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C.M.A.No.2116 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.2116 of 2023
and C.M.P.No.20584 of 2023

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

... Appellant

Vs.

1.S.K.Aathish
2.S.K.Yokesh
(*2nd Respondent is minor represented by
his elder brother as natural guardian*)

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 1987 & Section 104 Read with Order 43 Rule 1 (r) of C.P.C., against the order in OA (II-U) 60/2021 dated 15.05.2023, on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellant : Mr.K.Subbu Ranga Bharathi

J U D G M E N T

The appeal challenges the Award of the Tribunal granting compensation to the respondents herein.



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2.The respondents herein had filed a claim petition before the Tribunal stating that their mother, the deceased on 20.12.2019 at about 13.45 hours boarded the D6 Coach of Train No.12635 Vaigai Express; that about 19.00 hours; near Poongudi Railway Station when the deceased went to the toilet, she lost balance and fell down from the train and sustained injuries; that the train was stopped by the co-passengers with the help of T.T.E and Guard of the train, she was admitted in the hospital where she was declared dead; that the deceased had lost the ticket and prayed for compensation.

3.The appellant resisted the claim petition and filed the DRM Report which stated that when the deceased went to the toilet slipped and fell down and the accident took place only due to the negligence of the deceased that the deceased was not a bonafide passenger and therefore, the claim petition is liable to be dismissed.

4.Before the Tribunal, the son of the deceased had filed an affidavit stating that his mother along with his grandfather had purchased tickets and boarded the train.



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5.The Tribunal after considering the evidence on record held that the deceased was a bonafide passenger as the respondents have discharged their initial burden of establishing that the deceased travelled in the train and the train ticket was lost during the accident. The Tribunal also found that even assuming that the accident took place on account of negligence of the deceased it would not affect the liability of the Railways to pay compensation as held by the Hon'ble Supreme Court and this Court in several cases.

6.The learned counsel for the appellant submitted that the award of the Tribunal is erroneous; that the Tribunal ought to have seen that the deceased had suffered mental illness, and hence the appellant is not liable to pay compensation to the respondents; that the respondents had also not produced the travel ticket of the deceased and her father; that the son who claimed to have purchased the platform ticket had also not filed the same before the Tribunal; and that therefore, the Tribunal ought not to have accepted the claim of the respondents and hence, prayed for setting aside the award.



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7.This Court on perusal of the award of the Tribunal finds that the accident is not disputed by the appellant. The DRM Report confirms the fact that an untoward incident took place by which, the deceased slipped and fell down from the running train. As regards the non-production of ticket, it is trite law that absence of ticket by itself would not be the basis to deny the claim, if the claimants have explained the reason for non-production of ticket. In the instant case, the son of the deceased had filed an affidavit stating that the deceased and her father purchased the ticket, but could not produce the same because it was lost during the accident. Further, even assuming that the deceased fell down due to her own negligence, it is well settled that it will not have any effect on the compensation payable under Section 124(A) of the Railways Act. This has been reiterated by the Hon'ble Supreme Court in the case of ***Jameela & Others vs. Union of India*** reported in ***AIR 2010 SC 3705*** and in the case of ***Union of India vs. Prabhakaran Vijaya Kumar and Others*** reported in ***(2008) 4 MLJ 323 SC***.

8.That apart the above appeal has not raised any substantial question of law. Therefore, this Court is of the view that the order of the Tribunal



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awarding compensation to the respondents is liable to be confirmed and hence, confirmed.

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9.In the result, this Civil Miscellaneous Appeal is dismissed. Confirming the order dated 15.05.2023 passed by the Railway Claims Tribunal in OA(II-v)60/2021. The 1st appellant is permitted to withdraw his share of the award amount along with interest. The share of the 2nd appellant is directed to be deposited in any one of the Nationalised Bank, till he attains majority. No costs. Consequently, the connected miscellaneous petition is closed.

10.At this stage, the learned counsel for the appellant submitted that since the claim petition was made in the year 2021, the Tribunal ought not to have granted interest from the date of accident. The submission of the learned counsel cannot be countenanced. This Court is of the view that the compensation is payable from the date of the accident and hence there is no reason to interfere in the award of the Tribunal.



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11.It is seen that the appellant has paid Court Fee of Rs.7,354/- as against the Court Fee of Rs.1,500/- payable. Therefore, the appellant is entitled to refund of excess Court Fee.

12.09.2023

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
gvn/pam



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To
The Railway Claims Tribunal, Chennai Bench.



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SUNDER MOHAN, J.

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