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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.A.No.2789 of 2009

The Union of India Owning
Southern Railways,
Rep. By its General Manager,
Chennai.

... Appellant

-VS-

1. C. INDHUMATHI
W/O. LATE R CHANDRU,
NO 5/3 MARKETPARAM,
2ND STREET, NEW WASHERMENPET, CHENNAI.

2. C. RIVETHITHA (Major)
D/O. LATE R CHANDRU,
NO 5/3 MARKETPARAM,
2ND STREET NEW WASHERMENPET CHENNAI.

3. A. RAMACHANDRAN (DIED)

4. R. RUKMANI (DIED)

(2nd Respondent declared as Major and his
Mother/Natural Guardian C.Indumathi discharged
for Guardianship and respondents 3 & 4 died. Respondent 1 & 2
legal heirs of the deceased R3 Viz., A.Ramachandran and
R4 R.Rukmani, vide common order dated 10.10.2023 made in
CMP.Nos.22630, 23036 and 23034 of 2023 in CMA.No.2789 of
2003 by MDIJ)

... Respondents



Prayer: Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987 to call for the entire records leading to passing of the final orders in OA.No.2006 00031 dated 15.06.2009 on the file of the Railway Claims Tribunal, Chennai Bench and set aside the same.

For Appellant : Dr.S.R.Sundaram
For Respondents : Mr.T.S.Rajamohan for RR1 & 2
RR3 & 4 – Died (Steps taken)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed to quash the final award passed in OA.No.2006 00031 dated 15.06.2009.

2. It is the case of the appellant Railways that on 23.11.2005 prior to 6.30 hours, the deceased Chandru, who travelled by train between Kathivakkam and Wimco Nagar Railway Station, fell down from the train and suffered grievous injuries in the head and died at the place of the occurrence. Hence, the respondents, who is the wife, daughter, parents have filed a claim petition before the Railway Claims Tribunal, Chennai.

3. During the trial before the Tribunal, on the side of the respondents, the first respondent examined as AW1 and marked 6 documents viz., Exs.A1 to A6.

On the side of the appellant, the Station Manager/Kavarapettai has been examined as RW1 and marked one document.



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4. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition and awarded a sum of Rs.4,00,000/- as compensation to the claimants. Aggrieved by the award dated 15.06.2009, the appellant Railways has filed this appeal before this Court.

5. The learned counsel for the appellant submitted that the Tribunal has passed award in favour of the respondents in O.A.No.2006 00031 on mere presumption and totally brushed aside the specific provisions under Section 123, 124 of the Railways Act and awarded compensation, which is not sustainable one. It is further submitted that the deceased did not at all travel the train and that as per the post mortem report, he had fallen in front of the train to commit suicide and his body was crushed to death. Further, there was no eye witness to the incident and there was no reporting of such incident, by co-passenger of the train. Thus, the Tribunal has totally ignored the counter filed by the railways, awarded the compensation, which is liable to be quashed.

6. The learned counsel for the respondents submitted that the body was found by the public only on the morning on 23.11.2005 and as a ticket was found on the body dated 22.11.2005, there is every possibility that the deceased would have travelled on 22.11.2005 and fallen down from the train due to rush,



sped and jerk of the train. It was an accidental fall within the meaning of term untoward incident as defined under Section 123(c)(2) of the Railways Act. The Tribunal has considered all these facts, awarded compensation to the claimants, which does not warrants any interference.

7. Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the materials available on record.

8. The facts of the case are that a claim petition was filed before the Railway Claims Tribunal, by the wife, father, mother and minor son of one Chandru who died on 22.11.2005 in a train accident between Kathivakkam and Wimco Nagar Railway station. The Claims Tribunal allowed the claim. The Korukkupet Railway Police has registered a case and filed charge sheet. It is also undisputed fact that the second class train ticket was found from the body of the deceased.

9. From the narration of facts relating to the appeal, two questions emerge before this Court for our consideration, viz.,

1) Whether the deceased person was bonafide passenger and the manner of accident leading to the death of the person could be held to be an untoward incident falling within the ambit of [Section 123\(c\) of the Railways Act, 1989](#) ?



2) *Whether the respondents/claimants in this appeal are entitled for compensation under [Section 124A](#) of the Railways Act, 1989 for the death of the deceased persons in an untoward incident ?*

10. For better appreciation, Section 123 and 124(A) of the Railways Act are extracted hereunder:

Section 123 in The Railways Act, 1989

123. Definitions.—In this Chapter, unless the context otherwise requires,—

[\(a\)](#) “accident” means an accident of the nature described in section 124;

[\(b\)](#) “dependant” means any of the following relatives of a deceased passenger, namely:—

[\(i\)](#) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his parent;

[\(ii\)](#) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a pre-deceased son, if dependant wholly or partly on the deceased passenger;

[\(iii\)](#) a minor child of a pre-deceased daughter, if wholly dependant on the deceased passenger;

[\(iv\)](#) the paternal grandparent wholly dependant on the deceased passenger.

²⁵ *[\(c\)](#) “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.]

124. Extent of liability.—When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, 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 has suffered a loss 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 a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the



train, sustained as a result of such accident. Explanation.—For the puposes of this section “passenger” includes a railway servant on duty.

11. Keeping in view, the above provision, facts and evidences available on record, it is held that the deceased sustained injuries as a result of accidental fall from the running train in an "untoward incident" within the provision of [Section 123\(c\) \(2\)](#) of the [Railways Act](#), 1989 and the respondents are entitled for compensation. There is no legal impediment on coming to the conclusion that the deceased must have fallen down from the train. In so far as the question of bonafide passenger is concerned, as per the inquest report, the deceased was having Railway ticket bearing No.45414, which is also admitted in the DRM report. Hence, there are no legal impediments in coming to the conclusion that deceased was a bonafide passenger on the day in question and he died due to falling down from the train.

12. In view of the above above discussion, this Court does not find any perversity in the award passed by the Railways Claims Tribunal and therefore, the appeal filed by the Railways is liable to be dismissed and the Civil Miscellaneous Appeal is dismissed and a sum of Rs.4,00,000/- awarded by the Tribunal as compensation to the respondents/claimants is hereby confirmed. The appellant is directed to deposit the entire amount awarded by the Tribunal along



with interest and costs, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. Since the respondents 3 & 4 died during pendency of the appeal, the respondents 1 & 2/claimants, are permitted to withdraw the compensation as awarded by the Tribunal along with interest and costs, less the amount, if any, already withdrawn, by filing an appropriate application before the Court concerned No costs.

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non Speaking Order

To

The Railways Claims Tribunal,
Chennai Bench.



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M.DHANDAPANI.J.,

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