



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.08.2021

PRONOUNCED ON : 05.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.NO.1495 OF 2017

(Through Video Conferencing)

1.M.Munian

2.M.Dhanalakshmi

...Appellants

Vs

The Union of India owning Southern Railway
rep. by its General Manager, Chennai-600 003.

...Respondent

Prayer:- This Civil Miscellaneous Appeal has been filed, under Section 23 of the Railway Claims Tribunal Act, 1987, against the judgement, dated 26.08.2015 passed in OA.(II-U) 213/2014 by the Railway Claims Tribunal, Chennai Bench.

For Appellants : Mr.T.Rajamohan

For Respondent : Mrs.A.Shrijayanthi

JUDGEMENT

1.This Civil Miscellaneous Appeal has been filed, against the judgement, dated 26.08.2015, passed in OA.(II-U) 213/2014 by the Railway Claims Tribunal, Chennai Bench.

2.The Appellants/Applicants, who are the parents of the deceased M.Raja, aged 22 years, had filed the above application, on 13.08.2014, seeking a compensation of Rs.4 lakhs, with interest, for the death of the deceased, who died on 17.02.2014, due to falling down accidentally from the Train. The application was contested on the grounds that the deceased was not a bona fide passenger, as no ticket was found with the deceased and that only due to his own negligence, the deceased



fell down and died. On the side of the Appellants, Ex.A1 to Ex.A6 were marked. After framing issues on the basis of the pleadings of the parties, by the impugned judgement, the Tribunal had dismissed the application. Hence, this Civil Miscellaneous Appeal has been filed by the Applicants.

3.This Court heard the learned counsel on either side and considered their submissions, including the materials placed on record.

4.According to the Appellants, since the incident falls within the definition of 'untoward incident' under Section 123(c) of the Railways Act, the Tribunal ought to have allowed the claim application and without considering the evidence in a proper and perspective manner and well settled principles laid down by various Courts, the Tribunal had dismissed the application, erroneously shifting the burden of proof on the Appellants regarding the status of 'bona fide passenger'. 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. Reliance is placed on the decisions reported in 2008 4 MLJ 323 SC (Union of India Vs. Prabhakaran Vijayakumar), AIR 2010 SC 3705 (Jamila Vs. Union of India), AIR 2003 Andhra Pradesh 23 (Union of India Vs. Baburao Koddekar) and judgement of the Honourable Supreme Court dated 09.05.2018, made in Civil Appeal No.4945 of 2018.

5.According to the Respondent, 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 Sections 123 and 124 of the Railways Act is erroneous.

6.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



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



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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.

9. In this case, as per the report of the Divisional Railway Manager, dated 25.06.2015, it was concluded that the deceased, while negligently travelling on the foot board of the train, had fallen down and expired on the spot due to the injuries sustained, but, it is stated that no journey ticket was recovered, during the investigation. Even as per the First Information Report, inquest report and post mortem report, it is crystal clear that the deceased was a passenger and he fell down from the train accidentally and died, in other words, the deceased died of the accident due to fall from the train. Thus, the factum of 'untoward incident' stands proved, in view of Section 123(c) (2) of the Act, which defines 'untoward incident' as 'accidental falling of any passenger from a train carrying passengers'.

10. In so far as the contention of the Railways that it is a case of 'self-inflicted injury', as defined under Section 124A (b) of the Act, is concerned, it means injuries, which are self inflicted by a person, when he is capable of rational voluntary action and would be inflicted by one's self. When a person accidentally falls from the train because of some jerk or slipped down, while boarding or alighting or standing, it would not amount to 'self-inflicted injury' , but only an 'untoward incident'.

11. In a catena of decisions, various Courts, 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.

12. Mere non-recovery of a ticket is not a ground to deny the compensation. In this case, the claimants, who have no means of





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the principles laid down by various Courts as stated above and the evidence, in a proper and perspective manner, but misconstruing the provisions of law, the Tribunal erred in shifting the burden of proof on the Applicants and consequently, erred in not granting compensation to the Applicants, by dismissing the application, by the impugned order, which warrants interference by this Court.

16. In fine, this Civil Miscellaneous Appeal is allowed, setting aside the impugned judgement of the Tribunal. The Respondent is directed to pay a compensation of Rs.4,00,000/- (Rupees Four Lakhs only) with interest at 6% p.a. from the date of the application till the date of this order and thereafter, 9% p.a. till the date of payment, to the Appellants. No costs.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

Srcm

To

1. The Railway Claims Tribunal,
Chennai.

+2ccs to Mr.T.Rajamohan, Advocate, S.R.No.1276

+1cc to Mrs.A.Shrijayanthi, Advocate, S.R.No.575

CMA.No.1495 of 2017

PCH(CO)

RLP(08/02/2022)