IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.02.2021
CORAM

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

C.M.A.No.2972 of 2019

1.Mr.Khader Mohideen

2.Mrs.K.Nazeema ... Appellants

Vs.

The Union of India Owning,
Southern Railway, Rep by its
General Manager,
Chennai 600 003.

... Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987, against the judgment dated 03.05.2019, made in O.A.(II-U)/MAS/No.156 of 2018 by the Hon'ble Railway Claims Tribunal, Chennai Bench.

For Appellants : Mr.Sekaran.R

For Respondent : Mr.M.Vijayanand

J U D G M E N T

The judgment dated 03.05.2019, made in O.A.(II-U)/MAS/No.156 of 2018 by the Hon'ble Railway Claims Tribunal, Chennai Bench, is under challenge in the present civil miscellaneous appeal.

2. The claimants are the appellants. The claim application is filed based on the following facts:

> "The deceased was a resident of Athipattu in Thiruvallur District. He was a student of I.T.I studying at Chennai. He used to travel in EMU train between Basin Bridge and Nandiyambakkam Railway Stations. The applicants came to know from the Korukkupet Railway Police that prior to 17.55 hrs on 12.09.2017, the deceased, while travelling in any one of the EMU train, when the train was proceeding between Athipattu and Nandiyambakkam Railway Stations, due to over crowd, speed, jerk and jolt of the train, accidentally fell down from the running train, suffered grievous head injury and died at the

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> place of occurrence. It was an untoward incident. The II class ticket purchased by the deceased for his travel from Basin Bridge to Nandiyambakkam Railway Stations was said to have lost at the time of accident."

3. The respondent Railway disputed the claim petition mainly on the ground that the deceased was not a bonafide passenger. Therefore, the appellants are not entitled for any compensation. The learned counsel for the respondent made a submission that the deceased hit in a lamp post and therefore, it is a clear case of negligence and carelessness on the part of the deceased and further, he was not holding a travel ticket. Thus, the Tribunal is right in rejecting the application.

4. It is not in dispute that the accident occurred and the deceased died on account of heavy hit on the lamp post and sustained fatal injury. It is an admitted fact that the train was detained for some more time on account of the said accident. The inquest report and the final report reveals that the accident occurred and the same was established. The main ground raised by the respondent Railway is that it is an act of negligence and carelessness on the part of the deceased. The Tribunal adjudicated on the basis that the death occurred due to the negligent act of the deceased. Therefore, the claimants are not entitled for compensation.

5. The question arises whether such a negligence or carelessness on the part of the deceased would be a ground to decline compensation to the claimants. Section 124 of the Railways Act stipulates the exclusion clauses. The respondent mainly relied upon 124A(b) which stipulates that self inflicted injury is a ground to reject the compensation. Sub clause (c) states that "his own Criminal Act". Relying on the above provisions, the respondent submitted that it is a criminal negligence. Therefore, the appellants are not entitled for compensation.

6. Let us examine the scope of Section 123. Section 123 Sub Clause (2) denotes that the accidental falling of any passenger from a train carrying passengers, however it is not a falling from a train. It is an untoward accident and the untoward accident occurred on account of criminal negligence on the part of the deceased is the contention raised on behalf of the respondent railways.

7. The Courts have repeatedly held that mere negligence or carelessness are insufficient to decline compensation to the victims. If it is a criminal negligence, the criminal law jurisprudence requires "mens rea". In the absence of any

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intention on the part of the deceased, the Court cannot arrive a conclusion that it is a criminal negligence. Thus, unintentional negligence or carelessness of the passenger would not be a ground to deny compensation to the claimants. Only if the railways are able to establish that there is a criminal negligence or carelessness which requires mens rea or intention, the benefit of compensation cannot be denied at all. It is a welfare measure and the welfare legislations are to be extended with a perspective of social justice under the Constitution of India. If a passenger dies accidentally on account of certain negligence or carelessness and if the compensation is rejected, then undoubtedly, the family members would suffer even for survival in many of the cases.

8. Most of the cases, who are all travelling in unreserved coaches are poor and middle class people and may be in some cases, sole breadwinner of the family. All these factors are taken into consideration while rejecting the claim for compensation merely on the ground of negligence and carelessness. Carelessness and negligence is a common phenomena, which are all applicable to all the human beings in the world. A man or women cannot expect to behave prudently throughout his or her life or act in a manner in accordance with law all along from birth to death. Carelessness happens even for persons who are highly knowledgeable or reputed or prominent in the Society. Therefore, negligence and carelessness being a common character in the human society, mere negligence would not disentitle the claimants from getting rightful compensation.

