

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.NO.1610 OF 2016

1.Nagappan

2.Thilagavathy

.. Appellants

vs.

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

.. Respondent

PRAYER :

Civil Miscellaneous Appeal filed under Section 23(1) of Railway Claims Tribunal Act, against the order passed by the Railway Claims Tribunal, Chennai in O.A.(II-U)No.80 of 2015 dated 25.04.2016.

For Appellants : Mr.S.Parthasarathy

For Respondents : Mr.C.V.Ramachandramurthy

O R D E R

The judgment and Decree dated 25.04.2016 passed in O.A.(II-U)No.80 of 2015 is under challenge in the present Civil Miscellaneous Appeal.

2. The untoward incident narrated by the appellant reveals that "the applicants respectfully submit that on 14.01.2015 applicants son, he accompanied with friends came to Saidapet Railway Station for going to Chennai for purchase cloths and purchased train tickets. They boarded train at Saidapet Railway Station. While traveling the applicants son who had accidentally fell down from the running train near Egmore Railway Station due to heavy, jolt and jerk of the train and sustained head injury. Immediately, he was taken to Government General Hospital,

Chennai by 108 ambulance where he admitted. Subsequently, he died on due to failure of failure of treatment. The above case is registered by the Egmore R.P. In crime No.25\15 u\s accidental thereafter altered 174 of Cr.P.C.

3. The inquest report and the final report were also filed. The first respondent defended the case as the deceased while getting down from the moving train in the Railway station, hit against the overhead electrical pole in the Railway Station and died. Therefore, the said incident is to be described as self-inflicted injury with reference to Section 124(A)(b) of the Railways Act, 1989. The factum regarding the accident is not disputed by the respondent/Railways. However, the Tribunal arrived a conclusion that when the deceased was getting down from the moving train, hit against the overhead electrical post nearby the railway track and sustained injuries and died. Therefore, the appellants are not entitled for compensation.

4. The Tribunal adjudicated the issues. The Divisional Railway Manager report was considered by the Tribunal which states that "the deceased person while traveling from Saidapet to Chennai Beach by EMU Train No.40056 Ex.TBM-MSB on 14.01.15, he along with his friends were on footboard, while train was running between MSC-MS Railway station, suddenly hit by OHE post and got bleeding head injury and succumbed to the injury on 20.01.2015 at GH, Chennai". Therefore, the accident occurred due to the carelessness and the negligence on the part of the deceased person. Thus, it is to be considered as self-inflicted injury with reference to Section 124(A)(b) of the Railways Act and consequently, the appellants are not entitled for compensation. The Tribunal relied on the judgment dated 16.09.2015 passed in O.A.No.20 of 2015 and arrived a conclusion that it is a case of negligence and therefore, the applicants are not entitled for compensation.

5. The findings of the Tribunal further reveals as under:

"Ratio laid down therein is clearly applicable in the facts of the present case, which are similar in nature. Even the Hon'ble Supreme Court in Jameela & otrs. V.UOI (AIR 2010 SC 3705) noticing proviso to Section 124-S of Act observed that railway administration would have no liability to pay any compensation in case death of the passenger or injury to him was caused due to any of the reasons enumerated in Clauses (a) to (e). In these circumstances, we are of the view that the deceased case fall within the category of Clauses "b & c" of Proviso to Section 124-A of the Railways Act, for which, railway is not liable to pay any compensation. In this view of the

matter, we hold that though the deceased was a bonafide passenger but he did not suffer any untoward incident within the meaning Section 123(c)(2) of the Act. Therefore, Issues No.2 & 3 are decided in negative."

6. Passengers standing on the foot board per se would not constitute a ground to say that it is a self-inflicted injury, in the event of an accident within the meaning of proviso to Section 124 (A) of the Railways Act. The Railways have to establish that the injury sustained was intentional and not mere carelessness or negligence. Thus, mere carelessness cannot be a ground to invoke the exclusion clause.

7. The exclusion Clause contemplated in proviso to Section 124 (A) of the Railways Act is relatable to the criminal acts including suicide, attempt to commit suicide or self-inflicted injury and other circumstances stated in the provision. Thus, to establish that it is a self-inflicted injury for the purpose of invoking the exclusion clause, an intention to commit such an injury or death is to be established. In the absence of proving any such intention on the part of the injured/deceased, the Railways cannot invoke exclusion clause. Liberal interpretations are to be extended as far as the exclusion clauses are concerned. It means the circumstances contemplated under the exclusion clause are to be established beyond any pale of doubt by the Railways. Mere suspicion, carelessness or negligence are insufficient to arrive a conclusion that it is a self-inflicted injury or suicide, attempt to commit suicide or otherwise. Large number of passengers are travelling on the foot board. Mostly, the act is unintentional. Due to the huge crowd, passengers are forced to stand nearby the door as it may not be possible for few passengers to go inside the Railway coaches. All these circumstances are to be weighed with reference to the prevailing situation in trains, more specifically, in our great nation. Thus, in all cases, where the foot board travel is construed as intentional, then the very purpose and object of the welfare legislation for grant of compensation in the event of injury or death stands defeated. Thus, the Courts are conscious while scrutinizing the facts and circumstances, more specifically, when the Railways are taking a defence under the exclusion clause. Mere presumption is insufficient for invoking exclusion clause. Therefore, standing nearby the door of railway coaches or boarding in a moving train per se would not be a ground to invoke exclusion clause under proviso to Section 124(A) of the Railways Act. Thus, the view of the Tribunal that the passenger traveling on the foot board is not entitled for compensation, cannot be accepted in view of the fact that it is a welfare legislation and liberal interpretations are to be adopted for the benefit of victims.

8. In view of the facts and circumstances, this Court is not convinced with the judgment of the Railway Tribunal dated 25.04.2016 passed in O.A.No.80 of 2015 and the same is set aside and the Civil Miscellaneous Appeal stands allowed. No costs.

9. The appellants 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 passing of the award. The Railway/respondent is directed to deposit the entire award amount with accrued interest within a period of 12 weeks from the date of receipt of a copy of this order and on such deposit, the appellants/claimants are permitted to withdraw 50% each by filing an appropriate application before the Railway Tribunal concerned and the payments are to be made through RTGS.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ssb

To

1. The Registrar,
Railway Claims Tribunal,
Chennai.

+1cc to Mr.C.V.Ramachandramurthy, Advocate, S.R.No.8920
+1cc to Mr.S.Parthasarathy, Advocate, S.R.No.8878

C.M.A.No.1610 of 2016

PPA(CO)
CS/18/03/2021

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