

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1262 of 2016

- 1.R.Mageswari
- 2.Sandhya
- 3.Divya
- 4.Sujiya

A3 & A4 being minors rep.by mother &
natural guardian A-1

... Appellants/Applicants

vs.

Union of India owning
South Railway,
rep.by its General Manager,
Chennai-600003.

... Respondent/Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 23 of
Railway Claims Tribunal Act 54 of 1987, against the order dated
23.02.2016 passed by the Railway Claims Tribunal, Chennai Bench
in O.A.(II-U)No.188 of 2015.

For Appellants : Mr.T.Rajamohan

For Respondents : Mr.T.P.Savitha

O R D E R

The Judgment dated 23.02.2016 passed in O.A.(II-U)No.188 of
2015 is under challenge in the present Civil Miscellaneous
Appeal.

2. It is an admitted fact that the deceased died in a train
accident and the details regarding the untoward incident are
narrated as under:

"The deceased was a resident of K.V.Kuppam of
Katpadi Taluk, Vellore District of Tamilnadu. He was
working as a security personnel near Chennai and used

to travel by train holding monthly season ticket. That on 24.04.2015 in the morning, the deceased informed his wife that he was going to his work and left the house. The applicants came to know from the Basin Bridge Railway Police that the deceased, holding a superfast season ticket No.058359183 (ID Card No.475970021) for travel between Katpadi Jn and Athipet Pudunagar via MAS valid from 12.04.2015 to 11.05.2015 while travelling in Tr.No.12679 Kovai Intercity Express, on 25.04.15 at 15.15 hrs noon when the train was passing near the platform No.3, Basin Bridge Railway Station, due to heavy rush, jerk and jot of the train, accidentally fell down from the running train, suffered (1) amputation of right leg below knee, (2) grievous injury on head and (3) aberrations all over the body struggling for life. Immediately he was shifted by the 108 ambulance and admitted for treatment at Stanley Govt.Hospital and nor responding to the treatment he died at 23.00 hrs on 25.04.2015. It was an untoward incident.

3. The Inquest Report reveals that the deceased died due to falling down from the moving train. The Final report submitted by the Police states that "the deceased was possessing a super fast seasonal Ticket No.058359183. While travelling when the train was reaching Basin Bridge PF 3, he fell down from the train accidentally and sustained injuries of right leg cut below knee, severe injury on head and scratches over the body and was bleeding. Immediately, he was taken to the hospital by 108 ambulance and subsequently died". The Railway Tribunal made an observation that "as per message of Station Manager/Basin Bridge issued at 15.40 hours on 25.04.2015 that a male aged about 45 years, tried to board the running train No.12679 Ex. On platform No.3, fallen down into track and wheels ran over his right leg; that the train was stopped due to chain pulling by passengers; that the injured person was secured from the track; that the train was detained from 15.02 hours to 15.15 hours and the injured person was sent to hospital by 108 ambulance; that the deceased met with the incident only due to boarding the running train at a non-stop station and that the act of the deceased was nothing but 'self-inflicted injury' and the respondent is not liable to pay compensation under Section 124-A of Railways Act, 1989".

4. The question arouse whether the findings of the Railway Tribunal that it is a self-inflicted injury or not. It is relevant to consider the definition of untoward incident enunciated under Section 123(ii) of the Railways Act. The untoward incident includes the accidental falling of any passenger from a train carrying passengers. In order to describe

that the injuries suffered passenger is a self-inflicted injury, the intention is to be established. The word "self-inflicted" mean the wounds, pains, problems and illnesses etc., caused by one-self. Therefore, there must be an intention to cause such wound, pain, or injury. In the absence of any intention on the part of the passenger, the untoward incident cannot be described as self-inflicted injury. A fine distinction is to be drawn between self-inflicted injury and untoward incident. The very word "self-inflicted" and more specifically, the word "self" indicates that there must be an intention to commit himself. Thus, a passenger boarding in a moving train would not have intended to inflict himself and in certain mitigating circumstances, a passenger would have boarded in a moving train.

5. Our great nation has got a vast population. Every minute, in urban areas, the number of trains are moving from the platform. People are running in platform to board the train. Large crowds are boarding and therefore, the circumstances prevailing in the Railway station in our great nation are to be considered for the purpose of deciding the fact that whether the injury caused is a self-inflicted or an untoward incident. People are witnessing large number of passengers boarding in a moving train. This must be properly controlled by the Railway Authorities. Railway protection is available in the Railway Police Station. Instead of controlling the passenger in a systematic manner, the Railway Authorities cannot take a defence that a passenger boarding in a moving train has committed a self-inflicted injury. Such an interpretation would defeat the purpose of welfare legislation for the purpose of grant of compensation. In the present case, admittedly, the passenger was boarding in a moving Express Train. It is a regular practice in urban areas. Thus, in the absence of any evidence on the part of the passenger to inflict any injury himself, the same cannot be construed as a self-inflicted injury.

