



C.M.A.No.1578 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 22.4.2022

C O R A M

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

C.M.A.No.1578 of 2010

a n d

M.P.No.1 of 2010

The Union of India
owning Southern Railway
rep. By its General Manager
Chennai 600 003.

...

Appellant

Vs

1. R. Selvi
2. R.Lavanaya
3. R.Dinesh

(Respondent Nos.2 and 3 minors
rep. By their mother & natural guardian,
first respondent)

4. The Assistant Registrar
Railway Claims Tribunal
Chennai Bench
'FRESH FORD'
50 Mc Nichols Road, Chetpet
Chennai 600 031.

...

Respondents



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Prayer: Civil Miscellaneous Appeal filed under Section 23 (1) of the Railway Claims Tribunal Act, 54 of 1987, to call for the records culminating in the order dated 28/4/2009, passed in O.A.No.43 of 2007 delivered on 4/5/2009 by the Railways Claims Tribunal, Chennai Bench and set aside the same.

For appellant	...	Mr.M.T.Arunan ACGSC
For respondents	...	Not ready in notice

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the Southern Railway as against the Order dated 28.04.2009 passed by the Railway Claims Tribunal, Chennai Bench.

2. The main ground raised by the Railways is that the compensation granted by the Tribunal to the Applicants, who are the legal heirs of the deceased and allowing their claim has been done without recording any reason or basis because the deceased has no income whatsoever and the accident cannot be termed as “accidental falling” and hence, the Railways



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should not be burdened with the payment of compensation.

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3. The facts of the case is that on 01.05.2004 evening, the deceased boarded EMU II class at Nungambakkam, When the EMU was passing near Chetpet Railway Station, he was hit by an electric post on the back side of the head, sustained grievous head injuries and accidentally fallen down from the moving train. With the help of railway authorities, train passengers and Station Master/Park Town Railway Station, he was admitted into the General Hospital, Chennai, but, without responding to the medical treatment, he was declared dead. The legal heirs of the deceased/applicants viz., wife and two minor children have filed application in O.A.No.2007 00043, claiming Rs.4,00,000/- as compensation.

4. The Railway Claims Tribunal after analysing the oral and documentary evidence, found that the respondent Southern Railway has classified in the report as it is the case of “fallen down from running EMU Train”. The deceased had fallen down between MSC and MS at 6.23 p.m.,



while travelling by EMU train due to heavy rush in the train and as per the own admission of the respondent-Railways, there was heavy rush in the train at the relevant time and the possibility of the deceased falling from the train due to pressure of the crowd and hitting the electrical post cannot be ruled out. In the final report as per Ex.A.8, the police have concluded the case as Train accidental death. The Tribunal, after referring to decision reported in **2004 ACJ 529 (AP) Union of India Vs Kurukundu Balakrishnaiah** and **Union of India Vs. Prabhakaran Vijaya Kumar and others reported in (2008) 4 MLJ 232 (SC)**, held that the accident would come within the purview of Section 124-A of Railways Act, 1989 and the railways cannot avoid their liability. The Tribunal also held that the respondent/railways has not disproved the case of the applicants and the applicants are entitled to the compensation as per the Rules prescribed for death cases and as such Rs.4 lakhs has been awarded.

5. The grounds raised by the Railways in the present appeal is that



there is no valid proof that the deceased travelled in that train and he was completely negligent. It is held by the Tribunal that the applicants have come out with the pleading that ticket was lost and could not be retrieved, hence, the burden shifts on the respondent-railways to prove that the deceased was not a bona fide passenger. The Tribunal by referring to the legal position in the judgment reported in **2008 (1) TCJ 108 (Union of India Vs. G.Loganayaki and others)**, held that the burden of proof showing that the deceased held a valid ticket is impossible to be discharged by the dependants who have no means of knowledge about the ticket purchased by the deceased on the ground that it is unlikely that such a deceased passenger held a valid ticket, pass or permission but the same is lost in the accident with the death of person and loss of his belongings, if any. So the Tribunal categorically held that inference has to be drawn in favour of the applicants and held that the deceased could be treated as bonafide passenger on the fateful day in the train in question.

6. Heard Mr.M.T.Arunan, learned Additional Central Government



Standing counsel for the appellant-Railways. A bare perusal of the records would show that batta with petition and enclosures due with regard to the respondents 1 to 3. Appellant has not taken any steps to serve notice on the claimants.

7. A close scrutiny of the Order would show that the Railway Tribunal categorically found that the deceased was a bonafide passenger, travelled in the train and was hit by electrical post due to heavy rush in the train and it was Train accidental death.

8. When a categorical finding has been given by the Railway Tribunal that the negligence/carelessness on the part of the deceased is not a ground covered under Section 124-A of the Railways Act, 1989 and the railways cannot avoid its liability, this court is not inclined to interfere with the said finding. Accordingly, the appeal fails and the same is dismissed. No costs. Interim stay stands vacated.



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Index : Yes/No
Internet : Yes/No

mvs/nvsri

To

1.The Chairman,

The Railways Claims Tribunal, Chennai Bench.

2.The Record Keeper, V.R.Section, High Court, Madras.



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J.NISHA BANU, J.

mvs/nvsri

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