

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.NO.794 OF 2016

Kalpana .. Appellant/Applicant

vs.

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

2. M.Palani .. Respondents/Respondents

PRAYER :

Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act, 54 of 1987, against the order dated 12.01.2016 passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U).No.71 of 2015.

For Appellant : Mr.T.Raja Mohan

For Respondent : Mr.S.R.Sundaram for R1
R2-No such person

J U D G M E N T

The Judgment and Decree dated 12.01.2016 passed in O.A. (II-U).No.71 of 2015 is under challenge in the present Civil Miscellaneous Appeal.

2. The claimant is the appellant and the claim petition was filed under Section 16 of the Railways Act seeking compensation based on the facts that the deceased had purchased monthly season ticket for travel between Thiruvallur and Hindu College Railway Stations valid for the period from 17.07.2014 to 16.08.2014. The claimant came to know from the Police Authorities that on 01.08.2014, the deceased while returning to Thiruvallur, when the train was nearing Thirunindravur Railway Station due to rush, speed and jerk of the train, he accidentally fell down, hit by post and crushed to the death at

the place of occurrence. The F.I.R. Was lodged by Station Master, Thiruvallur and a case was registered at Thiruvallur Railway Police Station in Crime No.272 of 2014 dated 01.08.2014. The inquest was conducted by the Sub-Inspector of Police, Thiruvallur. It was held that the deceased died due to the injuries suffered in the accidental fall from the train.

3. The Railway Tribunal adjudicated the issues with reference to the documents and evidences made available. The Railway Tribunal formed an opinion that the nature of the injuries sustained shows that it is not a mere fall from the train, but his head was hit by great force. Considering the nature of injury, the Railway Tribunal formed an opinion that there is a possibility of hit in a post and therefore, the untoward incident occurred due to the criminal negligence on the part of the deceased. Thus, the exclusion clause is to be invoked. Accordingly, the application was rejected. The Railway Tribunal gone into the nature of the injuries recorded in the Divisional Railway Manager's report and analyzed the possibility of hit in an accident and arrived a conclusion that the untoward incident occurred due to the criminal negligence on the part of the deceased.

4. The learned counsel appearing for the appellant made a submission that even the case of the appellant is that the accident occurred due to hit in a railway post and severe head injuries sustained by the deceased. When these facts are found both in the inquest report, F.I.R as well as in the Divisional Railway Manager's report, there is no reason for the Tribunal to reject the claim petition.

5. The learned counsel appearing for the respondent/Railway relying the findings of the Railway Tribunal, made a submission that once the criminal negligence is established, then the case falls under the exclusion clause. Therefore, there is no infirmity as such in respect of the decision taken by the Railway for dismissal of the claim petition. The Railway Tribunal elaborately considered the nature of the accident and the manner, in which, the injuries caused to the deceased. Thus, there is no reason to interfere with the judgment. Accordingly, the appeal is to be dismissed.

6. The Inquest report reveals that the deceased had fallen down and hit in a post and sustained serious head injuries and died on the spot. Even as per the Post-mortem, this Court is able to find out that the deceased sustained serious head injuries and the Divisional Railway Manager report reveals that the discussion of evidence collected by the Railway Police Force. A travel in a train by the deceased was admitted. He was holding a valid travel ticket as he was a pass-holder. The

evidence collected by the Railway Police Force reveals that the deceased had fallen down from the running train, when he was traveling in EMU Train. However, while falling down, the deceased hit by a post and sustained serious head injuries. Thus, the Divisional Railway Manager report concluded by stating that " the deceased had traveled in EMU Train, while the train was entering into platform No.2 at T1 Railway Station on down slow line, before stopping the train at T1 the deceased might have hit on the pillar of the FOB/TI when he was not board due to over crowd in the door ways, had fallen down from the train on the off side and his head cut with severe injuries and died at the spot. Moreover, any foul play in the busiest station is totally ruled out". The enquiry conducted by the Railway Authorities had not suggested about any criminal act of the deceased person. Even there is no whisper about negligence. Contrarily, the report states that "when he was on board due to over crowd in the door ways, had fallen down from the train". Thus, it is made clear that at the time of the travel of the deceased, the train was overcrowded in the doorways and he had accidentally fallen down. Thus, the findings of the Railway Tribunal that the untoward incident occurred due to the criminal negligence is not found even in the report filed by the SRO. In the absence of any material to establish that the untoward incident occurred due to the criminal act of the deceased, there is no reason to deny compensation. Even in case of allegation of criminal negligence, it is to be verified whether such negligence is falling under the exclusion clause enumerated under Section 124(b) of the Railways Act. If the negligence is not falling any one of the exclusion clause in the Statute, then the Court is bound to grant compensation as mere negligence or carelessness alone cannot be a ground for denying compensation under the provisions of the Act.

7. In the present case, the appellant could not able to establish that the untoward incident occurred and a valid travel ticket was produced. The inquest report, F.I.R as well as the Divisional Railway Manager's report reveals that the accident occurred due to overcrowd in the doorways. The deceased had accidentally fallen down, while the train was entering into platform No.2 at T1 Railway Station on down slow line. Thus, this Court is of the opinion that the findings of the Railway Tribunal that the untoward incident occurred due to the criminal negligence are incorrect and not supported with any documents. Contrarily, the enquiry report of the Railway Department itself reveals that it is a case of fallen down accidentally from the running train. There is a possibility of hit on the pillar of the FOB/TI, when the deceased was on board due to overcrowd in the doorways. This being the findings, there is no reason to deny compensation to the appellant. Accordingly, the judgment dated 12.01.2016 passed in O.A.(II-U).No.71 of 2015 is set aside

and consequently, the Civil Miscellaneous Appeal stands allowed.

8. The appellant is entitled for 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 passing of the award. The respondent/Railway is directed to deposit the entire award amount with accrued interest before the Railway Claims Tribunal, Chennai Bench within a period of 12 weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the entire award amount by filing an appropriate application and the payments are to be made through RTGS. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssb

To

1. Railway Claims Tribunal,
Chennai Bench
2. The Union of India owning
Through its General Manager,
Southern Railway,
Chennai-600 003.

+2cc to Mr.T.Raja Mohan, Advocate, S.R.No.19266

C.M.A.No.794 of 2016

NR(CO)
CS/21/04/2021