



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.08.2021

PRONOUNCED ON : 05.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.2439 of 2015

MP.No.1 of 2015

(Through Video Conferencing)

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

...Appellant

Vs

1.M.Pushpa
2.M.Aravind (Minor)
3.M.Aathilakshmi
4.Elumalai

...Respondents

Prayer:- This Civil Miscellaneous Appeal is filed, under Section 23 of the Railway Claims Tribunal Act, 1987, against the order, dated 13.02.2014, made in OA.No.(II-U)213 of 2013, by the Railway Claims Tribunal, Chennai Bench.

For Appellant : Mr.C.V.Ramachandra Murthy

For Respondents : No appearance

JUDGEMENT

1.This Civil Miscellaneous Appeal is filed, against the order, dated 13.02.2014, made in OA.No.(II-U) 213 of 2013, by the Railway Claims Tribunal, Chennai Bench.

2.The Respondents/Applicants, who are the wife, minor son and the parents of the deceased Mahendran, aged 30 years, had filed the above application, seeking a compensation of Rs.4 lakhs, with interest, for the death of the deceased, who died on 17.08.2012, due to falling down accidentally from the Train.



WEB COPY

The application was contested on the grounds that the deceased was not a bona fide passenger and that only due to his own negligence, the deceased fell down and died. On the side of the Respondents, Ex.A1 to Ex.A7 were marked and AW.1 was examined and on the side of the Appellant, the Investigating Officer was examined as RW.1. After framing issues on the basis of the pleadings of the parties, by the impugned order, considering the consent affidavit filed by the Applicants 3 and 4, the Tribunal had awarded a compensation of Rs.4,00,000/- with interest 6% p.a. from the date of the application till the date of the impugned order and thereafter, at 9% p.a. till the date of payment, to the Applicants 1 and 2. Hence, this Civil Miscellaneous Appeal has been filed by the Railways.

3.This Court heard the learned counsel for the Appellant and considered his submissions, including the materials placed on record.

4.According to the Appellant, the deceased was not a bona fide passenger and the incident is not an 'untoward incident' and the deceased died only due to his own negligence and hence, the impugned order passed, without considering the provisions of the Sections 123 and 124 of the Railways Act is erroneous. Per contra, it was the stand of the Applicants that though no ticket was recovered from the deceased during the investigation, since admittedly he fell down from the train and died, he was a bona fide passenger and as such, the Applicants are entitled for compensation.

5.Section 123(c) of the Railways Act reads as under:-

(c) "untoward incident" means-

(1) (i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers."



WEB COPY

6. Section 124A of the Act provides as follows:-

"Compensation on account of untoward incidents:- When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to-

- (a) suicide or attempted suicide by him;
- (b) self inflicted injury;
- (c) his own criminal act;
- (d) any act committed by him in a state of intoxication or insanity;
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation: For the purpose of this Section, 'passenger' includes:-

- (i) a railway servant on duty; and
- (ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident."

7. In order to award compensation for any loss, damage, injury or death, occurred to a victim, in the Railway Premises, the points to be determined are that the victim was a bona fide passenger and sustained injury or death, as the case may be, in an 'untoward incident'. 'Untoward incident' should not fall within the exceptions (a) to (e) of proviso to Section 124A of the Act and the 'accidental fall' would include a passenger,



trying to alight a train, board a train or any other like action and he would be covered by 'untoward incident' as specified in Section 123(c) of the Act. Therefore, while boarding the train or alighting the train or standing near the door, due to jerk of the train, if a person accidentally falls from the train and sustains injury or dies, it cannot be held that due to his own negligence or carelessness, he sustained injury or died. The burden lies on the Railways to prove that the person met with an accident or death due to his own negligence, thereby not entitled to compensation from the Railways.

8. As per the investigation report, dated 05.09.2013, admittedly, while the deceased was returning after completion of his work at Tirunelveli on 17.08.2012 to Chennai, he travelled on the foot board of the train and fell down accidentally from the running train and died due to severe injuries, but, it is stated that no journey ticket was recovered, during the investigation.
9. The Investigating Officer, RW1, in her chief examination had denied the suggestion that the deceased was a trespasser and according to her, the deceased was a passenger. It is, therefore, clear that the deceased was a passenger and he fell down from the train accidentally and sustained severe head injury, due to which, he died. Thus, in the light of the said investigation report and the evidence of RW.1, the factum of untoward incident stands proved.
10. In a catena of decisions, this Court, in similar facts and circumstances, while dealing with Sections 123(c) and 124A of the Railways Act, had categorically found that the burden is on the Railways to prove that the passenger was not a bona fide passenger and he did not possess any ticket.
11. Mere non-recovery of a ticket is not a ground to deny the compensation. In this case, the claimants, who have no means of knowledge about the ticket purchased by the deceased, cannot be expected to discharge the burden that the deceased held a valid ticket, since at that time, there were probabilities of losing the ticket by the deceased on account of an untoward incident, while falling down from the running train or thereafter and there was also every possibility of the miscreants, taking his belongings. In this case, as stated above, since the factum of untoward incident is established to have occurred in the Railway Premises and the investigation report also revealed



WEB COPY

that the untoward incident occurred due to the train accident, the burden of proof is on the Railways to establish that the deceased was not a bona fide passenger, as has been held in the judgement of the Honourable Supreme Court dated, 09.05.2018, made in Civil Appeal No.4945 of 2015, 2012 3 CTC 741 (General Manager, Chennai Vs. G.Jayalakshmi and others) and 2017 5 MLJ 543 (S.Kannadasan and Another vs. Union of India), but in this case, the Appellant failed to discharge such a burden by valid evidence.

12.In so far as the contention of the Appellant that due to his own negligence, the deceased fell down from the train and died, is concerned, in the opinion of this Court, it will not make any difference, whether the deceased was travelling on the foot board or near the door way, when he fell down or actually inside the train when he fell down, but it would certainly amount to an 'accidental falling of a passenger from a train carrying passengers'. Hence, it is an 'untoward incident' as defined under Section 123 (c) of the Act. Falling from a train to death due to one's own negligence does not come within any exception enumerated under Section 124A of the Act.

13.At this juncture, it is relevant and pertinent to make a reference to the decision reported in 2008 ACJ 1895 (Union of India v. Prabhakaran Vijaya Kumar and others), wherein the principal of strict liability of Railway Administration for no fault liability in case of railway accidents was laid down. In the judgement dated, 09.05.2018, made in Civil Appeal No.4945 of 2015, cited supra, while dealing with the provisions of Section 124A of the Act, the Honourable Supreme Court had laid down the rulings regarding the application of principle of strict liability. Thus, in cases where there was an accidental falling of a passenger from train on a railway track or a contributory negligence of the victim, strict liability would arise for Railway Administration to compensate.

14.In view of the facts and circumstances as well as the principles laid down by various Courts, this Court is of the firm opinion that the Tribunal was right in drawing inference in favour of the Applicants and holding that the deceased was a bona fide passenger in the train on the fateful day and accordingly, awarding compensation with interest, as per the compensation rules, as stated above, by the impugned order, which is in consonance with the settled principles as stated above and hence, it need not be interfered with.



WEB COPY

15.In fine, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected MP is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

Srcm

To

The Railway Claims Tribunal, Chennai.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.C.V.Ramachandra Murthy, Advocate, S.R.No.1436

CMA.No.2439 of 2015

PMK (CO)
RLP (07/02/2022)