6. In certain cases, in the absence of evidence, the Railway should establish that the passenger had behaved in such careless manner which caused self-inflicted injury. However, the negligent to such an incident is to be established by the Railways with material evidence. The courts are bound to ascertain whether there is an intention on the part of the passenger to inflict any injury or not. If it is not ascertain any such self-infliction, then the benefit of doubt should be granted in favour of the claimants and contradiction, if any, is to be established by the Railways. Therefore, mere boarding in a moving train would not be construed as self-inflicted injury. Only if the Railway could able to establish that there was an intention on the part of the passenger or negligence or carelessness to that incident, one can arrive that it is a self-inflicted injury. In the present case, it is brought to the

notice of this Court that in urban areas, more specifically, in platforms, even the express trains are moving very slowly and many number of passengers are boarding in such express trains. This being the practical situation prevailing in Chennai City, all such instances cannot be described as self-inflicted injury. Therefore, this Court is of the considered opinion that the findings of the Tribunal that the case on hand, is a self-inflicted injury case, cannot be accepted. In this view of the matter, the judgment dated 23.02.2016 passed in O.A.(II-U)No.188 of 2015 is set aside and the Civil Miscellaneous Appeal stands allowed. The appellants/claimants are entitled for a total compensation of Rs.8,00,000/- (Rupees Eight Lakhs Only) along with interest at the rate of 6% per annum from the date of award. The compensation is directed to be apportioned as detailed hereunder:

(i) The first appellant/wife of the deceased is entitled for a sum of Rs.3,50,000/- (Rupees Three Lakhs Fifty Thousand Only)

(ii) The second appellant is entitled for a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only)

(iii) The appellants 3 and 4 are entitled for a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) each.

7. The appellants 3 and 4/ Dhivya and Sujatha are still minors. Therefore, their respective portion of the award amount is directed to be deposited in any one of the Nationalised Bank in an interest bearing deposit scheme till they attain majority. The appellants 1 and 2 are permitted to withdraw the award amount with accrued interest by filing an appropriate application before the Railway Tribunal concerned. The respondent/Railway is directed to deposit the award amount along with accrued interest at the rate of 6% per annum within a period of 12 weeks from the date of receipt of a copy of this order.

8. Accordingly, the Civil Miscellaneous Appeal stands allowed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

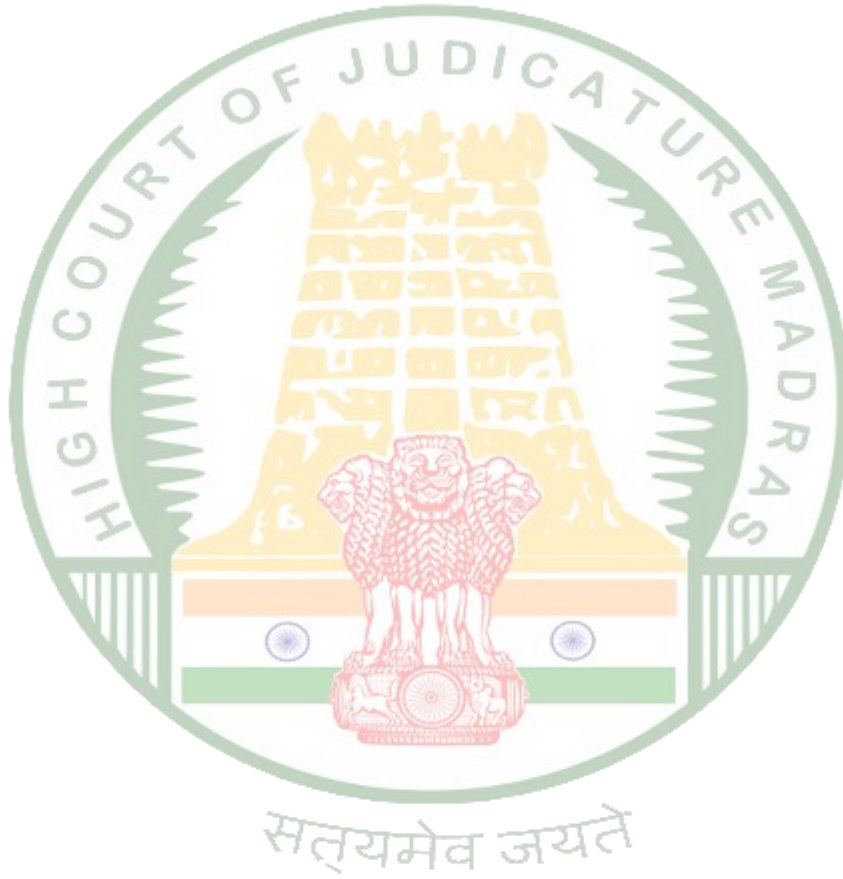
ssb

To
The Railway Claims Tribunal, Chennai Bench

+1cc to Mr.T.Rajamohan, Advocate, sr no.8899
+1cc to Mr,T.P.Saritha, Advocate, sr no.8883

C.M.A.No.1262 of 2016

SJ(CO)
RMP (15/03/2021)



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