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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2022

CORAM

THE HON'BLE Ms.JUSTICE P.T.ASHA

C.M.A.No.3196 of 2019

- 1.Veeralakshmi
- 2.Prabhakaran
- 3.Alaya Priya (Minor)
- 4.Sharumathi (Minor)

3rd and 4th appellants are Minors
Rep. by their mother and natural guardian
Veeralakshmi the 1st Appellant.

... Appellants/ Appellants

Vs

Union of India Owning
Southern Railway,
Rep. by its General Manager,
Southern Railway,
Chennai.

... Respondent/ Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 23 (1) of Railway Tribunal Act against the order passed by the Railway Claims Tribunal, Chennai in O.A. (II - U) No.188/2018 dated 18.07.2019.

For Appellants : Mr.S.Parthasarathy

For Respondent : Mr.M.Vijay Anand

J U D G M E N T

The legal heirs of the deceased Muniyasami have filed an application claiming compensation before the Railway Claims Tribunal, for the death of the said Muniyasami in a Railway accident.

2. It is the case of the applicants that Muniyasami, on 30.04.2018 had left his home at Ramanathapuram to travel to Chennai. Therefore he had come to Madurai, where he had met his friend. Thereafter, he has purchased a ticket and boarded an express train at Madurai Railway Station. While travelling, he had fallen off the running train between Kallakudi Pazanganatham and Pullambadi Railway Station. As a result of which he had sustained fatal injuries and died on the spot. The deceased was



46 years aged and was a driver by avocation. The applicants had therefore claimed compensation from the Railways.

3. In the application filed under Section 16 of the Railway Claims Tribunal (Procedure Rules 1989), the applicants had given a train ticket number in column 7.

4. The respondent Railways had filed a reply statement in which they had contended that the body was found on 03.05.2018 at 08.40 hrs. This information was received by the GRP/Vriddhachalam at 15.00 hrs. The Inquest was conducted between 17.30 hrs and 19.30 hrs in the place, where the body was recovered.

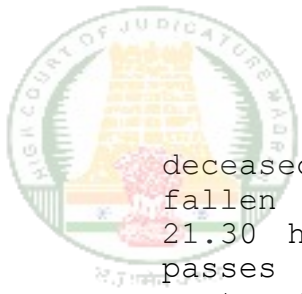
5. A man missing complaint has been lodged by one Prabakaran, the son of the deceased, through his first wife, at about 09.00 hrs on 03.05.2018 at Kenikkarai Police Station. In turn, the Kenikkarai Police Station had informed the family of the deceased about the discovery of the body at around 15.00 hrs.

6. During the inquest, no valuables were recovered from the body except for dress worn by him. The body was identified by the first applicant and the son/ second applicant of the deceased at 06.00 hrs on 04.05.2018. At the time of the inquest, five panchayatars were present who were residents of Valanthararai to which the applicants and the deceased belonged.

7. Therefore, the learned counsel for the respondent would contend that a suspicion is raised with reference to the very inquest report itself and the respondent would state that it could be a manufactured one to show that the deceased had fallen down from the train. It appears that a false FIR was also prepared, as if the complainant and the wife of the deceased was present at 15.00 hrs on 03.05.2018 at the Railway Station. The respondent would also submit that the ticket number which is mentioned in the inquest report was never recovered from the body of the deceased.

8. Further, the postmortem report would indicate that the deceased would have passed away between 48-78 hrs prior to the postmortem. The postmortem was conducted at 12.30 hrs on 04.05.2018. Therefore, as per the postmortem report, death should have occurred between 12.30 hrs on 01.05.2018 and 12.30 hrs on 02.05.2018.

9. The journey ticket was purchased at Madurai at 16.43 hrs on 30.04.2018, which would indicate that the deceased would have travelled by train No.22628, which leaves Madurai at 17.10 hrs. The first respondent wife had alleged that she had spoken to the



deceased over phone at 20.10 hrs. Therefore, if the deceased had fallen down, he would have fallen down between 21.15 hrs and 21.30 hrs on 30.04.2018 as that is the time, when the train passes the alleged place of accident. Therefore, from the postmortem report it can be inferred that the death may not have occurred on account of fall from the train, as the body was found only on 03.05.2018 at 08.40 hrs and the postmortem report fixes the time of death between 12.30 hrs on 01.05.2018 and 12.30 hrs on 02.05.2018.

