



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2021

CORAM

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

C.M.A.No.451 of 2020

1.K.C.Prabakaran
2.P.Ponni

..Appellants

Vs.

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

..Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 23 of Railway Claims Tribunal Act, 1987, against the order dated 27.11.2019 made in O.A. (II-U) No.76 of 2019 by the Railway Claims Tribunal, Chennai Bench.

For Appellants : Mr.R.Sekaran
For Respondent : Mr.M.Vijay Anand

J U D G M E N T

The judgment passed by the learned Railway Claims Tribunal, Chennai Bench in O.A. (II-U) No.76 of 2019 dated 27.11.2019, is under challenge in the present Civil Miscellaneous Appeal.

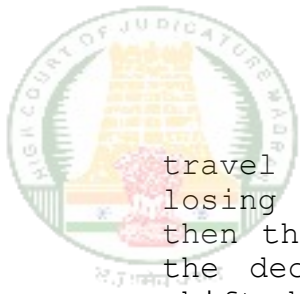
2. The claimants are the parents and the claim application was filed on the ground that the deceased was a native of Kizhvilachur Village in Katapadi Taluk of Vellore District. He was a third year student studying Diploma in Optometry in Government College of Optometry, Egmore. The deceased stayed in Korattur and used to visit his parents once in a month. On 21.07.2018, the deceased informed his parents over phone that he was on the way and reach home by 11.00 pm. The deceased while travelling in any one of the train from Chennai Central, due to heavy crowd, speed, jerk and jolt of the train, prior to 22.00 hrs of 21.07.2018 when the train was proceeding near Pattabiram Railway Station, accidentally fell down from the running train, suffered grievous head injury, aberration on both the hands, left side rib and died at the place of occurrence.

3. The Railway Tribunal adjudicated the issues with reference to the documents and evidences produced by the



respective parties. The Tribunal found an opinion that as per Rina Devi's case [Civil Appeal No.4945 of 2018 dated 09.05.2018], mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona-fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona-fide passenger. Initial burden will be on the claimants which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. By relying on the said judgment of the Hon'ble Apex Court of India, the Railway Tribunal found an opinion that it is case of suspicion. The deceased was not having a valid travel ticket or travelling authority in his possession and hence, the Railway Tribunal rejected the claim petition.

4. This Court is of the considered view that the fact reveals that the deceased was a student regularly travelling in the train and a season ticket was retrieved from the deceased. This apart, certain belongings of the deceased are recovered during the inquest and those are a brown colour bag containing an Eye test machine, Books, Note books, Purse, Aadhar Card, Railway Season ticket, Bus pass, Union Bank ATM card, cash Rs.25/- and a cell phone charger. The season ticket retrieved pertaining to the details of travels from Korattur to Chennai Egmore to attend his college. However, the ticket for travel from Chennai Central to Katpadi was not retrieved. The claimants/appellants would not be able to furnish the copy of the same. The DRM report reveals that it is possible on 21.07.2018 prior to 21.45 hrs., while travelling in a train, the deceased would have fallen down from the running train near Pattabiram station (East end) between up fast line and down fast line at KM.24/30A and sustained severe head injury and died on the spot. Thus, the untoward incident was established. However, the travel ticket was not retrieved. The deceased was holding a season ticket for his travel from Korattur to Chennai Egmore. Under these circumstances, this Court is of the considered view that the burden must be shifted on the Railways to establish that the deceased was not a bona-fide passenger. It is possible that the travel ticket would have been lost or even presuming that the deceased has not having a train ticket, this Court is of the view that a mere suspicion is not a ground to disentitle the claimants/appellants for compensation under a Welfare Legislation. When there are possibilities in non availability of the ticket or ticket would have been lost at the time of falling down from the train or taking the deceased to the hospital or to the burial ground etc., all such circumstances have been to be considered in the case where the



travel ticket was not retrieved. Thus, it is possible for losing of travel ticket and there are various circumstances, then the burden has to be shifted on the Railways to prove that the deceased was not a bona-fide passenger. If the onus is shifted on the claimants/appellants, it would be practically difficult for those claimants to produce the travel ticket and most of the time, it would not be possible. In such an event, a very purpose and object of grant of compensation would be defeated. Therefore, a pragmatic and practical approach is required so far as to consider the case of grant of compensation. Thus, a mere suspicion raised by the Railways are insufficient and they are bound to establish that the deceased was not a bona-fide passenger, then alone, the claim petition can be rejected or otherwise.

5. In the present case, the untoward incident under Section 123 of the Railways Act was established. It was further established that it is a case fallen down from the train and the belongings of the deceased shows that he was holding the bag. Further, the travel ticket was not retrieved but he was possessing a season ticket from Korattur to Chennai Egmore as he was a student studying in Government College of Optometry, Egmore. This being the factum, a mere non availability of the travel ticket would not disentitle the claimants/appellants from getting compensation under the provisions of the Railways Act. The Tribunal rejected the claim merely on the ground of suspicion. While considering the Welfare Statute, the Courts are bound to adopt a liberal approach. A very purpose of the objects of the Welfare Statute are to provide social justice to the victim, who lost their near and dear ones or the breadwinner of the family. Therefore, a pragmatic approach has to be adopted for grant of compensation and a mere suspicion would not be a ground for disentitle the same. In the present case, the Railways has not established that the deceased was not a bona-fide passenger and contrary, they raised a suspicion and the claim application was dismissed. This Court is of the opinion that the claimants/appellants are entitled for compensation and the dismissal of the claim petition merely on the ground of suspicion is not in consonance with the established principles, most specifically, with regard to the Welfare Statute. Thus, the judgment dated 27.11.2019 passed in O.A.(II-U) No.76 of 2019 is set aside and the Civil Miscellaneous Appeal filed in CMA.No.451 of 2020 stands allowed. The appellants are entitled for the compensation of Rs.8 lakhs along with interest at the rate of 6% p.a. from the date of passing of the award.

6. The respondent/Railways is directed to deposit the compensation amount of Rs.8 lakhs with accrued interest before the Tribunal concerned, within a period of 12 weeks from the date of receipt of a copy of this judgment and on such deposit,



the claimants/appellants are permitted to withdraw the amount in equal share by filing appropriate petition before the Tribunal and the payment shall be made through RTGS.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP

To

1. The Railway Claims Tribunal,
Chennai Bench.

2. The General Manager,
The Union of India owning
South Central Railway,
Chennai - 600 003.

+1cc to Mr.R.Sekaran, Advocate, S.R.No. 17838

+1cc to Mr.M.Vijay Anand, Additional Standing Counsel railways
Advocate, S.R.No. 17037

C.M.A.No.451 of 2020

SMI (CO)
GN(07/06/2021)