

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2021

CORAM

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

C.M.A.No.505 of 2015

1.Smt.S.Chandra
2.S.Guruprasad
3.S.Madhavan
4.S.Prakash
(Appellants 2 to 4 rep. by mother & natural guardian
1st appellant)
5.G.Ganesan
6.Smt.Sethu Ammal Appellants

Vs.

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

Prayer : Civil Miscellaneous Appeal filed under Section 23 of
Railway Claims Tribunal Act, 1987, against the order dated
16.12.2014 passed by the Railway Claims Tribunal, Chennai Bench,
in O.A.(II-U) No.45 of 2014.

For Appellants : Mr.T.Raja Mohan
For Respondent : Ms.A.Shri Jayanthi

J U D G M E N T

The order dated 16.12.2014 passed in O.A.(II-U) No.45 of
2014, is under challenge in the present civil miscellaneous
appeal.

2. The narration of facts by the appellants are as under:

The deceased was a resident of Puliyankudi Village in
Ramanathapuram District of Tamil Nadu State. He was a goat
shepherd. On 29.05.2013 the deceased informed his wife that he
was going to paramakudi to visit his parents and left the house.
The applicants came to know from the Virudhachalam Railway
Police that the deceased on 29.05.2013 in the night by
purchasing II class ticket for the travel from Virudhachalam to
Paramakudi, while traveling by sitting near the door of the
general compartment of Chennai-Rameswaram Sethu Express Train,
between Virudhachalam and Thalanallur Railway Station, as he

bent forward for vomiting, due to heavy rush, speed and jolt of the train, accidentally fell down from the running train, run over by the wheels, head crushed, brain squeezed off, left hand below wrists cut and crushed, right leg amputated at thigh level, left leg cut at hip level and grievous crush injuries all over the body with heavy discharge of blood, died on the spot. It was an untoward incident.

3. The respondent Railway contested the application mainly on the ground that the accident occurred due to the negligence of the deceased and therefore, the Railway is not liable to pay compensation. Further, it is contended that the deceased was not possessing a valid travel ticket and thus, not a bonafide passenger. The Railway Tribunal accepted the grounds raised on behalf of the Railway, more specifically, negligence and dismissed the application.

4. The learned counsel for the appellants reiterated that in the absence of retrieval of ticket, the factum regarding the accident is to be established and once the accident is established, then the burden to be shifted on the Railway to establish that the passenger was not a bonafide passenger. After establishing the accident in the railway premises, even as per the records available with the Railway, burden cannot be laid on the claimants and it is to be shifted to the Railway to establish that the deceased was not a bonafide passenger.

5. As far as the negligence is concerned, mere negligence is insufficient to hold that it is a self inflicted injury. Mere negligence cannot be considered by the Tribunal for the purpose of declining compensation to the victim. The act being the welfare legislation, only in the event of false claims, the application is to be rejected. Once the factum regarding the accident is established beyond any pale of doubt and such accident is not falling within the clauses excluded under Section 124(A), then the Tribunal has to consider for grant of compensation.

6. This being the principles, let us now consider the final report which reveals that after investigation, the police authorities found the accident occurred. The deceased Shanmugam on 30.05.2013 prior to 12.00 noon, while travelling by sitting near the door of the general compartment of Train No.16713, Chennai to Rameswaram Sethu Express. as he bent forward for vomiting, lost his balance and accidentally fell down, injured by the train, head crushed, skull broke open, brain squeezed off, grievously injured with heavy discharge of blood and died at the place of occurrence.

7. A question arises, such a negligence can be attributed against the victim. Undoubtedly, the passengers are bound to travel in train with all caution and equally, the responsibility lies on the Railway authorities also. The Railway authorities are bound to ensure that the safety and security of the passengers are protected adequately. The prevailing situation in our great nation on account of huge population, the Railway authorities are also incapable of providing complete security to the passengers and in most of the unreserved coaches, the doors are always remain open, even in express trains, tickets are issued without any restrictions to travel in unreserved compartments. Thus, over and above the seating capacity in unreserved coaches, the passengers are tempted to travel and the Railway Protection Force as well as the competent authorities, who are all incharge, are not even taking steps to regulate the crowd in the unreserved coaches.