10. The respondent would submit that the sequence of events narrated as well as the report, both inquest report as well as the postmortem report, would clearly establish that the accident had not occurred in the manner in which it has been narrated by the applicants.

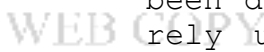
11. The first applicant, adduced evidence as A.W.1 and have marked documents. The inquest report with the attachments has been marked as Exs.R1 and R2 on the side of the respondent.

12. The Railway Claims Tribunal has come to a conclusion that from a perusal of the evidence and documents, it gives an impression that the incident itself is a fabricated one since the time as set out by the applicants does not tally with the schedule of the train and further the postmortem report would further confirm that the death could not have occurred at the time as stated by the applicants. The Tribunal has set out in detail the discrepancies in the applicants' case in detail.

13. Challenging this order, the applicants are before this Court.

14. Mr.S.Parthasarathy, learned counsel, who appears on behalf of the applicants, would primarily base his entire arguments on the fact that the ticket had been produced on the side of the applicants and once the ticket is filed, it has to be presumed that he was a bona-fide passenger and in case the Railways entertained a doubt about the genuineness of the ticket, they ought to have let in contra evidence to disprove the document. This exercise has not been done by the Railways. Therefore, it has to be concluded in no uncertain terms that the ticket was the ticket under which the deceased Muniyasami had travelled from Madurai.

15. The learned counsel for the appellants would cite the judgment of the Hon'ble Supreme Court reported in 2018 (7) SCALE 274 in Union of India (UOI) Vs. Rina Devi, where he would rely upon the observation made in the judgment that a mere absence of the ticket will not negative the claim that he is a bona-fide passenger. Initially the burden would be on the claimant which



16. He would further contend that this initial burden has been discharged by the applicants by filing the ticket. He would rely upon a judgment of this Court made in C.M.A.No.2122 of 2015, where one of the argument's of the defence was that the non production of the train ticket would not be fatal to the case of the claimants. The learned Judge had relied upon Section 2 (29) of the Railways Act and Section 124 A which defines a passenger and thereafter relied on the judgment reported in 2012 (3) CTC (Civil) 741 (The Union of India owning Southern Railway by its General Manager, Chennai Vs. G.Jayalakshmi and others, where this Court has held that the normal presumption is that the victim would hold a valid ticket and therefore the onus is on the Railways to disprove the same. The learned Judge has observed that it is the duty of the Railway Authority to first give evidence that the deceased or the injured did not have a valid ticket and if proof is given, the onus shifts upon the claimants to prove that the deceased was a bona-fide passenger. Therefore, he would submit that the burden placed on the applicants had been discharged and the respondent Railways has failed to disprove the same. He would also rely upon a judgment reported in (2008) 4 MLJ 323 (SC) by the Hon'ble Supreme Court in which the issue for the consideration of the Court was the expression 'accidental falling of a passenger from a train carrying passengers'.

The applicants, in their application, would submit that at 20.10 hrs the deceased had called his wife and informed her that he had purchased a ticket for travelling from Madurai to Chennai, giving the wife the ticket number. He would submit that it is rather strange that a husband would inform the ticket number to his wife. The wife in her cross examination had submitted that the information in the FIR, mentioning the ticket number was not known to her. He would therefore submit that the ticket has been procured later.

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19. He would further submit that the postmortem report would state that the death had occurred between 48-72 hours prior to the time on which the postmortem had been conducted, which therefore times the death on 01.05.2018 between 08.10 hrs and 09.10 hrs. As per the schedule of the train in which the deceased is said to have travelled, it would have crossed the spot where the body of the deceased was found at midnight. He would submit that all these factors have been taken note of by the Tribunal to disprove the case of the applicants.

20. He would state that even in Union of India (UOI) Vs. Rina Devi stated supra, the Hon'ble Supreme Court has held that each case has to be looked at as per the facts and circumstances of that case and it cannot be a general rule that the minute, the accident has occurred in the precincts of the Railway property, which includes the track that the person was a bona-fide passenger. In the instant case, the respondents have discharged the onus placed on them to prove that the deceased was not a bona-fide passenger. When the body was initially found, it has been clearly mentioned that no ticket was found. That being the case, the production of the ticket by the applicants without giving any details of the source from which they had obtained the ticket would clearly show that the document is a fabricated document and the deceased was not a bona-fide passenger.

