

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.804 of 2015

1.S.Indira

2.Minor Arunkumar

3.Minor Selvi Sandhya

Appellants 2 and 3 rep.by mother
and Guardian Mrs.Indira

Appellants

vs.

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

2.Amudha

Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 23 of
Railway Claims Tribunal Act 54 of 1987, against the order dated
13.01.2015 passed by the Railway Claims Tribunal, Chennai Bench
in O.A.(II-U)No.356 of 2013.

For Appellants : Mr.T.Rajamohan

For Respondents : Mrs.T.P.Savitha for R1

O R D E R

The Civil Miscellaneous Appeal on hand is preferred
against the order dated 13.01.2015 passed in O.A.(II-U)No.356
of 2013.

2. The facts in nutshell resulted in filing an application
under Section 16 of the Railways Act are that on 08.09.2013, the
deceased by purchasing second class ticket traveled from
Tambaram to Chidambaram. He was seen off at the Tambaram Railway
Station by his friend Manikandan. The applicants/claimants came

to know from the police authorities that when the train was proceeding between Vandalur to Guduvancherry Railway Stations, due to rush, speed and jerk of the train, he accidentally fell down and suffered grievous head injuries and fracture of legs and died at the place of occurrence. Thus, the legal heirs filed an application seeking compensation.

3. The Railway Tribunal rejected the claim mainly on the ground that the deceased was not possessing a valid travel ticket nor any such ticket was retrieved by the Investigating Authority or by the Railway Authority. In the absence of travel ticket, the legal heirs are not entitled for compensation.

4. This Court is of the considered opinion that the facts and circumstances are to be considered for the purpose of grant of compensation. In view of the fact that when a person sustained grievous head injury and fallen down and was taken to the hospital and after death and post-mortem, one cannot expect that the travel ticket can be retrieved or there is a possibility of loss of ticket at the time of accident. However, the other corroborating facts and circumstances are to be considered by the Court, compensation being a welfare legislation. Instead of creating unnecessary suspicion, the Courts have to adopt pragmatic approach for grant of compensation in such cases where the victims suffered train accidents.

5. The Railway Tribunal considered the fact that the travel ticket was not retrieved nor available with the deceased person and held that the applicants/claimants are not entitled for compensation. The inquest report is enclosed along with the present appeal which states that the deceased was travelling from Tambaram to Chidambaram on 08.09.2013. He fell down and sustained grievous injuries. Considering the nature of injuries, they drew factual inference that the death occurred on account of falling down from the train. The final report filed by the Sub-Inspector of Police also reveals that the deceased due to the overcrowd, accidentally fell down and suffered grievous injuries.

6. Despite the fact that the inquest report as well as the final report of the Railway Police reveals that the untoward incident due to falling down of the deceased from the running train, the learned counsel appearing on behalf of the respondent/Railway relied on the findings of the Divisional Railway Manager. However, the report of the Divisional Railway Manager is not supported by any other evidence so as to place reliance. The Divisional Railway Manager report states that the

deceased was a coolie and residing nearby Vandalur. The very fact recorded by the Divisional Railway Manager is in-correct, in view of the fact that the deceased was from Chidamabaram and the Death Certificate produced also reveals that he was from Chidambaram. While stating that the deceased was residing nearby Vandaloor, no further investigation was conducted to find out the address or establish the residence of the deceased. In the absence of any further investigation by the Divisional Railway Manager in this issue, mere statement in the finding that the deceased was residing nearby Vandalur cannot be relied upon for the purpose of declining the benefit of compensation.

7. This Court is of the considered opinion that when the travel ticket was not available with the deceased and the other factors reveals that he was travelling in a train and sustained grievous injury due to the accident from the running train, the burden of proof lies on the railway to establish that the deceased was not a bona fide passenger. In the present case, the Railway has not established that the deceased was not a bona fide passenger and the other documents established also reveals that the deceased was travelling in the train and fallen down from the running train. In the absence of any evidence to establish that the deceased was not a bona fide passenger, the benefit of welfare legislation is extended in favour of the claimants. One step further, this Court is of the considered opinion that any contradictions or benefit of doubt in this regard should go in favour of the claimants and not in favour of the Railway. In other words, unless the Railways are able to establish that the deceased was not a bona fide passenger of the train, the benefit of compensation is to be granted in favour of the claimants as the act itself is a welfare legislation.

8. This being the facts and circumstances, this Court has no hesitation in arriving a conclusion that the findings of the Railway Claims Tribunal are perverse and not in consonance with the evidence produced by the appellants. Accordingly, the order dated 13.01.2015 passed in O.A.(II-U)No.356 of 2013 is set aside and consequently, Civil Miscellaneous Appeal stands allowed. The appellants are entitled for a compensation of Rs.8,00,000/- (Rupees Eight Lakhs Only) along with interest 6% per annum from the date of award as amended with effect from 01.01.2017. The compensation of Rs.8,00,000/- (Rupees Eight Lakhs Only) is directed to be apportioned as detailed hereunder:

(i) the first appellant/Indira is entitled for a sum of Rs.3,00,000/- (Rupees Three Lakhs Only).

(ii) the second appellant/Arunkumar attained the age of majority. Thus, he is entitled for a sum of Rs.2,00,000/- (Rupees Two Lakhs Only).

(iii) The third appellant/Selvi Sandhya is entitled for a sum of Rs.2,00,000/- (Rupees Two Lakhs Only). As she is minor, her portion of the compensation is to be deposited in any one of the Nationalised Bank till she attain the age of majority in an interest bearing deposit scheme.

(iv) The second respondent/mother of the deceased is entitled for a sum of Rs.1,00,000/- (Rupees One Lakhs Only)

9. The first 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/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ssb
To

The Railway Claims Tribunal,
Chennai Bench.

+1cc to Mr.T.Rajamohan, Advocate Sr.8903
+1cc to Mrs.T.P.Savitha, Advocate Sr.8884

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