



C.M.A.No.3289 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A.No.3289 of 2021

1.M.Ananthi
2.M.Dhivahar
3.Baby Sakthi Sowmya
(The Appellants 2 and 3 are minors
represented by the 1st Appellant
through their mother as natural Guardian)

4.S.Vadivu ...Appellants

Vs.

1.Union of India,
Owning Southern Railway,
Rep. by its General Manager,
Chennai - 600 003.

2.S.Sakthivel ...Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment dated 30.07.2021 passed in O.A.(II-u)/MAS/181/2019 by the Railway Claims Tribunal, Chennai Bench.

For Appellants : Mr.B.Thirumalai

For R1 : Mr.M.Vijay Anand

For R2 : Given up



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the claimants challenging the dismissal of their claims before the Railway Claims Tribunal, Chennai in OA(II-u)/MAS/181/2019.

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

3.The case of the claimants is that the deceased herein, namely, Marithurai, who is the husband of the first claimant and father of the second and third claimants, was travelling from Chennai Egmore to Thoothukudi on 01.12.2017 along with his uncle namely one Subbiah. While travelling on the Pearl City Express train between Singaperumal Koil to Paranur railway station, due to heavy rush, speed, jerk and jolt of the train, the deceased accidentally fell down and suffered grievous injuries and died at the place of occurrence. The body of the deceased was noticed by the night patrolman of the Singaperumal Koil and Paranur Station at about 5.00 hrs on 02.12.2017. It is the further case of the claimants that the uncle of the deceased was not aware about the occurrence, since he was seated inside the train and came to know only after



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reaching Tuticorin. The FIR regarding the dead body found near Singaperumal Koil station was registered on the file of the Chengalpattu Railway Police. An investigation was conducted by the police and it was concluded that the deceased fell down from the running train due to over crowd. Since the deceased died, the claimants put forward this claim before the Railway Claims Tribunal seeking compensation. To prove the case of the claimants, the first claimant examined herself as A.W.1 and Exs.A1 to A6 were marked. On the side of the first respondent, DRM report was marked as Ex.R1. The Railway Claims Tribunal, on hearing both sides, dismissed the claim petition. Hence, the appellants have filed this appeal.

4. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the first respondent and perused the materials available on record.

5. The claimants filed the claim petition on the ground that the first appellant was informed by her uncle that the deceased on 01.12.2017 at about 5.00 p.m. along with his uncle namely one Subbiah were going to Thoothukudi and they boarded the Pearl City Express on that day. In support of the claim, the claimants also relied on the inquest report recorded by the police during



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investigation stating that a dead body was found at KM 54/34-36 between Singaperumal Koil station and Paranur railway station. Therefore, when it has been established that the deceased, while travelling in Pearl City Express from Chennai to Thoothukudi, accidentally fell down and suffered grievous head injury and died, they are entitled to the compensation amount.

6. Per contra, the learned counsel appearing for the first respondent submitted that to prove the prima facie claim of the claimants that the deceased was a bonafide passenger, the first respondent summoned the co-passenger one Subbiah to appear and adduce evidence, but he has not come forward to adduce any evidence to throw more light on the facts of the case. Therefore, he submitted that the appellants are not entitled to any compensation and no interference is called for in the impugned order.

7. It is seen from the records that on 02.12.2017, the Station Master of Singaperumal Koil station received a message regarding male dead body found lying on the track at KM 54/800-900. Immediately, he transferred the information to the Government railway police at Chengalpattu and an FIR was registered in Crime No.117 of 2017 under Section 174 Cr.P.C. From the dead body, they also found the ticket bearing no.81441583, which was issued as an



ordinary ticket at Pattabiram station on 01.12.2017 at 17.22 hours to travel from Pattabiram to St.Thomas Mount. From the dead body, a cell phone as well as cash of Rs.800/- were recovered. No other ticket authorising the deceased to travel in any other train, more particularly, for travel between Singaperumal Koil station and Paranur railway station was found. Hence, the appellants have failed to prove the fact that the deceased had a valid ticket on the date of occurrence to claim that he was a bona fide passenger.

8. The Hon'ble Apex Court in ***Union of India vs. Rina Devi and others*** [2019 (3) SCC 572] has considered the issue of burden of proof when the body was found on the railway station premises and definition of passenger, and has 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



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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*



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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)."

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



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inferred that it was not a case of 'untoward incident' but a case of run over. It was observed :

“7. The aforesaid 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.”

9. The burden of proof is on the appellants/claimants to prove that the



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deceased was a bona fide passenger and that mere presence of a body on the railway premises will not be conclusive to hold that the deceased was a bona fide passenger. Once the prima facie fact is established by the claimants that the deceased had travelled after purchasing a proper and valid ticket, then the burden is on the railways to prove that the deceased was not a bona fide passenger. Admittedly, in this case, the first claimant has categorically stated that her husband did not inform to her about the purchase of the ticket. The belonging of the deceased was also recovered by the railway police and more particularly cell phone and cash of Rs.800/- were recovered. This shows that the belongings of the deceased were found and does not go missing. The evidence placed on record by the claimants does not prima facie establish that deceased had travelled in the train after purchasing valid ticket. The DRM Report marked as Ex.R1 also shows that the ordinary ticket purchased was for the travel from Pattabiram to St. Thomas Mount railway station and the same was not to travel between Singaperumal Koil station and Paranur railway station where the body was found. The respondent Railways also produced a counter evidence to show that the deceased did not travel in the Pearl City Express as stated by the claimants herein. Therefore, this Court is of the view that since there is no prima facie evidence produced by the claimants to show that the deceased travelled in the Pearl City express as a bona fide passenger, as the ordinary



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ticket found in possession of the deceased was for the travel from Pattabiram to St.Thomas Mount only on the date of occurrence, and the co-passenger has also not adduced any evidence to the contrary for travel in the Pearl City express or any other train running in the particular route, the claimants are not entitled to any compensation. Therefore, finding no infirmity in the impugned order, this civil miscellaneous appeal stands dismissed. No costs.

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Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rjr



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K.RAJASEKAR, J.

rjr

To

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

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