



C.M.A.No.3512 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.3512 of 2014

The Union of India Owning
Southern Railway Rep. By
Its General Manager
Chennai-600 003.

... Appellant / Respondent

Vs.

1.R.Kalavathi
2.N.Radhakrishnan

... Respondents / Applicants

Civil Miscellaneous Appeal is filed under Section 23 of the Railway Tribunals Act, against the judgment passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U) No.219 of 2012 dated 14.12.2012.

For Appellant : Mr. M.Vijay Anand

For Respondents : Mr.J.Kari Rajan



JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the Railways, challenging the liability to pay the compensation as directed by the Tribunal in the award passed in O.A.(II-U) No.219 of 2012 dated 14.12.2012, on the file of the Railway Claims Tribunal, Chennai.

2. The parties are referred to hereunder according to their status and ranking before the Tribunal.

3. The brief facts of the case of the claimants are that the son of the claimants, namely R.Rajarishi, on 07.04.2011 travelled in an EMU train with II class ticket bearing No.103398242 from Tiruvallur to Arakkonam. While the train was proceeding between Thiruvalangadu and Mosur Railway Stations at Km.62/10-12, due to pressure exerted by other passengers, one Ms.Divya had accidentally fallen down from the running train, and in the attempt to save her the deceased Raja Rishi also fell down, died at the spot. Hence, the claimants filed claim petition under Section 16 of Railway Claims Tribunal Act, 1987 read with Sections 123(c)(2) and 124-A of Railway act, 1989, seeking compensation. The Railway contested the claim petition on the ground that both deceased in this case, have



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jumped out of train due to their personal quarrel and it is not the case of untoward incident hence no compensation is payable to the claimants.

4. Before the Tribunal, to prove their claim on the side of the claimants, Mother of deceased was examined as AW.1 and Exhibits A1 to Exh.A8 were marked. On the side of the respondent, RW.1 was examined and Report of Divisional Railway Manager, Chennai division dated 12.12.2011 was marked.

5. After full trial the Tribunal has passed an award dated 14.12.2012, granted compensation for a sum of Rs.4,00,000/-. Aggrieved by the said order the Southern Railways has preferred this appeal.

6. The learned counsel for the Railways submitted that the Tribunal ought to have held that the deceased R.Rajarishi and deceased Divya, have jumped out of the running train due to quarrel among them. The act of jumping out of train is a deliberate “self inflicted injury”. He further submitted that the appellant is not liable to pay any compensation under Section 124 A (b) of the Railway Act, 1989 and the alleged death of R.Rajarishin will not come under the definition of “Untoward incident”.



Hence, prayed to set aside the same by allowing this appeal.

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7. The learned counsel for the respondent submitted that based upon evidence placed on record and circumstances, the Tribunal has rightly awarded the compensation which needs no interference and prays to confirm the order passed by the Railway Claims Tribunal, Chennai Bench. I have considered the submissions made by both sides and perused records.

8. The claimants have marked the Final Report filed by the Railway Police, who have investigated the case and concluded that, the deceased was travelled along with his friend Divya from Tiruvallur to Arakkonam, while the train was nearing between Thiruvelangadu Railway Station To Mosoor Railway Station at KM.62/10-12 due to overcrowd in the train and also due to jerking and jolting of the train the said Divya unexpectedly fallen down from the train. While the deceased Rajarishi was trying to catch her and to safeguard her, he also fallen down unexpectedly from moving train and died on the spot.

9. The Railways has also marked the Investigation Report of untoward accident recorded by RPF/AVD, which has been accepted by



DRM. In which, it has been stated that it is a case of suicide. However, it is reiterated that the deceased along with his friend fell down from the running train, near Thiruvelangadu and Mosoor Railway Station and sustained grievous injuries and subsequently he died on the spot.