8. If the seating capacity of the coach is 72, more than 300 passengers are travelling and therefore, the negligence on the part of the Railway authorities also to be construed as contributory. Thus, the contention of the Railways cannot be taken into consideration in such nature of cases so as to decline the compensation to the victims. The Railway is bound to formulate the scheme to provide more protection and safety to the passengers, who are all travelling. Most of the untoward incidents are happening undoubtedly at the negligence and carelessness of the passengers and equally, the Railways are also contributing for such negligence and therefore, the right of compensation cannot be denied merely on the ground of negligence by the passengers by not considering the contributing negligence by the Railway authorities.

9. The Indian Railway Employees / Officials are getting very decent salary from the taxpayer's money and comparatively far higher than that of the employees working with private players. Unfortunately, the expected level of performance and responsibilities are not made available to the public at large. They are lacking in accountability. The higher officials undoubtedly are not having effective administrative control over these employees. At the outset, the accountability and responsibility are lacking at various levels. This exactly is the reason for heavy financial loss in Indian Railways, which is one of the largest public transport system in the entire world. The huge financial loss year after year made the Government of India to think about the privatization of these public sectors. This Court is of the firm opinion that Constitutional Governments are for Governance and not for running commercial establishments for profit making. Therefore, all such establishments, which all are facing continuous financial loss, affecting the public interest is to be re-visited. When the

Private Transport Players are making profit, the Government is not successful in running these commercial establishments profitably. Thus, the policy makers are looking after an alternate option for privatization in order to save the public interest and to minimise the heavy financial loss to the Government.

10. As far as the case on hand is concerned, beyond the final report, even the DRM report dated 02.04.2014 reveals that the accident occurred due to the fact that the deceased was sitting on the doorways of the train, bent forward to vomit and slipped and fallen down. Therefore, the vomiting and fallen down is certainly an accidental one and the same cannot be construed as a total negligence so as to deny the benefit of compensation to the claimants.

11. A pragmatic approach is required in respect of the welfare legislation. When the factum regarding the accident was established and the Railway authorities also permitting the passengers to travel by sitting or standing nearby the door and large number of tickets are issued without any limit, as far as the unreserved coaches and in express trains are concerned, the Railway authorities cannot raise a ground that on account of such negligence, the accident occurred. Even the possible probabilities are to be considered in such nature of cases. Our Great Nation with huge population and on account of illiteracy and ignorance, people even for joy, stand nearby the door in train coaches. The doors are not closed by the competent authorities of the Railway and automatic doors are to be provided, which is to be operated by the authorities whenever the train start from the platform. These all are the safety measures which all are to be adopted and in the event of not providing such safety measures, the Railways cannot blame the passengers as they have also contributed by issuing large number of tickets to the passengers without ascertaining the actual capacity of the unreserved coaches in the trains.

12. This being the factum established, the order dated 16.12.2014 passed in O.A.(II-U) No.45 of 2014 is set aside and C.M.A.No.505 of 2015 is allowed. No costs.

13. The appellants are entitled for total compensation of Rs.8,00,000/- along with interest at the rate of 6% per annum from the date of passing of the award . The said award is to be apportioned as detailed hereunder:

"The appellant/wife is entitled for a sum of Rs.3,00,000/- and all other five appellants are entitled for Rs.1,00,000/- each. The respondent/Railway is directed to deposit the award amount with accrued interest before the Tribunal

concerned within a period of 12 weeks from the date of receipt of a copy of this order and on such deposit, the appellants are permitted to withdraw their respective portions of the amount by filing an appropriate application and payments are to be made through RTGS."

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsk

To

1.The General Manager,
Union of India,
Southern Railway,
Chennai 600 003.

2.The Registrar,
Railway Claims Tribunal, Chennai Bench.

+1 cc to M/s.T.Rajamohan ,Advocate Sr.No. 9650

+1 cc to M/s.A.Srijayanthi, Advocate Sr.No. 9400

C.M.A.No.505 of 2015

SRII(CO)
RMP (19/03/2021)

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