



C.M.A.No.92 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.92 of 2022

1.Dhanam

2.Munusammy

... Appellants

Versus

Union of India, owning Southern Railways
Represented by its Through General Manager
Southern Railway, Chennai.

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 23(1) of the Railways Claims Tribunal Act, against the order dated 23.12.2021 made in O.A. (II – U)/MAS/25/2020 on the file of the Railways Claims Tribunal, Chennai.

For Appellants : Mr.S.Parthasarathy

For Respondent : Mr.M.Vijay Anand

JUDGMENT

This appeal has been filed by the appellants challenging the order of the Tribunal made in O.A. (II – U)/MAS/25/2020, dated 23.12.2021.



C.M.A.No.92 of 2022

2.The appeal arises under the following circumstances:-

WEB COPY

(a).The appellants filed claim petition before the Tribunal stating that on 04.09.2019, at about 19:20 hrs, the appellants' son, who was the college going student was traveling in the Electric train; that at that time, he accidentally fell down from the running train between Nungambakkam and Chetpet Railway stations, sustained fatal injuries and died at the place of the incident.

(b)The respondent herein filed the reply statement denying the averments in the claim petition and stated that the deceased did not travel in the train; that he was walking along the tracks of Suburban 'Down' line towards Nungambakkam Railway station; that the Tambaram bound train hit the deceased and he was thrown to the adjacent Suburban 'Up' line track and hit by the Chennai Beach bound train.

(c)The appellants examined the mother of the deceased/1st appellant as A.W.1 and marked the copies of the Station Master's message, FIR and other connected documents.



C.M.A.No.92 of 2022

(d)The Tribunal after considering the oral and documentary evidence dismissed the claim petition stating that the deceased did not die due to an untoward incident.

(e).Aggrieved over the judgment of the Tribunal, the appellants have preferred the instant appeal.

3.The learned counsel for the appellants submitted that while examining A.W.1-the 1st appellant herein, the appellants have discharged their initial burden of establishing that the accident took place due to an untoward incident and the deceased was a bonafide passenger; that the Tribunal had erroneously relied upon the DRM report, which was filed nearly 18 months after the incident and therefore, the learned counsel prayed for setting aside the judgment of the Tribunal.

4.The learned counsel for the appellants also relied upon the judgment of the Hon'ble Supreme Court in the case of ***UOI Vs. Rina Devi*** made in ***Civil Appeal No.4945 of 2018 dated 09.05.2018*** and the similar judgment in the case of ***Kamukayi & Ors. vs. Union of India &***



C.M.A.No.92 of 2022

Ors in C.A.No.3799 of 2023, dated 16.05.2023 in support of his submission that once the initial burden is discharged by the claimants, the onus shifts to the Railway Authorities to show that the deceased was not a bonafide passenger.

5.The learned counsel for the respondent per contra submitted that the witness examined on the side of the appellants was not an eye witness and no evidence has been let in to show that the deceased died due to an untoward incident while traveling in the train; that even assuming that the DRM report was filed belatedly, the appellants have not established that the deceased was a bonafide passenger and died due to an untoward incident and prayed for dismissal of the appeal.

6.On perusal of the records, it is seen that, there cannot be any dispute in the proposition of law that where the initial burden had been discharged by the appellants to show the the deceased was a bonafide passenger and died due to an untoward incident, by way of filing the affidavit, the burden shifts to the Railway Authorities. In the instant case it is seen that except A.W.1/the mother of the deceased, who was not an eye witness, no evidence has been let in on the side of the appellants to



C.M.A.No.92 of 2022

show that the deceased traveled in the train and was a bonafide passenger.

7.The affidavit of A.W.1, whose version is hearsay, cannot be treated as a discharge of the initial burden on the appellants. The earliest version available on record is the letter from the Commercial Supervisor of Booking Office at Nungambakkam Railway station to the Sub-Inspector, Government Railway Police, Chennai on 04.09.2019 at about 19.00 hrs. In the said letter, it is stated that the male passenger aged 19 years was run-over and was killed in the track between Nungambakkam to Chetpet Railway station.

8.It is also seen that an FIR was registered. After the registration of FIR, the final report was filed and the same was sent to the Tahsildhar, Egmore by the Sub-Inspector of Police, Railway Police Station, Egmore stating as follows:

“From the statement of the doctor while the deceased was traveling in a electric train running had accidentally fall from train hence the death of the deceased due to accident by falling from electric train and submit this final report”



C.M.A.No.92 of 2022

This Court is of the view that the report of the Sub-Inspector of Police is based on the statement of the Doctor. It is not known as to how the Doctor had stated that the deceased sustained injuries due to fall from the train. The Doctor was also not examined. Therefore, the report of the Sub-Inspector of Police cannot be the basis to hold that the deceased traveled in train and was a bonafide passenger. The appellants are also unable to produce any ticket. Considering all the above facts this Court is of the view that the judgment of the Tribunal dismissing the claim petition cannot be faulted and the appeal is liable to be dismissed.

9. With the above observations, this Civil Miscellaneous Appeal is dismissed confirming the judgment of Tribunal made in O.A. (II – U)/MAS/25/2020 dated 23.12.2021. No costs.

08.09.2023

rst/dpa

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



C.M.A.No.92 of 2022

To:

1.The Railways Claims Tribunal,
Chennai.

2.The Section Officer,
VR Section,
High Court, Madras.



WEB COPY



C.M.A.No.92 of 2022

SUNDER MOHAN, J.

rst/dpa

C.M.A.No.92 of 2022

08.09.2023