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C.M.A.No.1491 of 2022
and C.M.P.No.11038 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A. No. 1491 of 2022
and C.M.P.No.11038 of 2022

The Union of India owning,
Southern Central Railway,
Rep. by its General Manager,
Chennai – 600 003.

... Appellant

Versus

A.M.Kothandaraman

... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 23(1) of the Railways Claims Tribunal Act 54 of 1987, seeking to set aside the order dated 01.11.2019 made in RES/MAS/02/2019 in C.M.P.No.12 of 2005 on the file of the Railways Claims Tribunal, Chennai.

For Appellant : Mr.T.P.Savitha

For Respondent : Mr.M.Sai Durga

JUDGMENT

This appeal has been filed by the appellant/Railway challenging the compensation awarded by the Tribunal in RES/MAS/02/2019 in C.M.P.No.12 of 2005 dated 01.11.2019.



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2.The claim petition was filed stating that on 10.02.2000, the respondent was travelling in train from Kodambakkam to Vandalur. While the train was nearing St.Thomas Mount railway station, the respondent was hit by an electric pole and accidentally fell down from the moving train and became unconscious. He regained conscious only after three weeks. Due to the said accident, the respondent sustained head injury as that he was entitled for compensation.

3.The appellant/Railway filed a counter denying all the averments made in the claim petition along with DRM (injury) report dated 31.07.2019 and stated that no such incident was reported in St.Thomas railway station and no FIR was filed by the respondent in this regard.

4.The Tribunal after considering the oral and documentary evidence held that the injuries sustained by the victim were on account of untoward incident, under Section 123(c)(2) of the Railways Act, 1989 and directed the appellant to pay a sum of Rs.1,60,000/- as compensation to the respondent without ordering any interest.



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5. Aggrieved by the said order, the appellant/Railway had preferred the instant appeal challenging the findings of the Tribunal.

6. Learned counsel for the appellant submitted that the claim petition itself was filed with delay of 1547 days. The Tribunal had dismissed the petition filed to condone the delay in filing the claim petition. The respondent challenged the said dismissal order before this Court in C.M.A.No.1989 of 2007. This Court by order dated 11.09.2018 had allowed the said CMA and directed the Tribunal to consider the matter on merits and also held that the respondent is not entitled to the interest for the delay period in the event of Tribunal awarding compensation.

6(a). Learned counsel further submitted that the Tribunal erroneously found that the respondent had sustained injuries on account of untoward incident, though, the respondent had not proved that he suffered injuries due to the travel in the train and he had purchased a ticket for travel. The learned counsel hence submitted that the respondent is not a bonafide passenger.



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7.Learned counsel for the respondent per contra submitted that the Tribunal had awarded compensation on the basis of DRM report filed on the side of the appellant. The DRM report states that since the train was crowded, the respondent's head hit on an electric pole and he fell down on the platform while the train was nearing the station named St.Thomas Mount. The Tribunal also rightly found that the respondent suffered transient loss of memory due to the head injury and therefore his version that he had lost journey ticket is probable. Thus, the appeal has no merits and prayed for dismissal of the appeal.

8.Though the claim petition has been filed belatedly, the fact that the accident took place is established from the DRM report. The Tribunal in its order had extracted DRM report in Paragraph No.10, which states as follows:

“10.DRM report admitted that due to the crowd, and while the train was nearing STM station, his head hit on an electric pole and then fell down on the PF while the train was entering STM station in which he sustained severe head injury.”



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In such circumstances, the finding of the Tribunal that the respondent sustained injuries on account of the untoward incident cannot be faulted. It is seen that the respondent had established that he suffered transient loss of memory with loss of consciousness. It is trite that mere absence of ticket by itself would not be a ground to negate the claim if it is shown that the passenger was a bonafide passenger. The respondent suffered head injury and was admitted in the hospital and he regained conscious only after three weeks. The respondent had established the probable cause for the loss of the ticket. In such circumstance, this Court is of the view that absence of ticket would not lead to the inference that he was not a bonafide passenger. For the above reason, the order passed by the Tribunal does not call for any interference and the appeal is liable to be dismissed.

10.In view of the above, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal is confirmed. The appellant/Railways is directed to deposit the entire compensation



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awarded by the Tribunal, less the amount already deposited, if any, within a period of four (4) weeks from the date of a receipt of copy of this Judgment. On such deposit the respondent is permitted to withdraw the entire award amount, less the amount if any, already withdrawn. No costs. Consequently, connected miscellaneous petition is closed.

14.08.2023

rst

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

1.The Railways Claims Tribunal,
Chennai.

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



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SUNDER MOHAN, J.

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