

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 15.03.2021
CORAM
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
C.M.A.No. 1588 of 2017

1.E.Veeramuthu
2.V.Bharathi

..Appellants/Applicants

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, against the judgment dated 16.09.2015 made in O.A. (II-U) 108/2014 on the file of the Railway Claims Tribunal, Chennai.

For Appellants : Mr.M.Selvam

For Respondent : Mr.M.Vijay Anand

JUDGMENT

The judgment dated 16.09.2015 passed in O.A.(II-U)No. 108 of 2014 is under challenge in the present civil miscellaneous appeal.

2. The claimants are the appellants and the appeal is filed mainly on the ground, which reads as under:

"On 25.06.2013 prior to 09.15 hrs while the deceased was travelling in a train towards Chennai, due to over crowd had accidentally fallen down from the running train between Perambur and Viyasarpadi Railway Stations at Km 04/38-40 up slow line, thereby sustained head of skull smashed, brain comes out, the right hand fractured with shoulder, the left hand cut off with shoulder and laceration injuries all over the body and died at the place of accident."

3. The Railway Claims Tribunal adjudicated the issues with reference to the documents and evidence produced by the respective parties. It is pertinent to note that the respondent/Railways denied the fact that the deceased was a passenger at all. No belongings except LG cell phone and ID card were found nearby the body of the deceased at the time of inquest. The investigating officer has not conducted the investigation as per Section 174 Cr.P.C. and on seeing the nature of the injury mentioned in the inquest report, the respondent formed an opinion that it was a case of suicide and the DRM's Report also states that on 25.06.2013 at about 09.20 hours, GRP/PER received a message from Sri.M.G.Sekar, SM/PER as reported by SM/MMC that travelling public informed a male body aged about 25 years was lying on Up slow line between PER-VPY at KM 4/40-38. GPR/PER visited the spot and found that the deceased person had sustained head of skull smashed, brain comes out, the right hand fractured with shoulder, the left hand cut off with shoulder and laceration all over the body. No ticket was retrieved. There is no evidence to establish that the deceased was a passenger and fallen down from a running train. Thus, the Railway Claims Tribunal formed an opinion and made observations, which are extracted hereunder:

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

(i) In this case, FIR (Exh.A-1) was registered on 25.06.2013 at 09.20 hours on receipt of information by SM/MMC based on information through public about a dead body lying at Up slow line between PER-VPY at KM 4/40-88.

(ii) As per inquest (Exh-A2) only a cell phone and I.D. card were recovered at the scene of incident and there was no recovery of any journey ticket.

(iii) In the O.A. the appellants have stated that the deceased was travelling in a train "towards chennai". There is no indication as to originating point of alleged journey by the deceased.

(iv) In the inquest report as well as the final report (Exh.A-4) there is no mention of the originating point of the alleged journey of the deceased.

(v) Only in the affidavit filed on 07.09.2015 and in the deposition, A.W.1 has claimed that he had dropped the deceased at Perambur Railway Station which were not at all recorded in the police investigation reports.

(vi) In the affidavit, AW-1 had stated that deceased had told him that he had to attend a

company meeting at Guindy along with co-employer Karthic on 25.06.2013. However, there is no reference to the said Karthic in the inquest and in the final report of police.

(vii) During cross-examination, AW-1 stated that said co-worker Karthic did not accompany him. AW-1 during cross-examination stated that he did not know whether the deceased purchased ticket or not.

As such, inference is that the applicants had not let in any credible evidence to establish that the deceased was a bona fide passenger or his travel and fall."

4. Based on the observations made above, the Railway Claims Tribunal arrived at a conclusion that the claimants could not be able to establish that the deceased was travelling in a train and he was a bonafide passenger. Even the travel was not established. The nature of the injuries were considered and it was found that in the event of falling down from a running train, such injuries are improbable. Considering the facts and circumstances, the Railway Claims Tribunal arrived at a conclusion that it is not a fit case for grant of compensation.

5. This Court is of the considered opinion that undoubtedly the compensation is granted as a welfare measure. However, prima facie, case is to be established regarding the travel in the train and in the absence of any travel ticket, Courts have held that an inference is to be drawn and further the burden is to be shifted on the Railways. However, if the basic factors regarding the travel of the deceased/injured is not established then it would be difficult for the Courts to grant compensation. Based on the vague facts and circumstances, compensation cannot be awarded. The basic factors are to be established by the claimants, who approached the Tribunal for compensation. When these basic factors are not established, the Tribunal has rightly arrived at a conclusion and, therefore, this Court is of the considered opinion that there is no infirmity or perversity as such.

6. Accordingly, the judgment dated 16.09.2015 passed in O.A.(II-U)No. 108 of 2014 stands confirmed and the civil miscellaneous appeal is dismissed. No costs.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

ssm

To

1.The General Manager,
Southern Railway,
Chennai- 600 003.

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

+1 cc to M/s.M.Selvam Advocate srl6782

+1 cc to M/s.M.Vijay Anand Advocate srl6447

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