

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1478 of 2017

1.Sarojanamma
2.R.Malika
3.S.Vijaya
4.K.Karpuram
5.T.Babu
6.G.Sankar

..Appellants/
Appellants

Vs

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

..Respondent/
Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 23(1) of the Railway Tribunal Act, 1989 against the judgment dated 16.12.2015 made in O.A.(II-U) No.227/2014 by the Railway Claims Tribunal, Chennai Bench.

For Appellants .. Mr.S.R.Sekaran

For Respondent .. Mr.C.V.Ramachandramurthy

JUDGMENT

The judgment dated 16.12.2015 passed in O.A.No.227 of 2014 by the Railway Claims Tribunal is under challenge in the present civil miscellaneous appeal.

2. The legal heirs of the deceased are the claimants. The claim application was filed on the ground that the deceased was a resident of Nerini Kandriga Village, Chittor District, Telangana State. He was suffering from Kidney disease and for taking treatment, he used to visit Narayana Hospital once in two weeks. On 06.11.2013, he left his house to go to Nellore by train. The averment of the Government Railway Police is that on 07.11.2013 when the deceased was returning by a train from Nellore to Sullurpet, due to heavy rush and jolt of the train, near Sullurpet Railway Station, he had suddenly fallen

down from the running train, suffered injuries on the back side of his head, fracture of right hand, fracture of left leg and abrasions and died on the spot.

3. In view of the said untoward incident, the appellants filed a claim petition under Section 16 of the Railways Act. The Railway Claims Tribunal adjudicated with reference to the documents and evidences and dismissed the applications mainly on the ground that the claimants have established the fact that the deceased was a bonafide passenger of the train. The Tribunal is of the opinion that the train ticket was not available with the deceased nor any such ticket was retrieved during the investigation. In the absence of production of valid ticket, the application cannot be entertained and, accordingly, it was dismissed.

4. The learned counsel for the appellant contended that the claimants filed FIR, inquest report and the post-mortem certificate, death certificate as well as the final report. The Tribunal has not considered the entire facts and circumstances led to the death of the deceased and based on the fact that the ticket was not produced by the claimants, the application was dismissed. It is contended that on some occasions, it may not be possible to retrieve the train ticket when the victim sustained grievous/fatal injuries and died on the spot. The dead body was taken away to the hospital for doing post-mortem and thereafter to the burial ground and there is every possibility that the ticket could not have been retrieved during that time. Thus, in the absence of ticket, it is the duty of the Railways to establish that the deceased was not a bonafide passenger. The burden of proof should be shifted to the Railways. Under those circumstances, contrarily, the Tribunal cannot simply reject the application on the fact that the applicants have not produced the travel ticket.

5. Undoubtedly, the onus lies on the applicant at the first instance, however, if there are other facts and circumstances leading to such untoward incident and if the ticket is not able to be retrieved, the Railway must establish that the deceased/victim, is not a bonafide passenger travelled in the train.

6. As far as the documents produced in the present appeal is concerned, the FIR reveals that the death occurred and the Railway Police, Gudur, registered the FIR. The inquest report also states that the deceased, who was an unknown male person at that point of time has accidentally fallen down from an unknown running train at KM 50/15-13 @ SPE Railway Station yard. On 07.11.2013 evening at about 16.30 hrs, the Government Railway Police received death message. The inquest report states that there are fatal injuries on the back side of the head, fracture injuries on the head and both legs and other injuries.

7. Beyond the inquest report, the final report filed by the Sub Inspector of Police, Government Railway Police, Gudur, reads as under:

"Investigation discloses that the deceased Talluri Gopal Reddy, aged 75 years is native of Nerini Kandriga Village of Buchinaidukandriga Mandal, Chittor district. He has been suffering from kidney disease since 9 months. In this connection he used to visit Narayana Hospital, Nellore twice in a week for rendering treatment. Accordingly on 06.11.2013 evening he left his house for Nellore. On 7.11.2013 while in return journey i.e., from Nellore to Sullurpet the deceased was accidentally fallen down from running train, received fatal injuries and died on the spot. As per the statements of the blood relatives there is no foul play was suspected regarding the death of the deceased. Thereafter IRP, Nellore have verified the investigation on 15.03.2014 and found that it is on correct lines and instructed me to submit detailed report to DSRP, Nellore for orders to refer the case as AD. Accordingly, I have submitted detailed report to DSRP, Nellore through IRP, Nellore for orders. The kind officer permitted to refer the case as AD vide C.No:85/DIS/DSRP-N/2014, dated 29.03.2014."

8. When the final report after investigation reveals that there is no contradiction or discrepancy and the factum regarding the death in train was established then the burden of proof to be shifted on the Railway to establish whether the passenger was a bonafide passenger or not. Thus, the factum regarding the accident was established, the investigation reveals that the deceased was travelling in a train and fallen down and died on the spot and the only impediment was that the travel ticket was not retrieved. In such circumstances, this Court has repeatedly held that the burden lies on the Railways to establish that the passenger was not a bonafide passenger. In the present case, the Railway Claims Tribunal, fixed the onus on the applicants and based on the fact that the travel ticket was not produced, the claim petition was dismissed.

9. This Court is of the considered opinion that based on the final report and considering the nature of injuries sustained, one can able to reasonably arrive at a conclusion that the death occurred in a train accident.

10. This being the factum, the Tribunal, has committed an error in shifting the burden on the applicants instead of the Railways in view of the fact that the preliminary factum regarding the accident and death falling from the train was established through the investigation report. This being the factum, this Court, has no hesitation in arriving at a conclusion that the Tribunal has committed perversity in

fixing the burden on the applicants instead of shifting the burden on the Railways to prove that the passenger was not a bonafide passenger.

11. Accordingly, the judgment dated 16.12.2015 passed in O.A.No. 227 of 2014 is set aside and consequently C.M.A.No. 1478 of 2017 is allowed. No costs.

12. The appellants/claimants are entitled for a compensation of Rs.6,49,000/- inclusive of interest. However, an amendment was issued on 01.01.2017 fixing the compensation as Rs.8 lakhs. Thus, the appellants are entitled for a total compensation of Rs. 8 lakhs along with interest at the rate of 6% per annum from the date of passing of the order in the present appeal. The compensation is apportioned as (i) the first appellant/claimant is entitled for a compensation of Rs. 3 lakhs and (ii) all the other appellants/claimants are entitled for a sum of Rs. 1 lakhs each.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssm

To

1.The General Manager,
Union of India Owing,
Southern Railway,
Chennai - 600 003.

2.The Railway Claims Tribunal,
Chennai Bench.

+1cc to Mr.CV. RAMACHANDRAMURTHY, Advocate, S.R.No.8919

KV(CO)
SM/03/03/2021

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