

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.04.2022

PRONOUNCED ON : 14.06.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A. No.1734 of 2011
and C.M.P. No.1 of 2011

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

... Appellant / Respondent

versus

1.R.Venkatesan
2.V.Krishnaveni

... Respondents / Applicants

PRAYER: Civil Miscellaneous Appeal has been filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987, against the order dated 11.04.2011, in O.A.(II-U)No.177 of 2010, on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellant	:	Mr.S.R.Sundaram
For Respondents	:	Not ready in notice

J U D G M E N T

The appellant / respondent has preferred the present appeal against the order dated 11.04.2011, in O.A.(II-U)No.177 of 2010, on the file of the Railway Claims Tribunal, Chennai Bench.

2. The short facts of the case are as follows:-

2.1. The claimants/respondents, who are the parents of the deceased Palani Sankar, had filed the claim application in O.A.No.177 of 2010, on the file of the Railways Claims Tribunal, Chennai Bench, claiming a compensation of Rs.4,00,000/- with interest at 12% per annum from the date of the claim application till payment, from the appellant/respondent for the death of their son in a railway accident.

2.2. On 25.03.2010, while the deceased was travelling in a train had accidentally fallen down near 2nd L.C.Gate of Tirutani Railway Station and sustained grievous injuries on his head. He was taken to Government Hospital, Tirutani, where he

got first aid and thereafter, he was admitted in Government General Hospital, Chennai, for further treatment, where he succumbed to injuries on 29.03.2010 at about 06.20a.m.

2.3. In the reply statement filed before the Tribunal by the respondent/appellant, they denied the travelling of the deceased in the train and also denied that he had accidentally fallen down from the running train and sustained grievous injuries. According to them, the claimants' case was constructed based only on the inquest report of the police authority and not based on any facts or any report from the eye witnesses. Their defence is that had the deceased fallen from the train, there would have been a complaint to the nearest Station Master or chain pulling by a co-passenger. It is doubted by them that the alleged accident may be one other than falling from the running train and will not come under the definition of 'untoward incident' within the meaning under Section 124-A of the Railways Act, 1989. It was also submitted that the deceased was not a bona fide passenger and hence, it was prayed to dismiss the claim application.

2.4. On considering the averments of both sides, the Tribunal had framed three issues namely:

- i. Whether the deceased Palani Sankar, S/o.Venkatesan was a bona fide passenger, as alleged?
- ii. Whether any untoward incident as defined under Section 123(c)(2) of the Railways Act, 1989 occurred to the deceased Palani Sankar, S/o.Venkatesan while travelling by train on 25.03.2010 prior to 3.45 hours near 2nd LC Gate of Tiruttani Railway Station?
- iii. Whether the applicants are entitled for the compensation as claimed and other relief, if any?

2.5. On the side of the applicants, one witness was examined as A.W.1 and 8 documents were marked as Exs.A-1 to A-10 namely, Copy of the First Information Report (Ex.A-1), Copy of the Postmortem Certificate (Ex.A-2), Death Certificate (Ex.A-3), Legal Heir Certificate (Ex.A-4), Accident Register copy (Ex.A-5), Copy of Wound Certificate (Ex.A-6), Copy of Inquest Report (Ex.A-7) and copy of Final Report (Ex.A-8). On the side of the respondent, the report of the Divisional Railway Manager was filed and no one was examined as a witness.

2.6. A.W.1 had adduced evidence, which is corroborative of the statements made in the claim and in support of her evidence, she had marked Exs.A-1 to A-8. On scrutiny of Ex.A-4, it is seen that the applicants are the parents of the deceased and the only legal heirs of the deceased. On scrutiny of Ex.A-8 final report, the police had concluded the case as 'Train

Accidental Death' and that the deceased while travelling in a train had accidentally fallen down and died due to the injuries sustained by him.

2.7. Hence, the Railway Tribunal had held that the deceased, who was a bona fide passenger envisaged under Section 123(c)(2) of the Railways Act, 1989, had died in an untoward incident. The Railway Tribunal, on scrutiny of the Compensation Rules, had held that the applicants are entitled to get Rs.4,00,000/- as compensation, as per the prescribed rate of compensation for death. Further, the Tribunal had held that the applicants are entitled to interest at the rate of 6% per annum from 16.12.2010 (date of filing of claim application) till the date of order and further interest at 9% per annum from the date of their order till the date of actual payment. Further, the Tribunal had directed the respondent to pay the compensation amount together with interest, as stated above.

3. Aggrieved by the said order, the appellant/respondent has preferred the present Civil Miscellaneous Appeal.

4. Mr.S.R.Sundaram, learned counsel appearing on behalf of the appellant submitted that the Tribunal, without appreciating the evidence adduced by the parties in a prospective manner, on an erroneous analysis of the facts and circumstances, has awarded compensation to the claimants, which is illegal and liable to be set aside. He would submit that the claim of the claimants is not supported by any substantive evidence. According to him, the accident has not occurred while travelling in the train and the deceased was not a bona fide passenger. Therefore, the Tribunal has committed gross error in awarding compensation in favour of the claimants.

5. It is contended that no eye witnesses had been examined to show that the incident had taken place in the manner alleged and also to prove that the deceased had travelled as a bona fide passenger. It is contended further that when the postmortem report clearly indicates that the victim was hit by train, findings to the contrary has only to be termed as perverse. Hence, it is prayed to set aside the order passed by the Tribunal.

6. The Tribunal had framed necessary issues and decided the case in favour of the applicants and granted the compensation amount. As such, there is no lacuna in the impugned order of the Tribunal. Further, First Information Report, DRM report filed by the Railway Police, postmortem report and the final report submitted by the Railway Police Authorities, all in one voice concluded the case as an accidental death. It has been

clearly proved that the deceased had died in an untoward accident.

7. On considering the factual position of the case and on perusing the impugned order of the Tribunal, this Court does not find any lapse in the conclusions arrived at for granting compensation. This Court is of the view that the Tribunal had framed three issues and decided the case in an appropriate manner after recording evidence of the second applicant and documentary proof. Therefore, the above appeal does not have enough force warranting interference of this Court and hence, it is liable to be dismissed and the award of the Tribunal is liable to be confirmed.

8. In the result, this Civil Miscellaneous Appeal is dismissed and the order dated 11.04.2011, in O.A.(II-U)No.177 of 2010, on the file of the Railway Claims Tribunal, Chennai Bench, is confirmed. The appellant is directed to deposit the entire award amount, less the amount already deposited, with accrued interest at the rate of 6% per annum from 16.12.2010 (date of filing of claim application) till the date of order and further interest at 9% per annum from the date of their order till the date of actual payment, within a period of twelve (12) weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the award amount as apportioned by the Tribunal. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Railway Claims Tribunal,
Chennai Bench.

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

C.M.A. No.1734 of 2011
and C.M.P. No.1 of 2011

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