

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.NO.4296 OF 2019

S.Vijaya

.. Appellant

Vs.

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

... Respondent

Prayer :

Civil Miscellaneous Appeal filed under Section 23 of the Railways Claims Tribunal Act, against the Judgment dated 11.10.2019 and made in O.A.(II-U) 211/2018 on the file of the Railway Tribunal, Chennai.

For Appellant : Mr.M.Selvam

For Respondent : Mr.M.Vijay Anand

J U D G M E N T

The judgment dated 11.10.2019 passed in O.A.(II-U) 211/2018 is under challenge in the Civil Miscellaneous Appeal.

2. The Claimant is the appellant and the Claim Petition was filed on the ground that on 11.09.2018, prior to 14.00 hrs, while the deceased was travelling in electric train from Tambaram Railway Station to Chennai Beach Railway Station with return Ticket no C-48634040 had accidentally fallen down from running train between Guindy Railway Station and Saidapet Railway Station at Km 13/19-21, sustained grievous head injury and fracture of ribs, died at the place of accident.

3. The Tribunal adjudicated the issues with reference to the documents and evidences produced. The DRMs report reveals that there are many contradictions and they could form an opinion that it is not a case if falling down from a running train and the untoward incident was not established. Though it was assumed that the deceased while travelling in a Electrical train from

Tambaram Station, had accidentally fallen down from the running train between Guindy and Saidapet station on 11.09.2018 and died on the spot. The said assumption was not supported with any proof. In the absence of any proof, the assumption contained in the GRP report was not trusted upon. Based on these factual contradictions, the authorities formed an opinion that the Untoward incident was not established. The conclusion in the DRM Report reads as under:

"The GRP reports just assumed that the deceased while travelling in an electrical train from TBM station, had accidentally fallen down from the running train between Guindy and Saidapet station on 11.09.2018 and died on the spot. The assumption was not supported with any proof. In the absence of proof, the assumption contained in the GRP report cannot be acceptable. From the records, available, it is observed, the train from which the deceased had allegedly fallen down is neither known nor brought out by any person and there is no eye witness in this case. In this circumstance, it would not be exact to conclude that the victim had fallen down from train. There is no eye witness to this case. Equally it is not known whether the deceased actually travelled in a train because the body was noticed lying near the track by the public. Mere lying of a body near a railway track, does not establish that the deceased died of an untoward incident. Such incident under any circumstance could not be termed as an untoward incident.

In view of the above, it is concluded that the deceased is not a bonafide railway passenger and the incident did not happen due to untoward incident because there is no record or documentary evidence to establish the falling down of the deceased. Hence, the claim has no merits to be considered for compensation from Railway."

4. The Tribunal also considered the factual contradictions and formed an opinion that the claimant could not able to establish even the untoward incident. Factual inference can be drawn, if there are materials to establish certain facts and circumstances. Mere dead body near the Railway track would not provide any right to claim compensation. The Railway Tribunal elaborately considered the facts and circumstances and made a finding in Paragraphs 11 & 12, which reads as under:

"11. There are other contradictions too. If at all an unknown person had taken the pain of coming

near the dead body, removed the SIM Card from the broken mobile of the deceased and called the friend Ganesan, then the friend Ganesan should have received the call from the deceased Venkatesan's mobile only and not from an unknown number. But Ganesan deposed that he had gone with the brother & uncle of the deceased to Egmore police station and when he did not get the relevant information from them, he called the unknown person to know the exact place of the incident. This statement itself is wrong because the from which the unknown person called was that of the deceased and there was no way Ganesan could have known the mobile number of the unknown person. If at all an unknown person had noticed the dead body near the railway track, he should have informed either the Station Master or the Police. It is unimaginable how the unknown person took the SIM from the mobile of the deceased, inserted it into his own mobile & called the recently dialled mobile number and also sent the image of the dead body on Whatsapp. It leads to some suspicion whether there is some other hidden story in this case. Moreover, in this case, the evidence has been tampered with even before the RPF or GRP arrived at the spot.

12. Neither the Driver & Guard of any of the train reported a fall from train nor a co-passenger witnessed the fall. Moreover, Tambaram-Chennai Beach is a very busy suburban section with a high frequency of EMU trains. So, it is surprising that the dead body went unnoticed till 13.30 hrs., that too in broad daylight in a busy suburban section where many persons had chances to see the dead body. Hence, it is clearly established that the death did not happen due to an untoward incident."

5. This being the categorical finding, this Court do not find any perversity or infirmity as such and accordingly, the judgment dated 11.10.2019 passed in O.A.(II-U) 211/2018 stands confirmed and the Civil Miscellaneous Appeal in C.M.A.No.4296 of 2019 stands dismissed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

The Additional Registrar,
The Railway Claims Tribunal,
Chennai Bench, Chennai.

+1cc to Mr.M.Selvam, Advocate, S.R.No.20708

+1cc to Mr.M.Vijay Anand, Addl.Standing Counsel, S.R.No.20669

C.M.A.No.4296 of 2019

SMI (CO)
CS/23/06/2021



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