



C.M.A.No.683 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.683 of 2014
and M.P.No.1 of 2014

The Union of India
Owning Southern Railway
Rep. by its General Manager
Park Town, Madras – 600 003

.. Appellant

Versus

M.Gajendran
Respondent

..

Prayer : Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act (54 of 1987) against the Judgment passed by the Railway Claims Tribunal, Madras Bench made in O.A.(II-U) 20/2013 dated 07.08.2023.

For Appellant : Mr.M.Vijay Anand

For Respondent : Mr.R.Rajamohan

JUDGMENT

The present Civil Miscellaneous Appeal is filed against the judgment passed by the Railway Claims Tribunal, Madras Bench made in O.A.(II-U) 20/2013 dated 07.08.2023.



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2. The appellant/Southern Railway, Union of India, has filed the present Civil Miscellaneous Appeal questioning the award made in favour of the respondent in violation of the Section 124A(b) of the Railway Act, 1989.

3. The deceased is the mother of the respondent. On 23.01.2012, the deceased namely Mrs.Rathinamma while travelling from Arakkonam to Tiruttani, fell down from the train and died resulting in the registration of a case in Crime No.37 of 2012 under Section 174 of IPC. In the claim petition, the respondent/claimant has claimed compensation of Rs.4 lakhs together with interest. The manner of the accident on the part of the deceased is in dispute.

4. During the Trial, the claimant examined himself as A.W.1 and Ex.A1-FIR, Ex.A4-legal heirship certificate & Ex.A6-Final Report were marked on behalf of the claimant. On the side of the Respondent/Railway, Report of Divisional Manager/Chennai Division dated 08.03.2013 were filed. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

5.The Tribunal adjudicated the issues and the following points were



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formulated for consideration:

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“(1) Whether the deceased Rathinamma, w/o Late Munusamy was a bonafide passenger, as alleged?”

(2) Whether any untoward incident as defined under Section 123(c)(2) of the Railways Act, 1989 occurred to the deceased Rathinamma, W/o. Late Munusamy, while travelling in a train on 23.01.2012 before 10.00 hours near Tiruttani Railway Station at KM 79/22-24 down line and died at the spot?

(3) Whether the applicant is entitled for the compensation as claimed and other relief if any?”

6. As far as Points No.1 & 2 are concerned, the Tribunal observed that admittedly, the police have come to the conclusion that the deceased fell off the train and died. On the other hand, the appellant/Railways claimed that it was a hit and run case, however, no oral and documentary evidences were placed before the Tribunal. Also, merely on the basis of an unsupported stand taken in the investigation report of the Divisional Railway Manager, Chennai Division, it cannot be taken into consideration as it is made after a lapse of one year of the accident. Further, the Tribunal held that the deceased has to be treated as a bonafide passenger since his mother died on the same fateful day. It was further of the view that no iota of evidence was adduced on the side of the appellant/respondent claiming that the deceased was not a bonafide passenger.



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The Tribunal, further, held that there was a untoward incident as defined under Section 123(c)(2) of the Railways Act, 1989. Insofar as the third point, the Tribunal held that the claimant is the sole dependent of the deceased and awarded the compensation of Rs.4,00,000 with 6% interest till the date of that order and 9% per annum thereafter till the date of actual payment.

7. The learned counsel appearing on behalf of the appellant contended that the Tribunal's Order has overlooked and bypassed Section 124-A(b) of the Railway Act, 1989 as the deceased was not a bonafide passenger and the claimant is not entitled for any relief as awarded by the Tribunal. The deceased residence is located half a kilometre from the Tiruttani Railway Station as the deceased was crossing the track, she was hit by the train and therefore, the accident is due to the negligent act of the deceased and it would not attract the provisions of 'accidental falling from train' under Section 123(c)(2) of the Railways Act, 1989. The deliberate action of the deceased would tantamount to 'self-inflicted injury' under Section 124(A) (b) of the Act. The Tribunal instead of discharging the proof of burden on the part of the claimant insisted that the Railways ought to have proved that she is not a bonafide passenger and had mechanically passed the award in favour of the claimant/respondent.



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8. The learned counsel for the appellant submitted that neither independent witness nor eye witness were examined before awarding compensation to the claimant which is in gross violation of the Railways Act, 1989. He further placed reliance on the cases of 1) *Srinivasan and another Vs. Union of India Owing Southern Railway* made in C.M.A.No.249 of 2020 vide Order dated 18.09.2020 and 2) *B.Kalaivani and others Vs. Union of India Owing Southern Railway* made in C.M.A.No.2451 of 2017 vide Order dated 19.02.2021.

9. On the other hand, the learned counsel for the respondent/claimant submitted that the Tribunal has passed the Award in favour of the respondent/claimant after considering all the oral and documentary evidence placed by the claimant/respondent, which does not require interference of this Court. Also, no documentary or oral evidences were placed by the applicant/Railway to substantiate their claim that the deceased died while crossing the Train and the same is a case of hit by the train. Hence, this Court has to dismiss this Civil Miscellaneous Appeal *in limine*. The so-called



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Mandatory Report of Divisional Manager dated 08.03.2023 was supposed to be made within a period of one month, however, the same was done only after a lapse of one year.

10. It was his further contention that only based on the inquest report, the final report was filed by the Police, wherein, the Police have come with a crystal clear conclusion that the deceased was traveling in the Train and she lost her balance, fell off and died. Hence, It is a clear case of death during the Travel in the train and the appellant/Railways are liable to pay compensation to the claimant. Be that as it may, if at all, the appellant/Railway had doubt in the evidence of the AW1, the Railway ought to have examined the A.W.1 which, they have failed to do so. Hence, he prayed this Court that the Award passed by the Tribunal does not require interference and the same may be confirmed.

