

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.759 of 2016

1.Mrs.Passammal

2.Ashok Kumar

Daughter & Son of Deceased Kamalammal ..Appellants/Appellants

Vs.

Union of India owning,
Rep.by its General Manager,
Southern Railway,
Chennai - 3.

..Respondent/Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 23 of Railway Claims Tribunal Act, against the judgment dated 16.02.2016 made in O.A.No.(II-U) 131 of 2015 on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellants : Mr.C.Prabakaran

For Respondent : Mr.C.V.Ramachandramurthy

J U D G M E N T

The judgment dated 16.02.2016 passed in O.A.No.(II-U) 131 of 2015 is under challenge in the present Civil Miscellaneous Appeal.

2. The claimants are the appellants and the Claim Petition was filed on the ground that on 05.07.2014, the deceased was traveling in a train from Arakkonam to Jolarpettai and while traveling in a Train in between Vinnamangalam-Vaniyambadi Railway Station, due to sudden jerk of train, she slipped and fell down from running train and died in the same place.

3. The Claim Petition was filed. The Railway Claims Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties. The sanctity of the legalheirship of the appellants were verified. With reference to the accident, the Railway Tribunal made the following observations in Paragraph 6.6, which reads as under:

"6.6 On perusal of records and hearing the arguments on either side, the following observations are made:

(i) In this case, FIR (Exh.A-1) was registered by police at 13.00 hours on 05.07.2014 based on message from SM/Jolarpettai that K.Nagar, Keyman reported that one female dead body age around 70 years found on down line over KM 194/02-04 between VN-VGM near Bridge No.559.

(ii) During inquest (Exh.A-2) there is no recovery of any journey ticket.

(iii) As per PMC(Exh.A-3) the head was crushed with opening of vault of skull and brain had exteriorized out.

(iv) In the OA, applicants have averred that the deceased travelled in a train from Arakkonam to Jolarpettai. In the proof affidavit, AW-1 states that her mother was going to visit A-1 who resides at Pallikonda. In the cross-examination, this witness states that her mother was traveling from Arakkonam to Gudiyatham.

(v) From the records, it seems that the incident took place at KM 194/02-04 down line between VN-VGM near bridge, No.559.

As such, inference is that the applicants had not let in any credible evidence regarding the travel or fall or bona fides of the deceased as a "passenger".

4. Based on the observations, the Tribunal formed an opinion that the travel itself was not established. The travel ticket neither produced nor retrieved. Therefore, the claimants could not able to establish that the deceased was a Bonafide passenger. Further, even regarding the travel, the witnesses have made contradictory statements. Therefore, the Tribunal formed an opinion that there is no material evidence to establish an untoward incident and further, the deceased was not a Bonafide passenger and accordingly, rejected the Claim Petition.

5. This Court also carefully gone through the DRM's Report and the said report reveals that the deceased has left her home on the morning of 05.07.2014, informing her son and grandson that she is proceeding to visit her younger brother residing at Gudiyatham and her daughter at Pallikonda respectively and boarded any one of the train towards Jolarpettai and fallen down at the said KM 194/02-04. This version itself is highly contradictory because while proceeding itself, the deceased has not clearly informed where she is exactly proceeding. Further, as per that version to reach Gudiyatham of Pallikonda, the deceased should have detrained either at Katpadi or at Ambur,

there is no necessity to travel beyond Ambur. Based on the statement of the witnesses as well as the records, the Divisional Railway Manager also raised a serious doubt about the travel of the deceased in a train.

6. This Court is of the considered opinion that a prima facie case is to be made out regarding the travel of the deceased / Injured in a train. Even non-availability of a ticket would not be a ground to reject the application. However, In the present case, even the untoward incident has not been established within the meaning of Section 123 of the Railways Act. This being the factum, this Court do not find any perversity or infirmity with reference to the findings made and the conclusion arrived.

7. Accordingly, the judgment dated 16.02.2016 passed in O.A.No.(II-U) 131 of 2015 stands confirmed and the Civil Miscellaneous Appeal in C.M.A.No.759 of 2016 stands dismissed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Railway Claims Tribunal,
Chennai Bench.

2.The General Manager,
Union of India Owning
Southern Railway, Chennai-3.

+1cc to Mr.C.V.Ramachandra Murthy, Advocate, S.R.No.16307

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.16876

AAB(CO)
CB(09/04/2021)

C.M.A.No.759 of 2016

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