

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No. 1543 of 2017

1.P.Paldinakaran @ Raja

2.P.Santhi

.. Appellants

Vs

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

.. Respondent

Appeal filed under Section 23(1) of the Railway Claims Tribunal Act, 1989 against the judgment dated 08.10.2015 made in O.A.No.316 of 2014 on the file of the Railway Tribunal, Chennai.

For Appellants : Mr.M.Selvam

For Respondent : Ms.T.P.Savitha

JUDGMENT

The order dated 08.10.2015 passed in O.A.No. 316 of 2014 is under challenge in the present civil miscellaneous appeal.

2. The claimants before the Tribunal are the appellants herein and the claim petition was filed on the ground that the son of the appellants late Arunkumar, who is the deceased started from house on 13.11.2013 for going to his school and was travelling from Arakkonam through Train No.16085, Arakonam to Jolarpettai Express. Due to over crowd and sudden jerk, the deceased had fallen down from the running train and had sustained injuries and died on the spot.

3. The Railways defended the case by stating that it is a case of negligence and the deceased was ran-over and hit, and, therefore, the claimants are not entitled for compensation.

4. The Tribunal adjudicated the issues and rejected the claim mainly on the ground that the deceased was not a bonafide passenger and it was not an untoward incident as defined under Section 123(2) (c) of the Railways Act, 1989.

5. Learned counsel for the appellants states that the deceased died while boarding the moving train, and, therefore, it is an untoward incident and further drawn the attention of the Court that he was a regular passenger holding a valid pass and, therefore, he was a bonafide passenger.

6. As far as the findings of the Railway Claims Tribunal, regarding the untoward incident is concerned, Section 123 sub-clause (c) defines the untoward incident. Section 123(2) contemplates that "the accident falling of any passenger from a train carrying passengers is an untoward incident". While boarding the train, if a passenger falling down then it is to be construed as accidentally falling within the meaning of Section 123(2). Thus, in the present case, it is to be considered as an untoward incident.

7. Learned counsel for the respondent/Railways reiterated that it is a case of trespass and run-over, and, therefore, it would not fall under the definition of untoward incident.

8. However, the said factum was not established before the Tribunal. As per the recording of the Station Master on 03.01.2015, the passengers were shouting and the guard applied the emergency brake. Thus, the information provided by the Station Master, can be relied upon in view of the fact that the Station Master has recorded that the passengers were shouting and the guard applied the emergency brake. Therefore, it is a case where there is possibility of boarding in a running train or fallen down from the running train. It is further clarified in the said letter that the deceased made an attempt to board the train, while doing so, he had fallen down and sustained injuries. Thus, the contention of the Railways that it is a case of trespass is running counter to the statement of the Station Master, Jolarpettai dated 03.01.2015. For all purposes, the statement of the Station Master can be safely relied upon as it seems to be an information provided with reference to the untoward incident occurred. As far as the DRM is concerned, the findings revealed that the deceased was not a bonafide passenger. However, the enquiry revealed that the deceased tried to enter in a moving train Train No. 16085 on platform no.2 from up line the victim approached from off side of the platform to entrain the train in running while entraining he lost the balance and went away inside of the train wheel of south side direction amputated below the hip portion in to two parts at KM No 68/27-31 in front of the power cabin Arakkonam and profuse blood died on the spot and had died purely due to his own careless and negligent job by entraining the moving train from off side of the platform.

9. Thus, it is clear that it is a case of falling down from a running train. Hence, it is an untoward incident for all purposes and as far as non-availability of travel ticket is concerned, once the factum regarding the untoward incident was established and the ticket was not available then the onus lies on the Railways to attribute that the deceased was not a bonafide passenger. In the present case, the Railways was not able to establish that the deceased was not a bonafide passenger. Thus, this Court is of the opinion that the claimants are entitled for compensation.

10. Accordingly, the order dated 08.10.2015, passed in O.A.No.316 of 2014 is set aside and the civil miscellaneous appeal stands allowed. No costs.

11. The appellants/claimants are entitled for a compensation of Rs.8 lakh along with the interest at the rate of 6% per annum from the date of passing of the award. The respondent/Railways is directed to deposit the compensation with accrued interest within a period of twelve weeks from the date of receipt of a copy of this judgment before the Railway Claims Tribunal, Chennai Bench. The appellants are entitled for 50% each of the award amount and they are permitted to withdraw with the same by filing an appropriate application before the Tribunal and the payments are to be made through RTGS.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

SSM

To

The Presiding Officer,
Railway Claims Tribunal,
Chennai.

+1cc to M/s.T.P.Savitha, Advocate, S.R.No.15295
+1cc to Mr.M.Selvam, Advocate, S.R.No.14983

C.M.A.No. 1543 of 2017

VSN-II (CO)
TE (29/04/2021)