

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.02.2021
CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2676 of 2018

1.Dhanasekari

2.G.Sangeetha

3.G.Pradeep Kumar

4.N.Rani

... Appellants

vs.

Union of India through
The General Manager,
Southern Railway
Chennai.

... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 23 of Railway Claims Tribunal Act, 1987 against the order dated 20.07.2018, passed in O.A.(II)U.No.93 of 2018 on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellants : Mr.L.Rajasekar

For Respondents : Mr.C.Ramachandramurthy

O R D E R

The judgment dated 20.07.2018, passed in O.A.(II) U.No.93 of 2018 is under challenge in the present Civil Miscellaneous Appeal.

2. The appellants are the claimants. The first appellant, who is the wife of the deceased deposed before the tribunal that her husband accidentally fallen down from the running train and sustained fatal injuries and died. The application was filed by the appellants stating that the husband of the first appellant was working as a Assistant in the contractor name "Orchind Industrial Equipments" under the proprietor S.Baskaran. On 26.08.2017 at 8.00 hours, he met with a local train accident, while, he was travelling from Vysarpadi

to Perambur on his way to his work spot (ITC Hotel Grand Chola) at Guindy. Investigations were conducted and the incident was reported by the Station Master himself at Perambur at 7.45 hrs that a person was found lying on the track at Km.5/6 on the down slow line near Perambur Railway station.

3. The Railway Tribunal adjudicated the facts and circumstances and the evidence made available. The Railway Tribunal could able to draw a factual inference with reference to the incident occurred. This Court is bound to consider whether the factual inference can be considered as a probability so as to deny compensation to the claimants.

4. The Tribunal carefully considered the facts and circumstances and made a finding and the findings of the Railway Tribunal which indicates that " the body was found on the slow down line. The location for the body itself would lay the first ground of suspicion that he was travelling in the train. Secondly even according to the wife of the deceased who was examined before us today, she was informed about the death only by evening at 4 0' clock. She would state that her husband had carried his identity card and season ticket in his pocket. This in our view cannot be correct because when the body had been seen at 7.45 hrs.in the morning at a place near the residence of the applicant in Perambur, there could have been no delay in contacting the family till 4 0' clock if the identity card was available with the deceased. Indeed at the time of inquest, police has recorded that apart from his wearing apparel there was no other document or moveable with him. This would explain why a copy of the season ticket, which is produced now, was itself not being carried by him to show that he was travelling in the train. Thirdly, we have an unusual spectacle of a person working in a five star hotel under a contractor seen in 'lungi' in the morning at 7.45 hrs while allegedly going to work. The wife gave a strained explanation that he would go to office wearing 'lungi' and change it by wearing plant in the place of work. While such a sequel of dressing may be possible, when we are examining several circumstances whether he could have been travelling by train, this would provide another inkling that he was in casual dress only because he was not going to office. Fourthly, the nature of the injuries found in the body were taken note of, by the Panchayats at the time of inquest and they have stated that he could have been hit by some train. It would appear even at the time of inquest that they did not have the whereabouts of the deceased and therefore, in column 18 A it is entered that in order to secure information from the public about his address, a photograph was taken to be put as an advertisement in a newspaper. If the inquest had been concluded at 10.30 hrs., it will surely mean that there was no visible

proof available to fix the identity of the deceased. This means that the wife was not available at the time of inquest and the claim by her that the identity card with the deceased cannot be true. Fifthly, the nature of injuries we find on the deceased as recorded in the post mortem would show that he had dark red scalp contusion over the right front parietal region and other injuries on the left parietal and occipital region. The brain matter had been diffused and there was haemorrhage in the sub arachnoid region. All these only suggest that he had been hit by some train and these injuries may not even be on account of a fall".

5. The findings of the Railway Tribunal is crystal clear with reference to the inference drawn considering the injuries sustained as well as the documents available. This Court do not find any infirmity or perversity as the appellants could not able to establish that the deceased was a bonafide passenger and the untoward incident occurred within the meaning of Section 123 of the Railways Act. In the absence of establishing an untoward incident within the meaning of the provisions, the Tribunal cannot consider for grant of compensation as the case falls under the exclusion clause contemplated under Section 124 of the Railways Act. Thus, the judgment dated 20.07.2018, passed in O.A.(II)U.No.93 of 2018 stands confirmed and consequently, Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

ssb

To

The Railway Claims Tribunal, Chennai

+1cc to Mr.L.Rajasekar , Advocate SR.No. 9971

+1cc to Mr.C.V.Ramachandramurthy, Advocate SR.No. 10203

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A.SK(09.03.2021)