



C.M.A. No. 3288 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 3288 of 2021

1. S. Balasubramanian
2. B. Muniyammal ... Appellants / Applicants

Vs.

Union of India,
Through General Manager,
Southern Railway,
Chennai - 600 003.

... Respondent / Respondent

Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987 against the Judgment dated 23.07.2021 passed in O.A.(II-U)/MAS/05/2020 by the Railway Claims Tribunal, Chennai Bench.

For Appellants : Mr. B. Thirumalai

For Respondent : Mr. M. Vijay Anand



JUDGMENT

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This Civil Miscellaneous appeal has been filed by the applicants/ claimants challenging the Judgment dated 23.07.2021 passed in O.A.(II-U)/MAS/05/2020 by the Railway Claims Tribunal, Chennai Bench, wherein the Railway Tribunal has dismissed the claim application filed by the appellants herein seeking compensation for the death of their deceased son namely Pandiarajan.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Railway Tribunal. The case in brief is as follows.

3. The case of the claimants/ applicants is that the deceased Pandiarajan was their son and he was a B.E. Mechanical Graduate, who was searching for a job. The deceased had applied for a post in Military service and for attending the written examination on 11.02.2019 at MAM College near Samayapuram, Tiruchirapalli, he started his journey at early morning, from his home town, arrived to Madurai by bus and thereafter he travelled to Trichy by train. He has informed his parents about his journey by train from



Madurai. On the same day, the applicants/ claimants were informed by the Tiruchirapalli Railway Police that their son Pandiarajan, while travelling in the general compartment of Train No.12636, Madurai-Chennai Egmore Vaigai Express, at about 09:22 hours fell down from the train on the platform No.3 of Tiruchirapalli junction and sustained grievous crush injuries, and he was taken to Government Hospital, Tiruchirapalli. Deceased was succumbed to injury at about 4:30 PM on the same day. For the loss of the deceased Pandiarajan, the applicants/ claimants, have come forward with the claim application seeking compensation.

4. The respondent - Southern Railway by filing reply statment along with statutory investigation report resisted the claim and submitted that the deceased was not a bonafide passenger and the cause of death of the deceased was self-inflicted injury. However, they have admitted that the occurrence has taken place on 11.02.2019 at about 09:22 hours on the platform in which the Vaigai Express left.

5. Before the Railway Tribunal, on the side of the claimants, the first applicant, who is the father of the deceased, examined as A.W.1 and the



evidence in this case on the side of the claimants consists of copies of F.I.R.,

Inquest report, Post-mortem certificate, Final report, Death certificate and Legal Heir Certificate. The respondent had filed DRM report with copies of documents cited in it and a report from Senior Console Operator, Unreserved Ticketing System, Southern Railway, Chennai.

6. Based on the evidence placed on record, the Railways Tribunal has held that the deceased has fell down from train No.12636 Vaigai Express at Tiruchirapalli Railway station on 11.02.2019 and held that the contention of the respondent that the deceased sustained self inflicted injury has no merit. However, the Railway Tribunal has held that the deceased was not a bona fide passenger due to not possession of journey ticket, hence held that the applicants/ claimants are not entitled for any compensation and dismissed the claim application.

7. Aggrieved over the denial of granting compensation, the applicants/ claimants have filed this appeal.

8. The learned counsel appearing for the claimants submitted that



there is ample evidence placed before the Railway Tribunal to show that the deceased for the purpose of attending military written exam at MAM College near Samayapuram has chosen Vaigai Express to travel from Madurai to Trichy and due to heavy rush of the passengers, the deceased has accidentally fell down from the moving train on the railway platform at Trichy Railway junction. The learned counsel also submitted that the II Class ticket purchased by the deceased for his travel from Madurai to Tiruchirapalli was lost at the time of accident, hence prays to set aside the award of the Railway Tribunal and grant compensation.

9. The learned counsel appearing for the respondent submitted that though it is an admitted fact that the deceased fell down from the moving Vaigai express train from Madurai to Tiruchirapalli on the platform of Trichirapalli Railway junction on 11.02.2019, but there was no evidence that the deceased has a travel ticket or he is a bonafide passenger. In DRM Report, it is also stated, no witnesses have found the journey ticket and that A.W.1 is not the eye witness for purchasing the journey tickets by the deceased. Hence, his evidence is not sufficient to show that the deceased was travelled as an authorized passenger.



10. I have considered the submissions made on both sides and perused the materials available on record.

11. The undisputed facts herein are that, the deceased is an Engineering Graduate and was travelling from his home town to Trichy for appearing for a Military service written exam at MAM College near Samayapuram and also travelled from Madurai to Tiruchirapalli by Vaigai Express. The first claimant, who is the father of the deceased Pandiarajan has filed a proof affidavit and categorically stated that his deceased son has travelled by train from Madurai to Trichy by purchasing II-class ticket and the same was lost due to the incident.

