

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.02.2021
CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.3060 of 2019

1.R.Prema
2.R.Sujatha
3.M.Vanitha
4.R.Prabhu

.. Appellants

vs.

Union of India,
rep.by its General Manager,
Southern Railway,
Chennai-600003.

.. Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 23(1) of Railway Claims Tribunal Act, against the order dated 12.07.2019 passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U)No.4 of 2018.

For Appellants : Mr.S.Parthasarathy

For Respondent : Mr.T.P.Savitha

O R D E R

The order dated 12.07.2019 passed in O.A.(II-U)No.4 of 2018 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 04.10.2017, night, the husband of the first appellant after finished his work at Ayanavaram, returned back to his house by train and came to Villivakkam Railway Station and purchased train ticket. He boarded EMU Train at Railway Station. When the said train reached Thirumulavyil railway station, he was getting down from the said train, at that time, the train was suddenly moving and the deceased slipped hand and accidentally fallen down from the moving train at Thirumulavyil railway station, which resulted serious head injuries and multiple injuries in all over the body. The said incident was witnessed by a local person Mr.Raja Velu, who informed the family persons. Immediately, he was taken to the Government Hospital at Kilpauk, Chennai and subsequently, he died on 22.10.2017 and the case was registered in Crime No.83 of 2017. Thereafter, the claim petition was filed.

3. The Railway Tribunal adjudicated the issues. The claim petition was rejected mainly on the ground that the deceased was not a *bona fide* passenger as the travel ticket was not found nor retrieved. However, the Tribunal made an observation that 108 ambulance records collected from the G.V.K. Emergency Management shows that the deceased was taken in 108 ambulance for treatment from the railway Station. The said documents were marked as Ex.C1 and C2 which were Ambulance Trip sheet. As per the said documents, the victim was found with head injury in a place near Thirumullaivayal Railway Station and the type of the accident was mentioned as "train traffic accident". Therefore, the Railway Tribunal found that the accident was occurred in the Railway Station. Further, the victim was taken to the hospital by 108 ambulance. It is further stated that the type of accident is train traffic accident. But, there is no other evidence to establish the manner of accident. However, the Tribunal rejected the claim petition merely on the ground that the victim was not possessing travel ticket. Therefore, he is not a *bona fide* passenger. The copy of the ticket produced by the claimants was not genuine.

4. As per the verification done by the Railways, this Court is of the considered opinion that mere non-retrieval of ticket is not a ground to reject the claim petition. Once the untoward incident is established and the accident occurred within the Railway premises and it is not falling under the exclusion clause contemplated under Section 124(A) of the Railways Act, then the claim cannot be rejected merely on the ground that the travel ticket was not retrieved nor submitted by the claimant. One can easily presume that a passenger falling down or got injured seriously, taken to a Government Hospital through ambulance and subsequently died, the travel ticket would have lost at any point of time and it may not be possible for the claimants to trace out the travel ticket and submit the same before the Railway Tribunal. Therefore, if an accident is occurred within the Railway Premises and the accident was established beyond any pale of doubt and such an accident is not falling within the ambit of exclusion clause contemplated under Section 124(A) of the Railways Act, then the benefit of doubt regarding non-availability of the travel ticket is to be extended in favour of the claimants as the compensation is a welfare legislation. When there is a doubt regarding the travel ticket, the burden of doubt must be shifted to the Railways. If the claimants are unable to submit the travel ticket, then the Railways should establish that the deceased/injured is not a *bona fide* passenger.

5. In the present case, the Railways could not able to establish that the deceased was not a *bona fide* passenger. When

the Railways have no proof to establish that the deceased/injured was not a *bona fide* passenger, then the benefit of doubt is to be extended in favour of the claimants and they are entitled for compensation under the provisions of the Act. This being the principles to be followed, in the present case, the factum regarding the accident was established and the ambulance records/Ex.C1 and C2 reveals that the victim sustained serious fatal injuries due to the train traffic accident and there is no reason for the Tribunal to reject the compensation.