9. Undoubtedly, the negligence may be attributed on the act of the deceased or injured, however, the Courts are bound to ensure such negligence or carelessness is intentionally done or unintentionally done. If such negligence is intentionally done, then certainly it will be construed as a criminal negligence and exclusion to ask shall be invoked. In all other cases, attribution of mere negligence or carelessness may not be a ground to disentitle the claimants from getting compensation.

10. This Court is of the considered opinion that the Railway authorities are mostly raising the ground of negligence and carelessness on the part of the passengers. This Court is bound to consider the fact that the Railway authorities are also equally responsible and accountable for not implementing the Railway laws in its letter and spirit to provide adequate protection and safety to the passengers who are all travelling in a train. Undoubtedly, the Railway department is contributing for such negligence and carelessness of the passengers. To substantiate the said point, this Court is of the opinion that the rules and regulations for the maintenance of railway coaches, number of passengers allowed to be travelled, commuters

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in the platform are not all controlled effectively and efficiently by the officials of the Railway department. Therefore, when there is a possibility of untoward incident on account of non-regulation or non-implementation of the Railway Rules, is to be construed as contributory negligence by the Railway authorities.

11. Undoubtedly, our great nation is over populated. Train commuters are innumerable. The Railway authorities may raise a ground that they are not in a position to control the crowd and they may take a stand that the travelling tickets cannot be restricted on account of huge crowd waiting for travel. When all these practical difficulties are faced by the Railway authorities as per their statement, then the Courts are equally bound to consider the contributory negligence on the part of the Railway Authorities. It is also a possibility of untoward incident within the meaning of Section 123 of the Railways Act. Thus, the over crowding if established in unreserved compartments, more specifically in express trains, then, the facts and circumstances in the entirety are to be considered for the purpose of grant of compensation.

12. The Railway being controlled by the Union of India, is bound to provide atmost safety and security to the passengers. When they practically found not possible to provide complete safety with modernized technology, in view of overcrowding of passengers and travellers, then, in straight cases where such untoward incident occurred, the Railway authorities should not deny compensation by merely raising a ground that the untoward incident occurred due to the negligence of the passengers.

13. This being the possible view to be taken by the Courts with reference to the welfare legislation and a liberal interpretation being adopted for grant of compensation to the poor victims who lost their livelihood on account of near and dear's death or sole breadwinner of the family, this Court is of the opinion that in the present case, the Railway Tribunal has not considered these practical aspects by extending a liberal interpretation of the provisions of the Railways Act for grant of compensation.

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14. The Railway Tribunal arrived a conclusion that there was no ticket produced or retrieved. The effort taken by the Railway authorities to trace out the ticket also went in vein. Thus, they arrived a conclusion that the deceased travelled without any valid travel ticket. Even such findings are based on the inference, however, the fact remains that both the parties have not established regarding the valid travel ticket. Further

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grounds considered by the Tribunal was that the deceased died on account of fallen down from the running train and a possibility of hit in lamp post because the skull of the deceased was completely broken.

15. Thus, this Court is of the opinion that the accident was established and further the deceased travelled in the train and mere effort taken by the Railways to retrieve the ticket, cannot be construed as if the Railway established that the deceased was not a bonafide passenger. The benefit of doubt in this regard must be extended in favour of the claimants and therefore, this Court has no hesitation in arriving a conclusion that the findings of the Tribunal is not in consonance with the purpose and object of the provisions for grant of compensation and accordingly, the judgment and decree dated 30.05.2019 in O.A. (II-U)/MAS/No.156 of 2018 is set aside. C.M.A.No.2972 of 2019, stands allowed. No costs.

16. The appellants are entitled for compensation of Rs.8,00,000/- 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, within a period of 12 weeks from the date of receipt of a copy of this order. The award amount is to be apportioned among the claimants as detailed hereunder:

> "The award amount is to be equally distributed between the father and mother of the deceased. The appellants are permitted to withdraw the award amount with interest by filing an appropriate application and the payments are to be made through RTGS."

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsk

To
1.The Registrar,
Railway Claims Tribunal,
Chennai.

+1cc to Mr.M.Vijayanand, Advocate SR.No. 10342

C.M.A.No.2972 of 2019

A.SK(17.03.2021)

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