

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 15.03.2021
CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No. 1529 of 2017

M.Venkateswaralu

.. Appellant/Appellant

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, against the judgment dated 08.10.2015 passed in O.A(II-U).No.214 of 2014 on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellant : Mr.M.Selvam

For Respondent : Mr.M.Vijay Anand

JUDGMENT

The judgment dated 08.10.2015 passed in O.A.No. 214 of 2014 is under challenge in the present civil miscellaneous appeal.

2. The claimant is the appellant and the claim petition was filed on the ground that on 12.09.2013 prior to 15.00 hrs while the deceased was travelling in a train which was proceeding towards Chennai had accidentally fallen down from the running train at Villivakkam yard, between KM 09/29A- 10/1A up fast line nearby railway track thereby head was cracked, sustained fracture of both hands, right leg cut off below thigh, fracture of left leg, ribs were broken and right chest toured and died at the place of accident. Even it is not clarified in which train, the deceased travelled.

3. With these facts, the Tribunal adjudicated the issues based on the documents. In the documents that were produced, the Tribunal made a categorical finding that none of the parties either from the applicant's side or from the respondent side witnessed the incident and no eye-witness has been produced. The claimants were also not in a position to establish where the deceased was travelling in a train and the accident occurred due

to falling down. In view of the vagueness in the entire facts, the Railway Claims Tribunal formed an opinion and made an observation as narrated hereunder:

"6.6 On perusal of records and hearing the arguments on either side, the following observations are made:

(i) In this case, FIR (Exh.A-2) was registered by police based on message from SM/Perambur on 12.09.2013 at 15.10 hours stating public reported that a male body aged around 50 years lying between KM 10/1A and 9/29A on Up Fast Line at Villivakkam yard.

(ii) During inquest (Exh.A-3) there is no recovery of any journey ticket.

(iii) The applicant in the OA states that on 12.09.2013 prior to 15.00 hrs deceased travelled in a train which was proceeding towards Chennai and fell down at Villivakkam yard at KM 09/29-A10/1A Up fast line without mentioning the originating station.

(iv) In the affidavit, applicant says that on 11.09.13 at night his father informed him over phone that he was coming to Chennai in PINAKINI Express (typed as Dadar Express and altered in ink as Pinaki Express) and will get down at Perambur.

(v) During cross-examination, AW-1 stated that deceased travelled from Ongole to Chennai, by Pinakini Express.

(vi) Respondent submitted the time table pertaining to Pinakini Express which pass through Ongole towards Chennai Central in North eastern line without even touching Villivakkam, the place of incident which in south west line similarly while Dadar Express passes through Villivakkam, it does not pass through Ongole.

(vii) In the OA, the applicant merely stated that the journey ticket was lost without even indicating the originating and destination stations.

(viii) During cross-examination, AW-1 stated that he did not know whether the deceased purchased ticket on the day for his travel.

(ix) In the inquest as well as in the final reports, there is no mention of any originating or destination points for the alleged journey of the deceased and there is only a vague observation on 12.09.2013 prior to 15 hours deceased travelled in some train proceeding

towards Chennai and fell down at Villivakkam yard.

(x) In the annexure available in DRM report, Venkateswaralu (AW-1) in his statement mentions that he received a call from Perambur Railway Police around 4 p.m. on 12.09.2013 who informed him that a person was hit by train and admitted in Kilpauk Govt. Hospital and they found the AW1 name and phone number in his shirt pocket.

(xi) In the DRM report, it is pointed out that the incident spot is where usually so many commuters and passengers are trespassing through railway track from Villivakkam Railway Station to North side and south side to north side and claimant's house was located near the above incident spot.

(xii) During cross-examination, AW-1 stated that the track is located in the northern side within half km from his residence. As such, inference is that the applicant had not let in any credible evidence regarding the travel or fall or bona fides of the deceased as a 'passenger'."

4. Even, it was not established that the deceased was a passenger. Under these circumstances, the Tribunal could not be able to consider the case of the appellant for grant of compensation, more specifically, the untoward incident that was established and it was further not established that the deceased was a bona fide passenger and the travel was not established. In view of the contradictions in entirety, the claim petition was dismissed.

5. This Court do not find any acceptable ground for the purpose of interfering with the findings arrived at by the Tribunal, and, accordingly, the judgment dated 08.10.2015 passed in O.A.No. 214 of 2014 stands confirmed and the civil miscellaneous appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ssm

To

The Presiding Officer,
Railway Claims Tribunal,
Chennai.

+1cc to Mr.M.Vijay Anand, Advocate, S.R.No.16448.
+1cc to Mr.M.Selvam, Advocate, S.R.No.16779.

C.M.A.No. 1529 of 2017

GMI (CO)
CSR 17.04.2021



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