

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No. 3488 of 2019

1.Afreen
2.K.Mohamed Ibrahim
3.M.Sahida Banu ..Appellants/Appellants

Vs

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

Appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987 against the judgment dated 25.06.2019 made in O.A.(II-U)No. 196 of 2017 on the file of Railway Claims Tribunal, Chennai.

For Appellants : Mr.R.Sekaran

For Respondent : Ms.T.P.Savitha

JUDGMENT

The judgment dated 25.06.2019 passed in O.A. No. 196 of 2017 is under challenge in the present civil miscellaneous appeal.

2. The claimants are the appellants and the claim petition was filed based on the facts narrated in the application, which reads as under:

"The deceased was a resident of Bodinayakkanur of Theni District lived with his parents at Bodinayakkanur. That on 03.12.2016 he informed his parents that he was going to Villupuram to visit a relative and left the house. The applicants came to know from the Trichy Railway Police that on 04.12.2016 the deceased, by purchasing II class Superfast

ticket bearing No.293016635 for travel from Villupuram to Dindigul while travelling in a train, prior to 09.20 hours of 05.12.2016 when the said train was proceeding between Poongudi and Kolathur Railway Stations, due to heavy rush, jerk and jolt of the train, accidentally fell down from the running train, suffered grievous injuries and died at the place of occurrence. It was an untoward incident."

3. The investigations were conducted and the Railway Claims Tribunal, based on the documents and evidence, adjudicated the issues. The Railway Claims Tribunal rejected the claim petition only on the ground that the first appellant/claimant - wife of the deceased, mutually dissolved the marriage with the deceased and, therefore, she was not the dependant as defined under Section 123(d) of the Railways Act. However, appellants 2 and 3/parents being the dependants, are entitled for compensation as defined under the Railways Act. The Railway Claims Tribunal however considered the facts and circumstances and thereafter arrived at a conclusion that the deceased was not a bonafide passenger as he was not holding a valid train ticket.

4. Learned counsel for the appellants mainly contended that the factum regarding the untoward incident was established. The nature of accident was also established through the inquest report and even in the DRM's report, which was admitted that the deceased might have travelled in the train only by sitting on foot-board. It is further stated that the deceased had fallen down from a running train due to body imbalance and the post-mortem report says that the death of the deceased caused due to multiple head injuries.

5. The Railways after investigation arrived at a conclusion that due to lethargic attitude and utmost slackness, the deceased might have lost his body balance and fallen down from the running train. However, they have clearly recorded that the untoward incident was proved but had happened due to the negligence and mistake of the passenger. This being the categorical report of the DRM, there is no reason to disbelieve the fact that the death occurred due to falling down from the running train, of course, due to the negligence on the part of the passenger.

6. This Court is of the considered opinion that mere non-availability of the ticket or the ticket could not be retrievable, cannot be ground to deny the compensation to the victim. Once the untoward incident is established and the death occurred due to falling down from a running train then the non-availability of a travel ticket alone cannot be a ground to reject the claim petition for compensation. If the

travel ticket is unable to be retrieved then the burden is to be shifted on the Railways to establish that the passenger was not a bonafide passenger. However, in the present case, the Investigating Officer/Woman Sub-Inspector, Trichy, in her deposition categorically stated that "I recovered from the body of the deceased a Railway Ticket, Lenovo Cell phone, Airtel sim card, ATM card of Indian Bank, KVP ATM card, IDBI ATM card, key of motor bike. I did not prepare any seizure of articles." Learned counsel relying on the deposition of the Investigating Officer contended that the ticket was retrieved from the body of the deceased and, therefore, the findings of the Railway Claims Tribunal are incorrect.

7. Even in the absence of retrieval of the ticket, this Court is bound to consider the other facts and circumstances and arrive at a conclusion whether the untoward incident occurred or not and the death occurred due to falling down from a running train. When both the criteria of untoward incident and falling down from a running train were established, this Court is of the opinion that the claimants are entitled for compensation. As far as the burden of proof is concerned, the Railways has not established that the deceased was not a bonafide passenger and, therefore, the benefit is to be extended in favour of the claimants.

7. Accordingly, the order dated 25.06.2019 made in O.A.No. 196 of 2017 is set aside and the civil miscellaneous appeal stands allowed. No costs.

8. The appellants 2 and 3 are entitled to Rs.8 lakhs as compensation along with the interest at the rate of 6% per annum from the date of passing of the award. The first appellant/wife is not entitled for any compensation as the marriage between the deceased and the appellant was dissolved and she was living separately. The respondent/Railways is directed to deposit the award amount with accrued interest before the Railway Claims Tribunal within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, appellants 2 and 3/parents of the deceased are entitled to each 50% share of the award amount and they are permitted to withdraw the compensation amount by filing an appropriate application before the Tribunal and the payments are to be made through RTGS.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

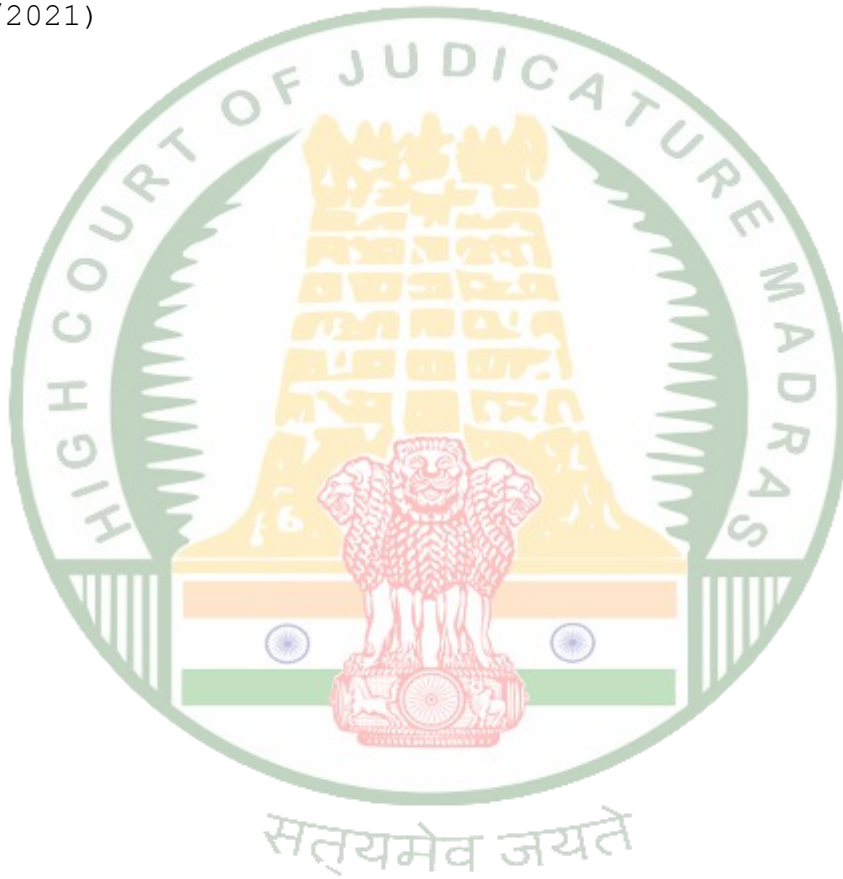
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To

1.The Presiding Officer,
Railway Claims Tribunal,
Chennai.

C.M.A.No. 3488 of 2019

AAB (CO)
GMY (08/04/2021)



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