6. This Court has perused the copy of the enquiry report filed by the Railway Protection Force. The enquiry report reveals that "no document is available with the Railway Officials. It wouldn't be correct to conclude that the deceased actually fell down from the train. In view of the above, they have said that the deceased was not a *bona fide* passenger and he did not lost his life due to an untoward incident". When the Railway Officials themselves are not in a position to ascertain the nature of the actual incident, then the benefit of doubt regarding the manner in which the untoward incident occurred is extended to the claimants and certainly, not in favour of the Railways. In the event of extending the benefit of doubt in favour of the Railways, the very purpose and object of the Act is defeated, the Statute being a welfare legislation. The Railways are bound to establish that the passenger, who met with an accident, was not a *bona fide* passenger. Admittedly, the Railway has no proof to establish the same. Under these circumstances, this Court is inclined to consider the appeal filed by the claimants. Accordingly, the order dated 12.07.2019 passed in O.A.(II-U)No.4 of 2018 is set aside and the Civil Miscellaneous Appeal stands allowed. No costs.

7. The appellants/claimants are entitled for a total compensation of Rs.8,00,000/- (Rupees Eight Lakhs Only) along with interest at the rate of 6% per annum from the date of 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 appellants/claimants are permitted to withdraw the award amount as apportioned hereunder:

(i) The first appellant/wife of the deceased is entitled for a sum of Rs.5,00,000/- (Rupees Five Lakhs Only)

(ii) The appellants 2 to 4 are entitled for a sum of Rs.1,00,000/- (Rupees One Lakh Only) each.

8. The appellants/claimants are permitted to withdraw the award amount with accrued interest by filing an appropriate

application before the Railway Tribunal concerned and the payments are to be made through RTGS.

Sd/-

Assistant Registrar (C.O.)

/True Copy/

Sub Assistant Registrar

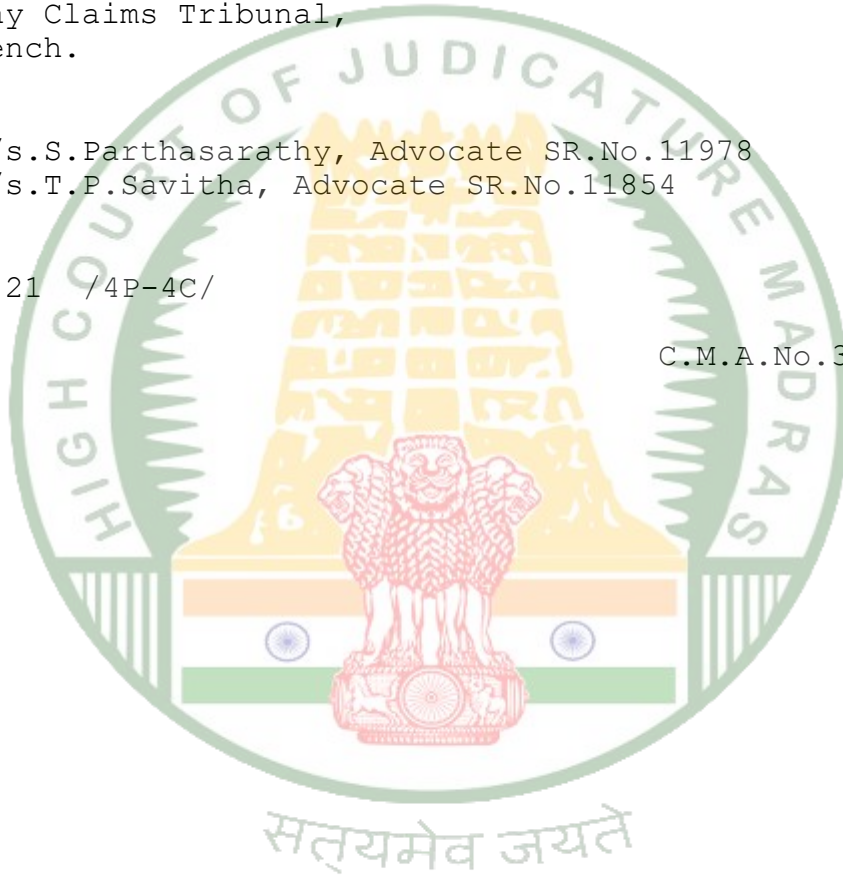
To

The Railway Claims Tribunal,
Chennai Bench.

+1cc to M/s.S.Parthasarathy, Advocate SR.No.11978
+1cc to M/s.T.P.Savitha, Advocate SR.No.11854

AKM/15.03.21 /4P-4C/

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