11. Heard the learned counsel for both sides and perused the materials placed on record.

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

"Compensation on account of untoward incidents:- When in the course of working a railway an untoward incident occurs, then



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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 the dependant of a passenger who has been killed 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, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to-

- (a) suicide or attempted suicide by him;*
- (b) self inflicted injury;*
- (c) his own criminal act;*
- (d) any act committed by him in a state of intoxication or insanity;*
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.*

Explanation: *For the purpose of this Section, 'passenger' includes:-*

- (i) a railway servant on duty; and*
- (ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident."*

13. By the Amendment Act 28 of 1994, clause (c)(2) was inserted in Section 123 of the Act, bringing the 'accidental falling of any passenger from a train carrying passengers' into the definition of 'untoward incident.'



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14. From the above provision of the Railways Act, the points which are to be determined are that the person, who is claiming compensation for any loss, damage, injury or death, was a bona fide passenger having a valid ticket 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 124-A 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, due to jerk of the train if a person 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 and the burden lies on the Railways to prove that the person had met with an accident or death due to his own negligence and thereby she is not entitled to compensation from the Railways.

15. In the case of **Union of India Vs. Kurukundu Balkrishnaiah (2004-ACJ-529-AP)**, a Full Bench of the Andhra Pradesh High Court answered to the following reference whether a passenger trying to board or alight from a running



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train or standing near the door, jumped from the compartment, crossing the railway track or leaning out of the carriage; and during the course of such circumstance had fallen down and was either injured or had died, was entitled to compensation from the Railways under Section 124A of the Railways Act, 1989. The court while answering the reference has held that (1) where a bonafide passenger dies in an untoward incident or sustain injuries, as the case may be, Railways to pay compensation without dispute, unless the death of the deceased or the injuries sustained by the injured, would fall within the exceptions (a) to (e) of the proviso to Section 124A of the Act; (2) accidental falling would include a passenger trying to alight a train, board a train, or any other like action, and hence they would be covered by untoward incident as specified in Section 123(c)(2) of the Act. To attract any of the exceptions under Section 124A proviso, may have to be decided in each and every case and general propositions cannot be laid down in this regard in view of the complexity and diversity of the illustrations and the provisions or the Rules.

16. The death caused by falling from the train is due to one's own negligence and it does not come falls within any exception enumerated under Section 124(A) of the Act. In the absence of malicious intent or mens rea, such negligence can neither be held as criminal act under Section 124(A)(c). In



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Jameela and others Vs. Union of India (2010-12-SCC-443) , the Honourable

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Supreme Court has held thus:

"12. The manner in which the accident is sought to be reconstructed by the Railways, that the deceased was standing at the open door of the train compartment from where he fell down, is called by the Railways itself as negligence. Now negligence of this kind which is not very uncommon on Indian trains is not the same thing as a criminal act mentioned in clause (c) to the proviso to Section 124-A. A criminal act envisaged under clause (c) must have an element of malicious intent or mens rea. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. Thus, the case of the Railways must fail even after assuming everything in its favour."

17. In the present case, it has been proved from the First Information Report, inquest report, postmortem report and the final report submitted by the Railway Police all in one voice concluded the case as an accidental fall from the train and without any material to indicate or infer any foul play or any collusive act, the Railways cannot contend that it is not an accidental fall from the train. The accident did not occur because of any of the reasons mentioned in clauses (a) to (e) of the proviso to Section 124A of the Act. Therefore, the case of the claimant would fall under the category of 'untoward incident' as defined under Section 123 of the Act.



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18. It is no doubt true that no ticket was recovered from the body of the deceased. This court is conscious of the position of law that as provided under Section 106 of the Evidence Act, if a fact is within the special knowledge of a person, the burden of proving such fact is on that person and as provided in illustration (b) of that Section, if a person is charged with travelling on a railway without a ticket, the burden of proving that he had a ticket, is upon him. But, such principle is not applicable to a case of a dead person who was proved died in the course of railway travel and whose body was taken in custody of the Railway Police. In such a situation, it is the duty of the railway authority to first give evidence that he was without a valid ticket and if such evidence is given, the onus shifts upon the claimants to prove that he was a bona fide passenger having a valid ticket. In this case, the burden has not been discharged by the appellant/Railways as they could not substantiate their plea through any oral or documentary evidence by producing the station records, the initial burden of proving such fact had not been discharged.

19. When a person accidentally falls from the train because of some jerk or slipped down while boarding, it would not amount to a 'self-inflicted injury',



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but an 'untoward incident'. Once it is held that the fall of the deceased was a result of untoward incident, the claimant would be entitled for compensation.

20. From the Railways Act defining the term 'untoward incident', it is eloquent that it also includes that an accidental fall of any passenger from a train. When a person is trying to board the train and falls down while trying to do so, that would certainly come within the purview of the accidental fall from a train. When we say that the provisions are part of a welfare statute, then the rules of interpretation mandate that the interpretation of the said provision shall be made in consonance with the object of the Act and for the benefit of the person for whom the Act was made. The beneficial or a welfare statute should be given a liberal and not literal or strict interpretation.

21. For the reasons stated herein above, this court do not find any merits in this Civil Miscellaneous Appeal and the impugned award is liable to be confirmed.

22. In the result, this Civil Miscellaneous Appeal is dismissed. The impugned award is confirmed. No costs. Consequently, connected



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miscellaneous petition is closed.

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Internet : Yes/No

Speaking Order/Non-Speaking Order

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To

1.The Presiding Officer
Railway Claims Tribunal
Chennai Bench

2.The Record Keeper,
VR Section,
High Court, Madras

A.A.NAKKIRAN, J.

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