21. Heard the counsels on either side and perused the records of the case.

22. That the body was found besides the Railway track is admitted. The dispute is whether the deceased had travelled as a passenger by taking a valid ticket and this is the issue that has to be considered in the instant case. In order to analyse the above, reference has to be drawn to certain documents and its contents. The "பிரேத விசாரணை அறிக்கை" which is a report pursuant to an inspection conducted in the presence of panchayatars who had identified the body, would state that the belongings which had been recovered from the body was his shirt, banian and pants. They have not recovered a ticket from the body. That apart, the body has been discovered three days after he had left his house i.e., on 03.05.2018.

23. The keyman, who had first seen the body had reported that the body was in a decomposed state emanating foul smell and it was found near the bushes abutting the Railway track. The keyman has further stated that there has been a heavy bleeding and the body was found caked with dry blood. If the ticket was recovered from the body then it should also be covered in blood.

24. There is no explanation on the side of the claimants as



to how and who had given them the ticket, particularly when the initial report clearly states that no item or valuable or a ticket had been recovered from the body. Therefore, the respondent Railways have been able to rebut the claim of the applicants that the deceased was a bona-fide passenger, who had purchased the ticket and boarded the train. Once they have discharged their onus, the factum of proving their case shifts back to the Appellants.

25. The Tribunal in its order has set out in great detail, the contradictions in the deposition of the first Applicant/wife. The learned Judge has stated that if credence is given to the ticket which has been produced on the side of the applicants, the deceased, should have travelled in train No.22628, which is the Trivandrum to Trichy express left Madurai at 17.10 hrs. Thereafter, he should have boarded another train from Trichy and the incident should have occurred in the midnight of the same date or the early hours on 01.05.2018. However, the postmortem report would fix the time of death between 12.30 hrs on 01.05.2018 and 12.30 hrs on 02.05.2018.

26. There is also a doubt, if the deceased had actually travelled in the train and fallen to his death while he was travelling in the train. It is an axiomatic principle of law that the Courts should not entertain a false case. In the case on hand, there are two glaring false statements as well as documents. These discrepancies are detailed herein below:

a) The journey ticket, which has been produced:- The applicants have not been able to explain the source from which they had obtained the ticket, particularly, when the inquest report clearly states that apart from the clothing, no other things of value had been retrieved from the deceased. Further, if the ticket had been obtained from the body, the body at the time of its discovery was already in a decomposed state.

b) The statement of the wife that when her husband had called on 20.00 hrs on 30.04.2018, he had given her the details of his ticket number appears false for the reason, that Ex.R2 call details does not show that a call has been made to the first applicant or the first applicant had called the deceased. Further in her deposition, she has submitted that she has not given the details of the ticket number.

27. The conversation regarding the husband conveying the ticket number, that too an unreserved ticket number, is clearly made for the purpose of fortifying their case in the claim. Even in the case of a reserved ticket, it is natural to only give details about the coach number or the seat number, but, never would one give the details of the ticket number which is about 8 to 9 numbers long. Therefore, taking into consideration the judgment in Union of India (UOI) Vs. Rina Devi case stated



supra, on the facts of the instant case, the applicants have not been able to prove their case that the deceased is a bona-fide passenger. A passenger has been defined in Section 2 (29) of the Railways Act, 1989 as follows:-

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2 (29). "passenger" means a person travelling with a valid pass or ticket;

28. The explanation to the section states that a passenger would also include a person who holds a platform ticket. This definition is available only in the case of accidents coming within the ambit of Section 124 A. What is an "untoward incident" has been explained in Section 124 A. In Section 124 A, there is reference to a person holding a platform ticket. However, Section 2(29) does not talk of a person holding a platform ticket. Therefore, a conjoint reading of Section 2 (29) and Section 124 A with its explanation clearly provides that a passenger is one holding a ticket. In the light of the discussion in the foregoing paragraphs, it is to be held that the deceased Muniyasami did not possess a valid ticket and will therefore not be entitled to compensation.

29. In the result, I see no reason to set aside the order passed by the Railway Claims Tribunal. Accordingly, the Civil Miscellaneous Appeal is dismissed. No Costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Railway Claims Tribunal, Chennai

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

+1cc to Mr.M.Vijay Anand, Advocate, S.R.No.21400

+1cc to Mr.S.Parthasarathy, Advocate, S.R.No.21326

C.M.A.No.3196 of 2019

KK(CO)

SB(26/04/2022)