thus, the burden is to be discharged by the Railways, which was not done, in the present case.

5. When the Railways are unable to prove that the deceased was not a bonafide passenger and not sustained injury or died due to the accident, the factual inference is to be drawn that the deceased was a bonafide passenger of the train. This is exactly the finding of the Railway Claims Tribunal and there is no factual difference on account of the fact that the Railways had not established that the deceased was not a bonafide passenger. The Tribunal held that the accident occurred in a running train and the deceased had fallen down, sustained fatal injuries and died on the spot.

6. Regarding the quantum of compensation, the Tribunal, considering the deeming cap notified by the Government of India during the relevant point of time, more specifically, at the time of passing of the Award by the Tribunal, it was Rs.4 lakhs. Thus, the Tribunal, awarded a sum of Rs.4 lakhs along with interest at the rate of 9% per annum, from the date of the award till the payment. This Court, do not find any infirmity or perversity with reference to the quantum of compensation fixed

by the Tribunal as the same is in consonance with the notification issued by the Government of India. Thus, the factum regarding accident was established and the Railway was not able to prove that the deceased was not a bonafide passenger and the quantum of compensation was also fixed in accordance with the notification issued by the Government of India.

7. These being the factors considered by the Railway Claims Tribunal, this Court do not find any infirmity or perversity, and, therefore, the award dated 08.04.2009 passed in O.A. No.39 of 2007, stands confirmed. Consequently, C.M.A.No. 1786 of 2013 is dismissed. No Costs. Consequently, the connected M.P.No. 1 of 2013 is closed.

8. Thus, the respondents/claimants are permitted to withdraw the entire amount awarded with accrued interest by filing an appropriate application before the competent forum and the payments are to be made through RTGS.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssm

To

The Railway Claims Tribunal,
Chennai Bench.

Copy to : The Section Officer
V.R Section, High Court Madras.

+lcc to Mr.M.Vijay Anand, Advocate, sr no.7932

+lcc to Mr.S.Parthasarathi, Advocate, sr no.7758

C.M.A.No. 1786 of 2013

PP(CO)

RMP(15/04/2021)