

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.4440 of 2019

1.G.Rasu

2.R.Veerammal

.. Appellants/Appellants

vs.

Union of India
owning Southern Railway,
Rep.by its General Manager,
Chennai

.. Respondent/Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 23(1) of Railway Claims Tribunal Act, against the order passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U).No.49 of 2019 dated 11.10.2019.

For Appellants: Mr.S.Parthasarathy

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). No.49 of 2019 is under challenge in the present Civil Miscellaneous Appeal.

2. The claimants are the appellants and the claim petition was filed with reference to the grounds stated in the claim petition which reads as under:

On 01.07.2018, the deceased come to her relative house Chennai for purchase books. On 02.07.2018 evening deceased and his cousin brother Alaghu Kumar come to Chennai Central Moore Market and purchased books. They come to Chennai Central Railway Station and purchased train ticket. They boarded EMU Train at Chennai Central for go to Ennore. While the said train came and halt at Ennore Railway Station. When the

deceased Chandra detrain from the said train, the said train suddenly started moving, result of which the deceased hand slipped and fallen down from the moving train at Platform of Ennore Railway Station. With the help of public she was taken to Private Hospital Sugam where she got first aid. Thereafter transferred to Rajiv Gandhi Govt.General Hospital, Chennai where she admitted subsequently she died. The incident is registered by the Korrukupet Railway Police in Crime No.184/18 under Sec.174 Cr.P.C.

3. The Tribunal adjudicated the issues. The Tribunal itself made a finding that "Mr.Azhagu Kumar, the cousin of the deceased is also a co-passenger, deposed in Court as A.W.1 and the father of the deceased deposed as A.W.2. Azhagu Kumar is an eye-witness to the incident. He is a resident of Ennore, working as Project Engineer in a private firm at Broadway, Chennai and used to travel from Ennore to Chennai Beach by train using a season ticket. On 02.07.2018, his cousin Chandra had come to Broadway around 17.00 hrs. Together they went by bus to Shankar IAS Academy at Anna Nagar to get consultations on coaching classes and returned to Chennai Central at 19.15 hrs. Azhagu Kumar said that the deceased purchased ticket for both of them at 19.30 hrs and they boarded a train from Chennai Central at 19.45 hrs. On reaching Ennore by the said train, Azhagu Kumar got down from the train as he was standing near the doorways. When the deceased was getting down, the train started moving and she fell down on the platform and sustained head injuries. Neither the train was stopped nor any incident reported. The RPF personnel on duty came to the spot within 5 minutes from the time of incident and helped them board an auto to go to Sugam Hospital to get first aid. Thereafter, she was taken to Rajiv Gandhi Govt.General Hospital (RGGGH), Chennai where the Doctor told that she had died. Azhagu Kumar added that the ticket purchased by the deceased was in her mobile phone's cover which he could not locate immediately after the fall".

4. The inquest report also reveals the travel by the deceased along with her cousin. The Divisional Railway Manager's report states that the deceased fallen down from the running train and sustained injuries on her head, nose, ear etc and then succumbed to her injuries on the same day. The conclusion of the Divisional Railway Manager's report reads as under:

"Based on the records, it is concluded that the deceased was not a bonafide railway passenger because the mobile ticket ex.MSB-ENR found with the deceased was claimed by her cousin brother, as his own ticket as well as the ticket ex.MAS-ENR seized by GRP also became invalid since the deceased and her cousin brother boarded the EMU train at MSB Station and not at

MAS Station. However, it is clear that on 02.07.2018 at about 20.14 hours, the deceased made attempt to get down from train when the EMU Train No.TG.1 ex.TBM-GPD started moving from Ennore PF.No.1 but fell down from running train and sustained injuries on her head, nose, ear etc and then succumbed to her injuries on the same day."

5. Based on the facts as well as the deposition of eye-witness, the Tribunal made a finding that the deceased/Chandra died in an untoward incident as per the Act. However, the claimants have not produced a travel ticket and therefore, the Tribunal held that the deceased was not a bona fide passenger.

6. When the untoward incident is established beyond any pale of doubt and the eye-witness also deposed that the deceased purchased a ticket and he could not able to retrieve the ticket from the mobile phone cover of the deceased, this Court is of the opinion that the Railway Tribunal ought to have drawn an inference with reference to the travel of the deceased along with her cousin in the train from which the deceased fallen down.

7. Mere non-availability of travel ticket would not disentitle the claimants from getting the compensation. In the present case, the untoward incident was established through documents and even the Inquest report and Divisional Railway Manager's report reveals that the deceased fallen down from the running train and died. This being the factum, non-retrieval of travel ticket is not a ground to reject the compensation and in the event of non-production of valid travel ticket, in such circumstances, the burden is to be shifted on the Railways to establish that the deceased was not a bona fide passenger. In the present case, the respondent/Railway could not able to establish that the deceased was not a bona fide passenger. Contrarily, the Railway Investigation Report itself reveals that the deceased traveled in a train and died due to the untoward incident occurred.

8. This being the factum, this Court is of the considered opinion that the Railway Tribunal has committed an error in shifting the burden of proof on the claimants instead of Railways as per the principles laid down by the Hon'ble Apex Court in the case of Union of India Vs. Rina Devi in Civil Appeal No.4945 of 2015 dated 09.05.2018. Thus, the findings are perverse. Accordingly, the order dated 11.10.2019 passed in O.A. (II-U).No.49 of 2019 is set aside and the Civil Miscellaneous Appeal stands allowed.

9. The appellants are entitled for a sum of Rs.8,00,000/- (Rupees Eight Lakhs Only) along with interest at the rate of 6%

per annum from the date of passing of the award. The respondent/Railway is directed to pay the entire award amount along with accrued interest before the Railway Tribunal concerned within a period of 12 weeks from the date of receipt of a copy of this order. On such deposit, the appellants/claimants are entitled for a sum of Rs.4,00,000/- (Rupees Four Lakhs Only) each and permitted to withdraw their respective portion of the award amount by filing an appropriate application and the payments are to be made through RTGS. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssb

To
The Railway Claims Tribunal, Chennai Bench

+1 CC TO M/S.VIJAY ANAND, ADVOCATE SR.No.15535
+1 CC TO M/S.S.PARTHA SARATHY, ADVOCATE SR.No.15580

C.M.A.No.4440 of 2019

ABB(CO)
RG.17/04/2021