10. The Hon'ble Apex Court in *Union of India vs. Rina Devi and others [2019 (3) SCC 572]* has considered that the burden of proof when the dead body was found on the railway station premises and definition of the passengers in relevant paragraphs, it is held as follows:

“Re: (iii) Burden of Proof When Body Found on Railway Premises – Definition of Passenger :

17.1 Conflict of decisions has been pointed out on the subject. As noticed from the statutory provision, compensation is payable for death or injury of a ‘passenger’. In Raj Kumari (supra) referring to the scheme of Railways Act, 1890, it was observed that since travelling without ticket was punishable, the burden was on the railway administration to prove that passenger was not a bonafide passenger. The Railway Administration has special knowledge whether ticket was issued or not. 1989 Act also has similar provisions being Sections 55 and 137. This view has led to an inference that any person dead or injured found on the railway premises has to be presumed to be a bona fide passenger so as to maintain a claim for compensation. However, Delhi High Court in Gurcharan Singh (supra) held that initial onus to prove death or injury to a bona fide passenger is always on the claimant. However, such



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onus can shift on Railways if an affidavit of relevant facts is filed by the claimant. A negative onus cannot be placed on the Railways. Onus to prove that the deceased or injured was a bona fide passenger can be discharged even in absence of a ticket if relevant facts are shown that ticket was purchased but it was lost. The Delhi High Court observed as follows :

*“3(ii) In my opinion, the contention of the learned counsel for the appellants/claimants is totally misconceived. The initial onus in my opinion always lies with the appellants/claimants to show that there is a death due to untoward incident of a bonafide passenger. Of course, by filing of the affidavit and depending on the facts of a particular case that initial onus can be a light onus which can shift on the Railways, however, it is not the law that even the initial onus of proof which has to be discharged is always on the railways and not on the claimants. I cannot agree to this proposition of law that the Railways have the onus to prove that a deceased was not a bonafide passenger because no such negative onus is placed upon the Railways either under the [Railways Act](#) or the [Railway Claims Tribunal Act & Rules](#) or as per any judgment of the Supreme Court. No doubt, in the facts of the particular case, onus can be easily discharged such as in a case where deceased may have died at a place where he could not have otherwise been unless he was travelling in the train and in such circumstances depending on the facts of a particular case it may not be necessary to prove the factum of the deceased having a ticket because ticket as per the type of incident of death can easily be lost in an accident. I at this stage take note of a judgment of a leaned Single Judge of this Court in the case reported as **Pyar Singh Vs. Union of India 2007 (8) AD Del. 262** which holds that it is the claimant upon whom the initial onus lies to prove his case. I agree to*



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this view and I am bound by this judgment and not by the ratio of the case of Leelamma (supra). ”

17.2 In *Jetty Naga Lakshmi Parvathi (supra)* same view was taken by a single Judge of Andhra Pradesh after referring to the provisions of the [Evidence Act](#) as follows :

“22. So, from [Section 101](#) of the Indian Evidence Act, 1872, it is clear that the applicants, having come to the court asserting some facts, must prove that the death of the deceased had taken place in an untoward incident and that the death occurred while the deceased was travelling in a train carrying passengers as a passenger with valid ticket. Therefore, having asserted that the deceased died in an untoward incident and he was having a valid ticket at the time of his death, the initial burden lies on the applicants to establish the same. The initial burden of the applicants never shifts unless the respondent admits the assertions made by the applicants. Such evidence is lacking in this case. Except the oral assertion of A.W.1, no evidence is forthcoming on behalf of the applicants. The court may presume that the evidence which could be, and is not produced, would, if produced, be unfavourable to the person who withholds it. The best evidence rule, which governs the production of evidence in courts, requires that the best evidence of which the case in its nature is susceptible should always be produced. [Section 114\(g\)](#) of the Indian Evidence Act, 1872 enables the court to draw an adverse presumption against a person who can make available to the court, but obstructs the availability of such an evidence. The Claims Tribunal, upon considering the material on record, rightly dismissed the claim of the applicants and there are no grounds in this appeal to interfere with the order of the Tribunal. ”



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17.3 In *Kamrunnissa (supra)*, from the circumstances appearing in that case it was held that there was no evidence that the deceased had purchased the ticket. In the given fact situation of that case, this Court inferred that it was not a case of 'untoward incident' but a case of run over. It was observed :

“7. The aforestated report also reveals, that the body of the deceased had been cut into two pieces, and was lying next to the railway track. The report further indicates, that the intestine of the deceased had come out of the body. The above factual position reveals, that the body was cut into two pieces from the stomach. This can be inferred from the facts expressed in the inquest report, that the intestines of the deceased had come out of the body. It is not possible for us to accept, that such an accident could have taken place while boarding a train.

