

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2021

CORAM

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

C.M.A.No.628 of 2016

and

C.M.P.No.5160 of 2016

Union of India,
Owning South Central Railway,
Rep.by its General Manager,
Secunderabad - 500 071.

..Appellant/ Respondent

Vs.

1.Suman
2.Seema
3.Sapana
4.Kajal

..Respondents/Applicants

Prayer : Civil Miscellaneous Appeal filed under Section 23 of Railway Claims Tribunal Act, 1987 praying to set aside the final orders in OA No.324 of 2014 dated 16.09.2015 on the file of Railway Claims Tribunal, Chennai Bench and set aside the same.

For Appellant : Mr.U.Venkatesan

For Respondents: Mr.P.Natarajan

J U D G M E N T

The Award dated 16.09.2015 filed in O.A.No.324 of 2014 is under challenge in the present Civil Miscellaneous Appeal.

2. The untoward incident occurred on 27.05.2014, the deceased had come down to Dindigul for Cooli Works. The deceased and his relative's son left for New Delhi via Katpadi. The claimants came to know from the Kavali Railway police and the co-passenger that the deceased, by purchasing II Super Fast ticket bearing No.499534236 & 499534237 dated 27.05.2014 for travel from Dindigul to New Delhi reached Katpadi and while traveling in Pondy chery - New Delhi Express train, on 28.05.2014, when the train was passing between Bitragunta and Sri Venkateswarapalem, due to over crowd, speed, jerk and jolt of the train, accidentally fell down from the running train suffered fatal injuries and died.

3. The First Information Report was registered, Inquest report was prepared, the postmortem certificate was also marked and final report after investigation filed on 11.11.2014 reveals that the death was an accidental one. The final report read as under:

"My investigation made out so for the deceased

by name Rajesh S/o.Lalachand. 35 years Subra

Village, Prabhath Nagar District, Uthara Pradesh State and his son in relations Bijender/LW-5 went to Dindigul and since two days they are attended for small coolie works. Meantime the deceased Rajesh wife Suman informed that their younger daughter is not feeling well. Then on 27.05.2014 both the deceased and LW-5 came to Dindigul, purchased each one Railway ticket vide No.499534236 Fair Rs.430/- from Dindigul to New Delhi and both of them came to Chennai Central. On 28.05.2014 at about 1 pm they boarded general compartment in train No.22403 Pondichery - New Delhi. While the deceased is standing at the door way, slipped and fell out side the train between Bitragunta and Sri Venkateswarapalem RSS and sustained sever bleeding injuries and died on spot, no foul play is suspected into."

4. The Tribunal adjudicated the issues with reference to the documents and evidences. The learned counsel for the appellant mainly contended that there was a negligence on the part of the deceased. The accident occurred due to the negligence and, therefore, Railway is not liable to pay compensation. Under these circumstances, the Railway Tribunal considered the scope of Section 123 of the Railways Act with reference to the definition for "untoward incident". The Courts have repeatedly held that mere negligence is insufficient to decline compensation to the victims. Only if it is a self-inflicted injury, then alone the railway is not liable to pay compensation and mere negligence cannot be a ground to deny compensation to the victim.

5. This being the settled principles, the Railway Tribunal also adjudicated the issues with reference to the documents and the relevant findings are extracted hereunder:

"5.We have heard both sides at length, perused the pleadings and other material placed on record. It is not disputed that the deceased travelled based on above noted tickets which were admitted by the respondent and exhibited as Ex.A.7. Furthermore, neither the Dy.Station Superintendent message / BTTR dated 28.05.2014 nor the genuineness of FIR No.38/2014, Ex.A1, which was registered by GRP/Guntakal Railway Police Station, Kavali dated 29.05.2014 as well as Inquest report noticing the above aspect, are denied. Furthermore, the post mortem report dated 29.05.2014 clearly opined the cause of death as crush injury of head, which was also noticed in the inquest report, therefore, the first two issues are decided in affirmative holding that the deceased was a bona fide passenger and had fallen from running train which fall within the ambit of untoward incident, within the meaning of Section 123 (c) (2) of the Railways Act, 1989. The

observations made in the reply that there being no eye witness to support that the deceased person traveled on footboard by train and fell down from the running train and consequently the railway department is not at fault and hence not responsible for the incident is totally unjust, imaginary and based on hypothesis particularly when no oral evidence was adduced by the respondent."

6. In view of the fact that the mere negligence on the part of the passenger would not dis-entitle the claimant from getting compensation from the Railways Act.

7. This Court is of the opinion that there is no perversity as such in respect of the finding arrived by the Railway Claims Tribunal. Accordingly, the Award dated 16.09.2015 passed in O.A.No.324 of 2014 stands confirmed. Consequently, C.M.A.No.628 of 2016 stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

8. In view of the facts and circumstances, the respondents / claimants are entitled for a compensation of Rs.8,00,000/- (Rupees Eight Lakhs only) along with the interest at the rate of 6% per annum from the date of passing of the award. It is contended that the appellant/Railway has already deposited the award amount. If the award amount with accrued interest is lesser than that of a sum of Rs.8,00,000/- as per the amended ceiling with effect from 01.01.2017, the appellant is directed to deposit the balance amount with accrued interest within a period of 12 weeks from the date of receipt of a copy of this award. However, if the deposited amount with accrued interest exceeds the sum of Rs.8,00,000/-, then the appellant is permitted to withdraw such balance amount by filing an appropriate application. The respondents/claimants are permitted to withdraw the award amount of Rs.8,00,000/- (Rupees Eight Lakhs only) along with the interest at the rate of 6% from the date of award and the apportionment is to be granted as per the judgment of the Railway Tribunal.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Pns/kak

To

The Registrar,
Railway Claims Tribunal,
Chennai.

+1cc to Mr..U.Venkatesan , Advocate SR.No. 8402

C.M.A.No.628 of 2016
and C.M.P.No.5160 of 2016

A.SK(22.03.2021)

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