

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.02.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.1920 of 2014

and

M.P.No.1 of 2014

The Union of India Owning,
Southern Railway,
Rep. by its General Manager,
Chennai.

.. Appellant

Vs.

1.T.Rukmani
2.T.Manjula
3.T.Chandrashekar Raju

.. Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987, praying to set aside the order made in O.A.(II-U)No.177 of 2013 on the file of the Railway Claims Tribunal, Chennai dated 09.04.2014.

For Appellant : Mr.M.Vijayanand
Additional Standing Counsel

For Respondents: No appearance

J U D G M E N T

Appellant herein is the respondent in O.A(II-U).No.177 of 2013 filed by the respondents / applicants before the Railway Claims Tribunal, Chennai Bench, who claiming compensation for the fatal death of deceased 'Thyagarajan', while he had travelled in the train accidentally fallen down and died on 29.09.2011.

2. The Railway Authority has also contested the case.

3. After full trial, the Tribunal has not accepted the defence taken by the railway and decreed a sum of Rs.4,00,000/- as compensation in favour of the respondents / petitioners. Aggrieved by the same, the railway preferred this appeal before this Court.

4. Point for consideration:

(i) whether the Tribunal was error in holding that the Railway Authority are liable to pay the compensation "Union of India Vs. Prabhakaran Vijaya Kumar and others" reported in (2008) 4 MLJ 323 (SC) ?

(ii) whether any untoward incident as defined under Section 123 © (2) of the Railways Act, 1989 Railways Act, 1989 occurred to the deceased G.Thyagarajan, S/o.late Bairaraj, who was a bona fide passenger while travelling in any one of the train before 9.00 a.m., on 30.09.2011 between Tiruvalangadu and Mosur Railway Stations at Ks.58/18-58/18A upline, sustained injuries and died at the spot?

(iii) whether the applicants are entitled for the compensation as claimed and other relief if any?

5. To prove the facts of the case, that the deceased G.Thyagarajan along with his wife / 1st respondent went to the Sapthagiri hospital on 26.09.2011 and they were boarded in Brindavan Express on 29.09.2011, when the train reached at Katpadi station, the deceased got down from the train to fetch water and before he boarded the train, it had started and his wife alone reached Chennai and informed the Railway Police. Thereafter, the respondents came to know on 30.09.2011 before 9.00 a.m., the deceased fallen upline between Tiruvalangadu and Mosur Railway Stations. while travelling in any one of the train by losing his balance, sustained grievous injuries and died at the spot. The respondents claimed that the deceased had possessed second class free pass No.E 725407. Hence they sought for compensation before the Railway Tribunal.

6. The Railway Authorities had raised an objection with regard to the compensation awarded by the Tribunal. The main objection raised by the Railway Authorities is that without appreciating the mandatory investigation report of the Divisional Railway Manager, the Court below erroneously fixed the liability on the Railway.

7. Per contra, the learned counsel for the respondents argued that the wife of the deceased who had travelled with him. On that day, he was examined as P.W.1 and the documents, Exh.P.1 to Exh.P.10 were marked before the Tribunal, and the respondents prima facie proved their claim. The Tribunal has rightly appreciated the evidence and facts, and awarded the claim. So they prayed to dismiss the appeal as no merits.

8. On perusal of the records, it clearly proves that immediately came to know about the incident, the FIR was lodged and thereafter, investigation was conducted and all the documents were produced on the side of the respondents. But, the Railway Authorities relied the Divisional Railway Manager's report dated 22.01.2014 which was prepared long after the accident occurred and there is no contra evidence on the side of the respondents before the Tribunal. According to Railway, G.Thyagarajan died due to self inflicted injuries, but during the Chief-examination, the R.W.1 admits that the deceased was having a travel pass and also ID and after his enquiry he came to know that the deceased had travelled. The wife of the deceased also enquired. So the evidence of R.W.1 itself proves that the Railway Authorities admit that the travel of the deceased on that day. Infact, his wife also accompanied him upto Katpadi Railway Station.

9. Considering the facts and circumstances and the following authorities relied on,

(i) "Jameela and others v. Union of India reported in AIR 2020 SC 3705, held that the fact that he was standing at open doors of compartment of running train may be negligent act or even rash act, but it is certainly not criminal act and negligence of passenger does not have effect on liability of railways."

(ii) Union of India Vs. Prabhakaran Vijaya Kumar and others" reported in (2008) 4 MLJ 323 (SC)" held that Section 124 lays down strict liability or no fault liability in case of railway accidents and if a case comes within the purview of Section 124-A, it is wholly irrelevant as to who was at fault." are also squarely applicable to the facts of the case.

10. Based upon all the facts and circumstances, the Tribunal has rightly awarded the compensation in favour of the respondents herein. But the Railway Authority has not proved that the deceased died due to his own negligence. Hence, the order passed by the Railway Claims Tribunal, Chennai Bench, is

confirmed. Accordingly, this Civil Miscellaneous Appeal is dismissed. Hence, the appellant is directed to deposit the award amount, if not already deposited, after 30 days from the date of accident till the deposit of amount at the rate of 9 % within a period of four weeks from the date of receipt of a copy of the judgment. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Railway Claims Tribunal,
Chennai.
- 2.The General Manager,
The Union of India Owning
Southern Railways, Chennai.
- 3.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.M.Vijay Anand Advocate SR.11376

C.M.A.No.1920 of 2014
and
M.P.No.1 of 2014

AD(CO)
CB(18/03/2021)

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