

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1729 of 2016

1.Veerammal

2.Niveda

3.Nirosha

4.Nirmala

5.Muthammal

..Appellants

Vs.

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

..Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 23(1) of Railway Claims Tribunal Act praying to set aside the order passed by the Railway Claims Tribunal, Chennai in O.A. (II-U) No.88 of 2015 dated 05.05.2016 and allow the C.M.A.

For Appellants : Mr.S.Parthasarathy

For Respondents: Mr.S.R.Sundaram

J U D G M E N T

The judgment dated 05.05.2016 passed in O.A. (II-U) No.88 of 2015 is under challenge in the present Civil Miscellaneous Appeal.

2.The brief facts of the untoward incident is narrated by the appellant as under:

"The Applicants respectfully submit that on 23.10.2014 forenoon 1<sup>st</sup> Applicant's husband come to Vridachalam Raiway Station for go to Tiruchirapalli. He boarded Guruvayur Express. While he getting down by

6127 Express train fallen down from the running train at Ariyalur Railway Station Platform No.II and sustained fatal injuries and died on the spot."

3.The respondent/railways defended the case mainly on the ground that the deceased committed an act of negligence by getting down from a moving train and therefore, the incident is to be construed as self-inflicted injury with reference to Section 124 (A) (B) of the Railways Act.

4.The Railway Claims Tribunal adjudicated the issues and made the following observations:

(i) FIR(Exh.A-1) was registered by GRP/Trichy Vridhachalam RPS based on written complaint made by wife of deceased (A-1 herein) on 23.10.2014 at 01.00 P.M.

(ii) It is the case of applicants that on 23.10.2014, the deceased had boarded T.No.6127 Guruvayur Express at Vridhachalam and wife getting down from the running train at Ariyalur station PF No.2 had sustained injuries and died at the spot. It was further stated by the applicants that the deceased was a "Pass Holder" for travel from Vridhachalam to Trichy on 23.10.2014.

(iii) As per inquest report Exh.A-2, one duty pass was recovered.

(iv) Aw-1 in her affidavit stated that the deceased was working at Thanjavur Railway station and on 23.10.2014, "in order to go for duty" from Vridhachalam to Thanjavur, had travelled by Guruvayur Exp.

(v) During cross examination, AW1 stated that the deceased had travelled from Vridhachalam "to go for his work" at Thanjavur. She further stated that he was having a Duty pass for his travel but she did not know the permissibility of the pass for travel.

(vi) So far as the incident is concerned, in the DRM report it is stated that when T.NO. 6127 Exp. Was entering into Platform 2 of Ariyalur station, the deceased attempted to detrain from the running train before it was stopped and was dragged and fallen between train and platform and sustained injuries and died at the spot. The inquest Exh.A2 and Final report Exh.A-3 also narrate the incident in more or less similar manner.

(vii) However, the crucial question in this case is the bonafides of the deceased as a "passenger" to claim compensation under Sec.124-A of Railway Act. For

the purpose of this section "passenger" includes - a railway servant on duty and a person who has purchased a valid ticket... And become a victim of an untoward incident.

(viii) In the present case, the applicants have averred that the deceased was working in Tanjavur station and was holding a duty pass for travel from Vridhachalam to Tanjavur.

(ix) It is also noted that despite seeking and being allowed further time to file additional documents, applicants had not filed any document to establish their claim.

(x) However the DRM report has specifically pointed out that RPSI/Ariyalur who had attended the deceased had recovered one EDP No. 418988 - valid from 3.9.2014 to 5.9.2014 Ex. TJ-GOC & back.

(xi) Applicants have attempted to give a colour of journey on duty by using terms like "in order to go for duty" and "to go for his work".

(xii) However, it is crystal clear that since the incident had occurred on 23.10.2014, and the said duty pass valid from 3.9.2014 to 5.9.2014 was only meant for travel from Tanjavur to Golden Rock and back, which does not even cover the section where the incident had occurred or the date of such incident, the duty pass in the possession of the deceased was an invalid pass and the deceased was not a bona fide passenger as defined in the Act."

5. The reason for rejection of application is that in the DRM Report it is stated that when Train No.6127 Express was entering into Platform No.2 of Ariyalur Station, the deceased attempted to detrain from the running train before it was stopped and was dragged and fallen between train and platform and sustained injuries and died at the spot.

6. The Inquest Report marked as Ex.A3 also narrated the incident more or less in similar manner, in view of the fact that the deceased detrain from the moving train before it was stopped. The Tribunal arrived a conclusion that the passenger committed an act of negligence and the incident is to be described as self-inflicted, because it is a moving train and accordingly rejected the application.

7. The second ground relied upon by the Tribunal is that the incident occurred on 23.10.2014, and the duty pass valid from 03.09.14 to 05.09.14 was only meant for travel from Tanjavur to Golden Rock and back, which does not even cover the section

where the incident had occurred or the date of such incident, the duty pass in the possession of the deceased was an invalid pass and the deceased was not a bonafide passenger as defined in the Act.

8. As far as the ground relating to "bonafide passenger", admittedly the accident occurred and the injuries sustained while getting down from the moving train. Thus, in the absence of a valid pass, it is no way connected with the route in which the accident occurred. The railway ought to have been proved that the deceased was not a bonafide passenger.

9. However, the learned counsel for the appellant raised a contention that the deceased was holding a travel ticket for traveling from Vridachalam Railway Station to Tiruchirapalli Railway Station. It is pertinent to note that the deceased was an employee of the Railways and he boarded Guruvayur Express and while he was getting down from 6127 express train, fallen down from the running train at Ariyalur Railway Station and sustained fatal injuries and died on the spot.

10. Railway employees are permitted to travel and this apart, the learned counsel for the appellant states that he was holding a valid ticket during that point of time. However, the appellants have not established at the first instance that the deceased had purchased ticket or holding a valid pass for traveling from Vridachalam to Tiruchirapalli. This apart the deceased was an employee of the Railways. Therefore, it is very hard to believe that a railway employee purchased a paid travel ticket. If such a ground is taken, the burden of proof lies on the person who is stating that the railway employee purchased a paid travel ticket.

11. Courts cannot presume the railway employee purchased a ticket, in the absence of establishing that the ticket was purchased and produced as evidence. Thus with reference to the second ground relied upon by the Tribunal that the deceased was not a bonafide passenger, this Court is of an opinion that same is to be considered as an acceptable ground.

12. As far as the self-inflicted injury is concerned, falling down from a moving train cannot be considered as self-inflicted injury as there was no intention on the part of the deceased. With reference to the issue of bonafide passenger, the deceased was an employee of the railways and he was holding a pass to Vridachalam to Tiruchirapalli. Further the appellant have not produced any proof with a valid ticket.

13. This being the factum established in respect of the findings of the Tribunal, this Court does not find any

perversity or infirmity as such. Accordingly, the judgment dated 05.05.2016 passed in O.A.(II - U) No.88 of 2015 stands confirmed and C.M.A.No.1729 of 2016 stands dismissed. No costs.

s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

Pns

To

1. The Railway Claims Tribunal, Chennai.

2. The General Manager  
Southern Railway  
Chennai 600 003.

+1 CC to Mr.S.Parthasarathy, Advocate sr 8879.

C.M.A.No.1729 of 2016

AD(CO)  
SP(16/03/2021)



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