8. In addition to the factual position emerging out of a perusal of paragraphs 7 & 8 extracted hereinabove, the report also reveals, that besides a pocket diary having been found from the person of the deceased a few telephone numbers were also found, but importantly, the deceased was not in possession of any other article. This further clears the position adopted by the railway authorities, namely, that the deceased Gafoor Sab, was not in possession of a ticket, for boarding the train at the Devangere railway station.”

17.4 We thus hold 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 a bonafide passenger. 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 shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

11. In this case, except the Final Report, the Railways have not adduced any contra evidence to dispute the evidence placed on record by the claimants herein. On the side of the respondent the official of Railway police-RW.1 also examined that they conducted enquiry with the family members and came to know that the family members have not approved the relationship between the deceased. By relying on this statement and also by relying on the fact that both the deceased were travelled in a common ticket it is urged that since the family members have not approved their marriage, the couple jumped out of train.

12. This Court unable to appreciate the said fact, since no witness, or the family members, or any other person who are having direct knowledge about their relationship or the person who have seen the occurrence have been examined before the Tribunal. Except his oral statement there is no other corroborative material to substantiate the evidence of R.W.1 was



produced on the side of the respondent.

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13. Hon'ble Apex Court recently, had an occasion to consider the standard of proof required for proving the untoward incident, in ***Kamukayi and others vs. Union of India (UOI) and Others [AIR 2023 (SC) 2761]*** has held that, in the absence of any distinct evidence to prove the occurrence, the reliance on final report held by the Police after investigation shall be acceptable for the purpose of corroborating the evidence of claimants. To contradict the case of claimants, which is corroborated by the Final Report of Railway Police, the Railways have to produce creditable evidence and also to rebut the presumption. In paragraph no.18 observed as follows:

“18. Now, reverting to the issue whether the deceased was a bona fide passenger? In this regard, the ocular statement of AW1- Manikandan, son of the deceased, who procured a valid train ticket for travel from Lalapettai to Karur and handed it over to the deceased is on record. As per the statement of AW1, the averments made in the claim petition have been testified and even in the cross-examination, he has reiterated that ticket for deceased from Lalapettai to Karur was purchased for a sum of Rs. 10/- and sent him off at Station to go to Karur. The deceased fell down at Mahadanapuram Railway Station. The said averment of the claim petition and the statement of D.Ravisankar, Station Master finds support from inquest report prepared by the



Inquest Officer on the date of incidence i.e. 27.9.2014 and the final report prepared by the Investigation Officer, Railway Police Station Trichy on 14.11.2014. The said reports have been referred to in the investigation report dated 7.6.2017. Considering the material brought on record, in our view, the initial burden that the deceased passenger was having a valid ticket has been discharged shifting onus on the Railway Administration to disprove the said fact. Nothing has been placed before Claims Tribunal or brought on record during the course of hearing that the Railway Administration has discharged the burden of not having the valid railway ticket with the deceased passenger, except to say that during recovery ticket was not found. In absence of any cogent evidence, notwithstanding anything contained in any other law, the Railway Administration shall be liable to pay compensation as prescribed.”

14. As discussed above in this case, claimant filed affidavit stating that, deceased was travelled in Train after taking valid ticket. The final report of Police corroborated the evidence of P.W.1. Since the DRM Report accepts that the deceased was died in the accident after fall from train. The Railway have failed to prove the fact that it is a case of suicide or self inflicted injury. In the absence of proving the case of suicide, the Railways failed to discharge their burden and the Tribunal rightly accepted the case of the claimants. Accordingly, this Court is of the view that the claimants are entitled for compensation and the appeal filed by the Railways failed.

15. In the result, this Civil Miscellaneous Appeal is dismissed and



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the Order of the Railway Claims Tribunal is hereby confirmed. There shall be no order as to costs in the present appeal.

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

K.RAJASEKAR, J.

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To

1. The Railway Claims Tribunal,
Chennai Bench.
2. The Section Officer, V.R.Section,
High Court of Madras.

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