12. According to the respondent, the cause of death of the deceased was self-inflicted injury, since the deceased attempted to get down from the moving train, before it stopped. In this regard, the railway police registered F.I.R. and they have filed a final report concluding that the train while reaching the platform, the deceased could have fell down due to heavy rush. The fact that the deceased fell down at the platform, while trying to de-train shows that, it is a case of untoward incident and it could not be termed as



self inflicted injury. The F.I.R. and final report filed by the Police corroborates the case of the claimant that, the deceased fell down from the train due to heavy crowd of passengers.

13. 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 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 bona fide 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 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 bona fide 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 bona fide 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 learned 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 this view and I am bound by this judgment and not by the ratio of the case of Leelamma (supra).”*



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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.I, 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.”

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



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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 bona fide 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 bona fide 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.”



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14. The father of the deceased – A.W.1 filed a affidavit in support of his case, wherein he has stated that his son has travelled to Trichy to attend a written exam with fond hope to get selected and to serve in the Armed Forces. While he tried to de-train at the platform, he fell down and sustained grievous injuries. The definition of any untoward incident prescribed under Section 123 (C)(2) of the Railways Act, accepts the accidental falling of any passenger from the train as an untoward incident, which is extracted hereunder:

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

- (a) “accident” means an accident of the nature described in Sec.124:*
- (b) “dependant” means any of the following relatives of a deceased*
- [(c) “Untoward incident” means –*
 - (1)(i) the commission of a terrorist act within the meaning of sub-section (1) of sec. 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987),*
or
 - (2) the accidental falling of any passenger from a train carrying passengers.]”*

15. Even though, it is countered by the Railways that it is a self inflicted injury, no evident has been placed on record to show that it is a self



inflicted injury. The evidence of A.W.1 is also supported by the final report filed by the Railway Police. The A.W.1 also stated that the deceased has travelled in the train from Madurai to Trichy with II Class ticket, which was purchased by the deceased and his evidence coupled with facts that while the deceased was trying to detrain at Platform No. III of the Trichy Railway Station, he fell down and sustained injuries, hence this Court is of the view that the above facts are sufficient to establish that the deceased was a bonafide passenger for which the claim of compensation is maintained. As stated by the Apex Court judgment cited supra, the burden shifted to Railways to show that the deceased was not a bonafide passenger and this burden has not been discharged by the Railways. The counter evidence of the Railways has failed to prove that the deceased is an unauthorized passenger, hence the presumption is in favour of the deceased herein.

16. Based on the above observations, this Court is of the view that the Railways Claims Tribunal has not properly appreciated the evidence placed on record and failed to invoke the presumption in favour of deceased herein. Hence, the Order of the Railways Claims Tribunal is not sustainable and the same is liable to be set aside and the claimants are entitled for



claiming compensation from the respondent.

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17. The learned counsel for the claimants has submitted that the Central Government has notified as per G.O.No.877, Ministry of Railways, New Delhi, dated 22.12.2016, the compensation to be awarded for the death of the passenger to Rs.8,00,000/-. Hence, the same amount shall be awarded as compensation to the claimants.

18. In ***Union of India vs. Rina Devi*** case cited supra, in paragraph No.15.4, Hon'ble Apex Court has given a guidelines for calculating the quantum of compensation, which reads as follows:

*“15.4. Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay. Seeming conflict in *Rathi Menon* (supra) and *Kalandi Charan Sahoo* (supra) stands explained accordingly. The 4-Judge Bench judgment in *Pratap Narain Singh Deo* (supra) holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with*



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reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given”.

19. In this case, the untoward incident was taken place on 11.02.2019 and the applicable compensation is Rs.8,00,000/- as per the Government Order cited above, hence this Court is inclined to award the same and the interest shall be paid from the date of accident till the date of realization.

20. In the result, this Civil Miscellaneous Appeal is allowed. The respondent-Railway is directed to deposit a sum of **Rs.8,00,000/- [Rupees Eight Lakhs only]** along with interest at the rate of **6%** per annum from the date of claim petition till the date of award and thereafter, **9%** per annum within a period of six weeks from the date of receipt of a copy of this judgment to the credit of O.A(II-U)/MAS/05/2020, on the file of the Railway Claims Tribunal, Chennai Bench. On such deposit, the appellants/claimants are entitled to withdraw the amount, now awarded by this Court along with interest and costs. The Tribunal shall disburse the amount now awarded by this Court by directly giving the credit to Savings Bank Account of the claimants without any formal application. 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

To:

1. The Railway Claims Tribunal,
Chennai Bench.

2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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