

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.4122 of 2019

- 1.Shobana
- 2.Srimathi (Minor)
- 3.Dhiyaneshwar (Minor)
- 4.Santha

Appellants 2 and 3 are minors and are rep.by their mother, the first appellant.

...Appellants

vs.

Union of India owning
Southern Railway,
rep.by its General Manager,
Chennai-600 003.

...Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 23 of Railway Claims Tribunal Act, against the judgment dated 25.04.2019 passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U)No.169 of 2018.

For Appellants : Mr.R.Sekaran
For Respondent : Mr.M.Vijay Anand

O R D E R

The order dated 25.04.2019 passed in O.A.(II-U)No.169 of 2018 is under challenge in the present Civil Miscellaneous Appeal.

2. The claimants are the appellants and the claim petition was filed mainly on the ground that the deceased owned a Bunk shop at Chennai and was doing business. Regularly, he used to come back to home weekly once. On a particular day, the deceased informed his wife/first appellant that he is coming from Chennai and purchased a journey ticket in Train No.12681 Chennai to Coimbatore Express and the place of the occurrence

was Katpadi Railway Station Plot form No.1 on 01.10.2017, wherein he had fallen down from a running train and sustained severe injuries and died on the spot. The F.I.R report reveals that the deceased fallen down from the running train and sustained fatal injuries. The Final report also confirms the same. More importantly, the Divisional Railway Manager's report categorically enumerates as follows:

Based on the records, it is concluded that the deceased was not a bonafide railway passenger because no traveling ticket or pass was found with the deceased in his possession while ATM card, Driving license and Samsung cell phone were recovered from the deceased during the inquest conducted by GRP/KPD. The circumstantial evidence suggests that the deceased who was traveling in T.No.12681 ex.MAS-CBE weekly train, had fallen down from the train at Katpadi PF.No.1, while trying to get down from running train in a negligent manner before the train became to complete halt at KPD station. The loco pilot also confirmed that no untoward incident took place while the loco engine was approaching KPD Station. In other way, it can be said that there was no trespass.

In view of the above, it is concluded that the deceased was not a bonafide passenger and the incident does not fall within ambit of untoward incident because he lost his life due to falling down from the train while trying to get down from running train in a negligent manner before the train became to complete halt at KPD station. Hence, the claim has no merits to be considered for compensation from Railway.

3. The Divisional Railway Manager's report submitted after conducting a detailed investigation with the Railway employees and other persons stating that the travel ticket was not retrieved from the deceased. Therefore, he is not a bona fide passenger. However, regarding the untoward incident, the report confirms that "the deceased had fallen down from the running train at Katpadi Railway Station, while trying to get down from running train in a negligent manner before the train became to complete halt at KPD Station. The loco pilot also confirmed that no untoward incident took place while the loco engine was approaching KPD Station". The said factum unambiguously portrays that the deceased had fallen down from the running train and sustained fatal injuries. However, the case of the claimants was rejected on the ground that the deceased was not a bona fide passenger as the travel ticket was not retrieved nor submitted by the appellants before the Railway Claims Tribunal. The Railway Claims Tribunal also adjudicated these facts and formed an opinion that the railway ticket was

not retrieved and therefore, the petition is liable to be rejected. The Tribunal has drawn an inference by stating that "it is possible that the deceased had been hit by a train while crossing the train. We must remember that unless the engine driver notices somebody walking on the track from a distance and who would not move away inspite of a horn, an engine driver cannot at all times notice a person crossing the track if the attempt was made from alongside the track to cross or getting close to the train at the last minute, which might not be noticed by an engine driver placed at the engine which is fairly high from the level of the track". Such an inference drawn by the Railway Tribunal is not correlating with the conclusion arrived in the Divisional Railway Manager Report. The Divisional Railway Manager report categorically states that "the loco pilot also confirmed that no untoward incident took place while the loco engine was approaching KPD Station". When such definite finding was arrived by the Divisional Railway Manager in his report, no further factual inference are need to be drawn by the Tribunal in rejecting the claim of the appellants. A factual inference can be drawn only if certain lapses are made in the report by the Divisional Railway Manager. In the present case, the Divisional Railway Manager Report speaks clearly that it is not a case of trespass. When it is the clear finding by the Divisional Railway Manager Report, then there is no reason whatsoever to draw a contra factual inference so as to decline the compensation to the victim.

4. The question arises, whether non-retrieval of travel ticket alone can be ground to reject the compensation. The Hon'ble Supreme Court of India in the case of Union of India Vs. Rina Devi in Civil Appeal No.4945 of 2015 dated 09.05.2018 also clearly states that mere non-availability of travel ticket is not a ground to dismiss the claim petition. It is to be established by the Railway that the deceased was not a bona fide passenger, then alone, exclusion clause can be invoked and not otherwise. Thus, non-availability of travel ticket per se cannot be a ground to reject the claim petition. Only if the Railways are able to prove that the deceased was not a bona fide passenger, then alone, exclusion clause contemplated under Section 124(A) can be invoked and not otherwise.

