



C.M.A.No.3648 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

C O R A M

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

C.M.A.No.3648 of 2011

and

M.P.No.1 of 2011

The Union of India
owning Southern Railways
rep. By its General Manager
Chennai.

....

Appellant

Vs

1. G. Bhavani
2. Master G.Manoj
3. Miss.G.Jayasuriya
(2 and 3 are minor son/daughter of
late K.Gopinathan, are minors rep. by their
mother and natural guardian Mrs.G.Bhavani)

4. V. Karvannan

5. K. Kantharubi

...

Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987 to call for the entire records leading to passing of the final orders in O.A.(II-U) No.177/2009 dated 11/4/2011, on the file of the Railway Claims Tribunal, Chennai and to set aside the same.

For appellant

...

Mr.M.Vijay Anand

For respondents

...

No appearance

J U D G M E N T



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This Civil Miscellaneous Petition has been filed, to set aside the order, dated 11/4/2011, passed in O.A.(II-U) No.177/2009, by the Railway Claims Tribunal, Chennai.

2. For the sake of convenience, ranking of the parties is referred to as per their rankings before the learned Tribunal.

3. Brief facts which are necessary for the disposal of this Civil Miscellaneous Appeal are as follows:-

The claimants – wife, children and parents of late K.Gopinathan, aged 40 years, have filed an application, claiming compensation of Rs.4 lakhs, together with interest, alleging that the deceased, while travelling in a train, on 26/9/2010, at about 7 a.m., had accidentally fallen down from the running train, due to heavy crowd and hit by an electric post, as a result of which, left portion of his head was severely injured and brain came out of the head and died between Perambur railway station and Vyasarpadi railway station.

4. The Railway Claims Tribunal, vide order, dated 18.10.2011, directed the



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first respondent to pay a sum of Rs.4,00,000/-(Rupees Four lakhs only) together with interest at 6% p.a., from 24/6/2011 till the date of the order and interest at 9% p.a., thereafter, till the date of actual payment.

5. Being aggrieved, the appellant has come forward with this instant Civil Miscellaneous Appeal, praying for the relief as stated supra.

6. Heard Mr.M.Vijay Anand, learned counsel for the appellant. There is no representation on behalf of the respondents.

7. The learned counsel appearing for the appellant submitted that the alleged accident took place on 26.09.2010 at 7.00 a.m on Sunday and at no stretch of imagination, there could be over crowded of the train at 7.00 a.m and the theory of jolt and jerk is only concocted and fabricated one. He would further submit the deceased was not having valid ticket and he is not a bonafide passenger. Therefore, he would submit that the alleged accident might be the one, rather than falling from train and will not come under the definition of “untoward incident”, within the meaning of Section 123 (c) of the Railways Act, 1989.



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8. This Court is unable to agree with the said submission made by the learned counsel for the appellant. The reasons being that, it is an admitted fact that as per the inquest report, on 26.09.2010, the deceased was travelling in the front portion of the compartment in an unknown electric train travelling between Central to Avadi and due to heavy crowd and due to jerk and jolt of the train, he fell from the train and hit by an electric post, as a result of which, left portion of the head was severally injured and his body was found between Perambur Railway Station and Vyasarpadi Railway Station. Further, Ex.A5- final report prepared by the police and submitted to the taluk authority, in which, the police, after reiterating the opinion of the Panchayatdars in the inquest report Ex.A3, concluded the case as accidental death. All these facts clearly show that the deceased accidentally fell down from the running train between Perambur Railway Station and Vyasarpadi Railway Station.

9. In fact, under similar circumstances, this Court in the case of The Union of India owning Southern Railway by its General Manager, Chennai v. G.Jayalakshmi and others, 2012 (3) CTC 741, while considering an identical issue, has held as follows:-

15. This Court in similar circumstances in the case of



S.Poonkodi and others v. The Union of India, Southern Railway, -CDJ 2007 MHC 3784, observed as hereunder:~

16.....Moreover, if the deceased had travelled as a ticketless traveller, one would normally expect the Railway Authorities to have detected such ticketless traveling. When a person dies in an accident by falling down from train, it is not possible for the legal representatives to produce the ticket or valid authority to travel in the train. Depending upon the facts and circumstances of a given case, the Tribunal/the Appellate Court infer about the deceased being a bona fide passenger. In the present case, facts and circumstances prima facie indicate that the deceased was a bona fide passenger, who lost his life in the Railway incident.?

10. Even the Apex Court also in the case of ***Union of India (UOI) vs Rina Devi reported in 2018 (7) SCALE 274*** has held that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bonafide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was not a bonafide passenger and initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts



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shown or the attending circumstances. In the present case, all the circumstances clearly show that the deceased accidentally fell down from the running train, sustained head injuries, as a result of which, he died, which defines the term 'untoward incident' as above. Hence, this Court is of the considered opinion that the deceased is the bonafide passenger.

11. In view of the above observation, this Court is not inclined to interfere with the findings of the learned Tribunal. Accordingly, the Civil Miscellaneous Appeal is dismissed. Consequently connected Miscellaneous Petition is closed. No costs.

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Index : Yes/No

Internet : Yes/No

mvs/vsi

To

The Railway Claims Tribunal, Chennai



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