

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2946 of 2014
and
M.P.No.1 of 2014

The Union of India Owning
Southern Railway
Rep.by its General Manager,
Park Town,
Madras – 600 003.

...Appellant

Vs.

R.Vasanth Raj(aged 15 years)
Minor rep.by father and Guardian
A.Rajkumar,
No.9/5, Pillaiyar Koil Street,
Kidangal,
Tindivanam – 604 001.

..Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal, Madras Bench, against judgment passed by the Railway Claims Tribunal, Madras Bench dated 01.07.2014 in O.A.(II-U) 322 of 2013.

For Appellant : M/s.T.P.Savitha

For Respondent : Mr.T.RajaMohan

J U D G M E N T

The judgment dated 01.07.2014 passed in O.A.(II-U) 322 of 2013 is under challenge in the present Civil Miscellaneous Appeal.

2. The respondent filed an application seeking compensation under Section 16 of the Railways Act on the ground that the applicant is a resident of Kidangal in Tindivanam. After attending a marriage of a relative at Chennai, the applicant along with his parents, in order to return to Tindivanam, on 07.06.2013 travelled in Pondicherry passenger train. When the said train was entering into platform at Tindivanam Railway Station, the applicant moved towards the door and due to push and pull by the other passengers, he accidentally slipped and fell into the gap between the train and the platform, suffered crush injury causing amputation of both legs below knee. Immediately, he was shifted on 07.06.2013 and treatment given at Government Hospital, Tindivanam. However, next day i.e., on 08.06.2013, he was referred for further treatment at Ramachandra Hospital at Porur near Chennai and thereafter, on the same day, he was shifted and admitted as inpatient at Stanley Medical College Hospital, Chennai – 1. He underwent amputation surgery on 08.06.2013 and discharged after two months on 08.08.2013.

The second class combined ticket purchased by father of the applicant, was possessed by the applicant and the same was lost during the time when the injured applicant was transported to hospital.

3. The learned counsel appearing on behalf of the appellant/Railways mainly contended that the Station Master provided an information, stating that injured while trespassing the Railway Track met with an accident. Therefore, the Award of the Railway Tribunal is perverse.

4. The learned counsel for the appellant reiterated that the Head Constable one Mr.I.Abdulrajak also given a statement that the injured at about 09.00 p.m by using his cell phone, carelessly crossed the Railway Track and sustained injuries. In view of the fact that it is a clear case of negligence and the injured in violation of the Railway Rules, crossed the Railway Track, he is not entitled for compensation.

5. The Tribunal considered these aspects, more specifically, the Tribunal arrived a conclusion that when the ground of “Tress Passed and injured” is taken by the Railways mainly on the ground that the Head

Constable, who was an eyewitnesses, given a statement that the injured was carelessly crossing the Railway Track, the said Head Constable has to be examined as a witness before the Railway Tribunal, enabling the other party to cross examine.

6. The learned counsel for the respondent / claimant made a submission that the statement from the Head Constable was obtained after a lapse of one year and three months from the date of accident. Therefore, the statement cannot be relied upon and further, the said Head Constable was not examined before the Tribunal. This being the factum, the Railway Tribunal has rightly rejected the ground raised by the Railways and awarded compensation.

7. The Railway Tribunal made an observation that legal presumption with regard to any of the exceptions under Section 124-A cannot be drawn merely on taking a plea – rather the exception has to be taken only on the basis of concrete evidence – either oral or documentary and in the present case, the respondent has not produced before the Tribunal Sri Abdul Rajak, HC/RPF/TMC on whose statement, the respondent has come with the above theory and in his

absence, the theory put forth by the respondent has to be rejected as not proved. Such a finding is in consonance with the law and there is no infirmity as such.

8. This Court is of the considered opinion that Section 123 of the Railways Act defines “Untoward incident” and Sub Clause 2 enumerates that “the accidental falling of any passenger from a train carrying passengers is an untoward incident”.

9. In the present case, the contention of the Railways that it is a self-inflicted injury, cannot be accepted. In view of the fact that the accident itself was established and the contention of the Railways was not proved by examining the Head Constable who had given a statement, the accident cannot be construed as self-inflicted injury. The Railway Tribunal elaborately considered all these issues and granted compensation. This Court do not find any perversity and the grounds raised deserve no merit consideration.

10. Accordingly, the judgment dated 01.07.2014 passed in O.A.(II-U) 322 of 2013 is confirmed and the Civil Miscellaneous Appeal in C.M.A.No.2946 of 2014 stands dismissed. If the amount already deposited by the appellant / Railways along with the accrued interest does not exceed the enhanced compensation amount of Rs.8,00,000/-, the appellant / Railways is directed to deposit the balance amount before the Railway Tribunal concerned, within a period of 12 weeks from the date of receipt of a copy of this judgment and on such deposit, the respondent / claimant is permitted to withdraw the entire amount by filing an appropriate application and the payments are to be made through RTGS. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

To

1. The Railway Claims Tribunal,
Madras Bench.



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S.M.SUBRAMANIAM, J.

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