

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 15.02.2021
CORAM
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
C.M.A.No.1607 of 2016

1.S.Priyanka

2.Baby Subiksha

3.D.Annamalai

4.A.Kalaimani

A2 being minor rep.by mother &
natural guardian S.Priyanka

... Appellants/Applicant
vs.

Union of India owning
Southern Railway,
rep.by its General Manager,
Chennai-600 003.

... Respondent/Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 23 of
Railway Claims Tribunal Act 54 of 1987, against the order dated
10.09.2015 passed by the Railway Claims Tribunal, Chennai Bench
in O.A.(II-U)No.204 of 2014.

For Appellants : Mr.T.Rajamohan

For Respondents : Mr.T.P.Savitha

सत्यमेव जयते

O R D

E R

The Judgment dated 10.09.2015 passed in O.A.(II-U)No.204 of
2014 is under challenge in the present Civil Miscellaneous
Appeal.

2. The untoward incident occurred is described as under:

"The deceased was a resident of
Sooriyampalayam Village in Erode. He had been staying at
Moondithalam near Kozhikode in Kerala. He used to visit
his native place as and when he found time. The
applicants came to know from the Tanur Police that prior

to 7.00 hrs of 22.3.13, the deceased, while travelling in a general compartment of a train, near the railway gate at Olapeedika of Tanur, due to speed, jerk and jolt of the train, accidentally fell down from the running train, suffered (1) Fracture of left thigh bone, facial bones and lower jaw, (2) multiple lacerated wounds all over the body, (3) fracture of lower end of left leg, (4) compound fracture of lower end of upper arm and died at the spot. It was an untoward incident. The dead body was noticed by the Tanur Panchayat Member only at about 7.00 hrs on 22.03.13. The II Class ticket purchased by the deceased for travel from Kozhikode to Erode was said to have been lost at the time accident and the same could not be traced by the police authorities."

3. The final report submitted after investigation by the Police reveals that the deceased had fallen from the train accidentally and sustained injuries on the head and other parts of the body and died.

4. The learned counsel appearing on behalf of the respondent/Railway mainly contended that the findings of the Tribunal reveal that the travel ticket was not retrieved and further the gate keeper had informed the station master regarding the dead body found nearby the track. Therefore, the Railway arrived a conclusion that it is not an untoward incident and it may be otherwise.

5. This Court is of the considered opinion that in the event of any such contradictions, the burden of proof lies on the Railway to establish that the deceased was not a bona fide passenger. It is easy to arrive a conclusion that the dead body was lying nearby railway track. However, the cause of the death cannot be presumed and the presumptive findings cannot be a conclusive one for the purpose of declining the benefit of compensation. Thus, the Tribunals are bound to consider whether there was an evidence is available so as to arrive a conclusion that the deceased was not a bona fide passenger travelling in the train. In the absence of any such acceptable proof, the Courts are bound to consider the grant of compensation as the benefit is conferred under the Welfare legislation.

6. In the present case, the report of the Divisional Railway Manager says that the ticket was not available and therefore, the deceased was not a bona fide passenger. If the ticket was not available and the factum regarding the accident was established, then the burden of proof lies on the Railway to establish that the deceased was not a bona fide passenger and such a proof was not provided by the Railways in the present case.

7. The Tribunal considered the F.I.R/Ex.A1 and the Divisional Railway Manager Report. As per Divisional Railway Manager Report, the gate keeper of Level Crossing Gate No.172/B at KM 635/6-7 informed to the on duty SM/Parappanangadi that one male lying at KM 635/200 between PGI-TA up line. At this juncture, it is relevant to point out that if at all the deceased died while crossing the Railway track, the said gate keeper ought to have reported the same clearly before the Station Master, Parappanangadi. However, no such information was provided by the gate keeper of level crossing. He simply informed that a male was lying nearby the Railway Track. Such being the information provided, an adhere inference cannot be drawn so as to arrive a conclusion that it was a self-inflicted injury or injury sustained while crossing the railway track. Such an adhere inference is directly opposite to the very purpose and object of the welfare legislation. Thus, the factual inference can be drawn only with reference to the sole possible circumstances and if multiple possible circumstances are made available, then the benefit of contradictions or similarity or doubt should be held in favour of the claimants and not in favour of the Railways. Therefore, the Tribunal erroneously trusted upon the report of the Divisional Railway Manager. The Divisional Railway Manager report raised a doubt regarding the death. Therefore, it is to be concluded that it is an untoward incident.

8. This being the factum, this Court is of the considered opinion that the findings of the Railway Tribunal are not in consonance with the evidence made available as well as the principles established. Thus, the judgment dated 10.09.2015 passed in O.A.(II-U)No.204 of 2014 is set aside and the Civil Miscellaneous Appeal stands allowed. The appellants/claimants are entitled for compensation of Rs.8,00,000/- (Rupees Eight Lakhs Only) as amended with effect from 01.01.2017 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 is entitled for a sum of Rs.3,00,000/- (Rupees Three Lakhs Only)

(ii) The second appellant/minor daughter is entitled for a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) and the said amount is directed to be deposited in any one of the Nationalised Bank in an interest bearing deposit scheme till she attain majority.

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

9. The respondent is directed to deposit a sum of Rs.8,00,000/- (Rupees Eight Lakhs Only) along with interest at the rate of 6% per annum from the date of award within a period of 12 weeks from the date of receipt of a copy of this order and on such deposit, the major claimants are permitted to withdraw their respective portion of the award amount by filing an appropriate application and the payments are to be made through RTGS. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

ssb

To

The Railway Claims Tribunal, Chennai Bench

Copy to
The Section Officer
VR Section
High Court Madras

+1 cc to Mr.t.Rajamohan Advocate sr8897
+1 cc to M/s.T.P.Savitha Advocate sr8885

C.M.A.No.1607 of 2016

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