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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.04.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.714 of 2017

U.Krishith Begam

.. Appellant/Applicant

Vs.

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

.. Respondent/ Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 23 (1) of the Railway Claims Tribunal Act, 1987, appeal against the judgment dated 19.06.2015 made in O.A.(II-U) No.38 of 2014 passed by the Railway Claims Tribunal, Chennai Bench.

For Appellants : Mr.M.Selvam

For Respondent : Mr.M.Vijayanand

J U D G M E N T

Appellant herein is the petitioner in O.A.(II-U) No.38 of 2014 filed by her before the Railway Claims Tribunal, Chennai Bench, she is the widowed mother, who claimed compensation for the fatal death of her son 'Zahir Hussuin', who died while he was travelling in the train due to an accidental fall between Chennai Central and Arakkonam Railway stations and suffered fatal injuries and died on 03.12.2013.

2. The Railway Authority contested the case.

3. After full trial, the Tribunal dismissed the claim petition, concluding that the accident was not proved by the legal heir of the deceased that on that day the deceased was a bona fide passenger, travelled in the train, fell down and met with an accident and sustained fatal injuries. Aggrieved by the said order, the appellant has preferred this appeal.

4. The Railway Authorities appeared and contested the appeal.



5. The question of law that arise for for consideration is as to,

"whether the Railway Tribunal was right in finding that the appellant is not entitled for compensation as she failed to prove that the deceased was a bona fide passenger and failed to appreciate the fact that the victim died due to the untoward incident while he was travelling in the train on that day?"

6. The learned counsel for the appellant submitted that with the help of FIR, death certificate, Final report and inquest report, the claim was established that her son died due to the accidentally fallen down from the train on 03.12.2013 at Perambur Railway Station, plat form No.2. But the Tribunal has not appreciated these documents and erroneously concluded that the appellant has not proved that the deceased was a bona fide passenger on that day.

7. Before the Tribunal, to prove her claim on the side of the appellant, she was examined as A.W.1. and Exh.A-1 to Exh.A-6 were marked. On the side of the Railway, a mandatory investigation Report of the Divisional Railway Manager / Chennai Division dated 30.12.2014 was marked.

8. On considering all these evidence, the Tribunal while dismissing the application stated that the appellant has not proved that the deceased was a bona fide passenger on that day. But as per the Inquest report the reason for the death was stated as follows:

" while the deceased was travelling in train from Chennai Central towards Arakkonam had accidentally fallen down from the running train near Perambur Railway station, thereby sustained grievous injury on the left side of the head, as he being alive, some public arranged 108 Ambulance, admitted him in Zero cleley ward at Govt. Stanly Hospital. Being in treatment, he died on 04.12.2013 at 04.30 hrs without responding to medical treatment".

9. The reason stated by Panchayadars for the cause of the death stated as follows:

(i)" From the opinion of the Panchayadars, individually and unanimously opinioned that on 03.12.2013 at 08.55 hrs, while the deceased was travelling in train from Chennai Central towards Arakkonam he had accidentally fallen down from the running train near Perambur Railway Station, thereby sustained grievous injury on the left



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side of the head, being alive, some public arranged 108 Ambulance admitted him in Zerl Cleley Ward at Govt. Stanley Hospital. Being in treatment, he died on 04.12.2013 at 04.30hrs, without responding medical treatment."

(ii). Under what circumstances and situation the person was deceased.

" while the deceased was travelling in train from Chennai Central towards Arakkonam had accidentally fallen down from the running train near Perambur Railway Station and involved in accident".

10. The above referred documents on the side of the appellant/ claimant clearly established that the deceased died due to the injuries sustained by accidental fall from the train.

11. By way of reply, the learned counsel for the Railway Authority submitted that the case of the appellant is that while attempting to board the moving train the deceased had accidentally slipped and fell down and the incident occurred due to the negligence on the part of the deceased. The burden is on the respondent to prove this fact, but, except the DRM report no other independent witness was examined to prove that the accident happened due to the own negligence act of the victim.

12. But as rightly pointed out by the learned counsel for the appellant, that the Tribunal failed to take note of the fact that prima facie has been made out and proved that the victim died due to accidental fall from the running train. But the Tribunal concluded that the appellant has not proved that the deceased had possessed valid ticket at the time of the said accident, thereby concluding that the deceased was not a bona fide passenger.

13. The ratio laid down in, a Division Bench of this court in the case of The Union of India Owning Southern Railway Vs. G.Jayalakshmi and others, reported in 2012(3) CTC 741, held as follows:

Railways Act, 1989 (24 of 1989), Section 123(c) & 124-A - "Untoward incident" - Claimant's deceased husband fallen down from train due to overcrowding and died - Deceased lost ticket during accident - Contention of Railways that incident happened due to negligence on part of deceased and claimant has failed to prove that deceased was travelling with valid ticket - Held: Normal presumption is that passenger in Train holds valid ticket - Burden is on



annum before the Railway Tribunal concerned within a period of 12 weeks from the date of receipt of a copy of this judgment. No costs.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To,

The Railway Claims Tribunal, Chennai Bench.

+1cc to Mr.M.Vijay Anand, Advocate SR.No.21705
+1cc to Mr.M.Selvam, Advocate SR.No. 21689

C.M.A.No.714 of 2017

A.SK(18.08.2021)