5. In the present case, the factum regarding the accident was established beyond any pale of doubt. The F.I.R report, final report, inquest report as well as the Divisional Railway Manager report reveals that the accident occurred in the platform and further it was confirmed that the untoward incident occurred not on account of any trespassed by the deceased. However, negligent would not disentitle the claimants from getting compensation under the Act. Again, this Court has considered the ground that mere negligence or carelessness of

the passenger is insufficient to decline the compensation. Negligence must be to such an extent so as to arrive a conclusion that the said negligence is a criminal case warranting exclusion clause under Section 124(A). Thus, mere negligence or carelessness cannot be a ground to deny the compensation to the victims. This being the facts and circumstances, the findings arrived by the Railway Tribunal are not in consonance with the principles and accordingly, the order dated 25.04.2019 passed in O.A.(II-U)No.169 of 2018 is set aside and Consequently, Civil Miscellaneous Appeal stands allowed. No costs.

6. The appellants 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 passing of the award. The respondent/Railway is directed to deposit the award amount with accrued interest within a period of 12 weeks from the date of receipt of a copy of this order before the Railway Tribunal concerned. On such deposit, the appellants are entitled for compensation as apportioned hereunder:

(i) the first appellant/wife of the deceased is entitled for a sum of Rs.4,00,000/- (Rupees Four Lakhs Only).

(ii) the appellants 2 and 3 are entitled for a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) each.

(iii) the fourth appellant/mother of the deceased is entitled for a sum of Rs.1,00,000/- (Rupees One Lakh Only).

7. The major claimants are permitted to withdraw their respective portion of the award amount by filing an appropriate application before the Railway Tribunal concerned and the payments are to be made through RTGS. As far as the minors share are concerned, the same is to be deposited in any one of the Nationalised Bank in an interest bearing deposit scheme till they attain the age of majority.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

ssb

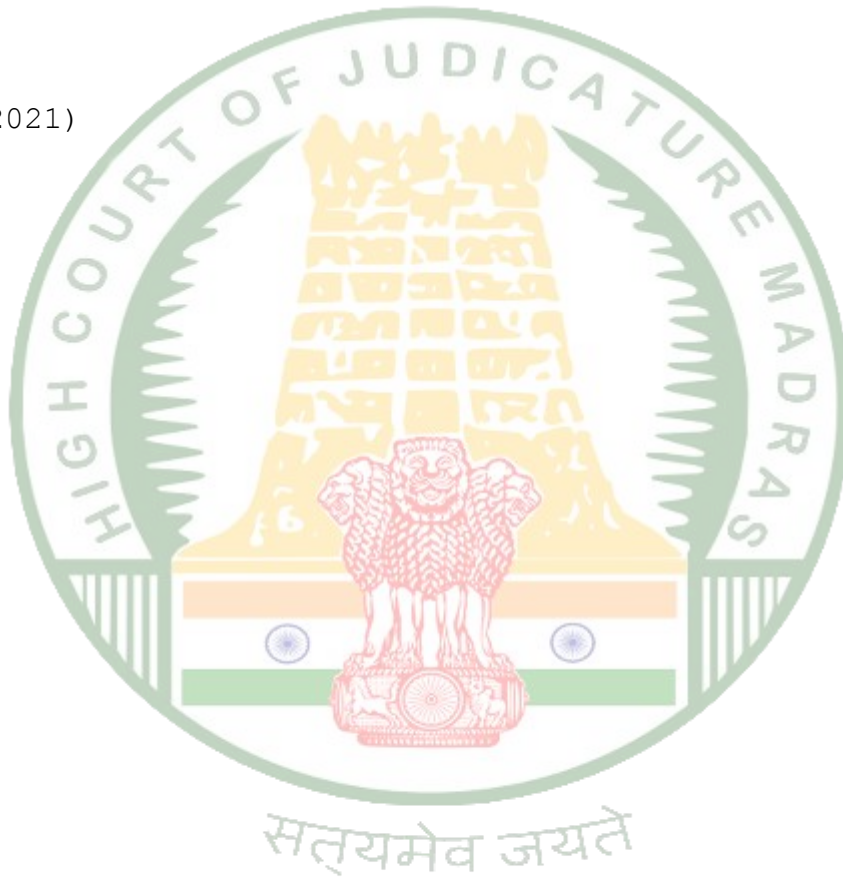
To

1.The Registrar
The Railway Claims Tribunal, Chennai Bench

+1 CC to Mr.M.Vijay Kumar, Advocate sr 12257
+1 CC to Mr.R.Sekaran, Advocate sr 13279.

C.M.A.No.4122 of 2019

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