

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2426 of 2017

1.S.Pilavendran

2.P.Amalorpavam

... 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 of the Railway Claims Tribunal Act, 1987, against the judgment dated 29.01.2016 passed in O.A. (II-U).No.189 of 2014 on the file of Railway Claims Tribunal, Chennai Bench.

For Appellants : M.Selvam

For Respondent : Mr.M.Vijay Anand

J U D G M E N T

The judgment dated 29.01.2016 passed by the learned Railway Claims Tribunal in O.A. (II-U).No.189 of 2014, is under challenge in the present Civil Miscellaneous Appeal.

2. The claimants are the parents and the claim petition was filed under Section 16 of the Railway Claims Tribunal Act, 1987, seeking compensation on the ground that on 10.12.2013, prior to 23.15 hrs, in order to go to his company at Ambattur, while the deceased was travelling in the train towards Avadi, had accidentally fallen down from the running train between Patravakkam and Ambattur Railway Stations at KM 14/06-08 down slow line, sustained grievous injuries on the head, skull smashed, injury on the right jaw, right thigh and died at the place of accident.

3. The claim petition was filed before the Railway Claims Tribunal. The Railway Claims Tribunal adjudicated the issues

with reference to the documents and evidences produced by the respective parties. The deposition of the witnesses were considered by the Railway Claims Tribunal (hereinafter referred to as 'the Tribunal'). The Tribunal framed three issues and they are as follows:-

"1. Whether the deceased was a bona-fide passenger as alleged?

2. Whether there was any untoward incident as defined under Section 123(c)(2) of the Railways Act, 1989, as alleged?

3. Whether the applicants are entitled for the compensation as claimed and other relief if any?'

4. As far as the issues 1 and 2 are concerned, the Tribunal found that as per the deposition made by R.W.2/Nandakumar, Head Constable, GRP/JTJ, it is undisputed fact that the burial took place on 19.12.2013 and the death certificate was also issued on the even date by Washermenpet BG, which carried the signature of R.W.1 and the information as recorded therein, was given by R.W.2. It is seen that the death report of even date neither disclosed the identity of the deceased, his place of residence, address etc., nor any amount was charged for the burial. When the above aspects are read in sequence and examined dispassionately, it becomes inevitably clear that projection made in the original application are far from truth and the appellants have not approached the Tribunal with clean hands and the deposition made by A.W./ father of the deceased was untrustworthy and cannot be believed at all and given no credence. No credible evidence has been led by the claimants/appellants to prove the first and second issues. Precise details of destination, Station of visit, number of train vide which deceased might had travelled on either direction etc., has not been provided by the claimants. Assertions made in the original application as well as in the deposition are as vague as possible. The Tribunal found an opinion that no concrete details have been provided by the claimants/ appellants in order to establish the untoward incident and the deceased was a bona-fide passenger. Based on these facts, the Tribunal, in the absence of any evidence to establish the untoward incident as well as the bona-fide passenger, came to the conclusion that the application cannot be considered at all. In order to ascertain the findings of the DRM report, this Court has considered the conclusion arrived at the enquiry conducted by the Railway and the DRM report states that during the enquiry, it is learnt that the deceased was not a passenger since no ticket was found with him during the inquest made by GRP/PER. There was no eye witness to substantiate the claim of the claimants/appellants. No train Guard or Driver have reported any such incident. Had it been a

case of fallen down from the running train at KM 14/06-08 on down slow line, it would have been informed by any of the passengers. Hence, the claim of the appellants does not have any merit. This being the conclusion of the statutory enquiry, this Court is of the opinion that the appellants have not established the untoward incident as well as the fact that the deceased was a bona-fide passenger and even the travel itself was not established. Under these circumstances, the judgment dated 29.01.2016 passed in O.A. (II-U) No.189 of 2014 stands confirmed and consequently, the Civil Miscellaneous Appeal is dismissed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

DP
To

1. The Railway Claims Tribunal,
Chennai Bench.
- 2.The General Manager,
The Union of India owning
Southern Railway,
Chennai - 600 003.

+lcc to Mr.M.Selvam, Advocate Sr.17105
+lcc to Mr.M.Vijay Anand, Advocate Sr.17038

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