



C.M.A.No.1373 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 19.06.2023	Delivered on: 02.08.2023
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CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.1373 of 2017

C.Dhanapal

... Appellant/Applicant

Vs.

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

... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 23 of the
Railways Claims Tribunal Act, against the order dated 27.08.2015 made in
O.A.No.(II-U) 325 of 2013 on the file of the Railway Claims Tribunal,
Chennai Bench.

For Appellant : Mr.S.Parthasarathy

For Respondent : Mr.Vijay Anand.M



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C.M.A.No.1373 of 2017

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the applicant against the order of dismissal in O.A.No.(II-U) 325/2013, on the file of the Railway Claims Tribunal, Chennai Bench, wherein, the Tribunal has dismissed the Claim Petition filed, for the death of one Kanthayee in untoward incident.

2. The parties are referred to hereunder according to status and ranking before the Trial Court.

3. The case of the applicant is as follows:

The applicant is the son of the deceased Kanthayee, was self employee, on 23.10.2011 at about 19.00 hours, while detraining from Erode to Jolarpet Passenger Train at Neikarapatti, Railway Station, accidentally fell down and succumbed to injuries at about 22.55hours. Hence, application filed under Section 16 r/w 123 (c) (2) and 124-A of the Railway Claims Tribunal Act, 1987, claiming a sum of Rs.4,00,000/- as compensation.



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4. The respondent -Southern Railway has filed the counter and contended that the deceased was not a bonafide passenger and the incident was one other than fall from the train, for which, the respondent is not liable to pay the compensation under Section 124 -A of the Railways Act.

5. Before the Tribunal, on the side of the applicant, A.W.1 was examined and Exs.A1 to A3 were marked.

6. Based on the oral and documentary evidence placed on record, the Tribunal has held in issue No.1 that the deceased Kanthayee was not a bonafide passenger and the deceased was not a victim of an untoward incident and thereby, rejected the claim of the applicant.

1. Aggrieved over the above finding, the applicant has filed this appeal, challenging the finding of the fact that the deceased was not a victim of untoward incident.

2.



C.M.A.No.1373 of 2017

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8. The learned counsel for the applicant would submit that the Tribunal has failed to appreciate the fact that the deceased was died, while detraining at Neikarapatti Railway Station. The report of the DRM, Salem Division, dated 04.09.2014 is confirming the same. But the Tribunal based on the non availability of passenger ticket has wrongly concluded that the applicant has failed to prove the fact that the deceased is an authorised passenger.

9. The burden of proof placed on the applicant is not sustainable and the Tribunal has failed to invoke the presumption relating to authorised passenger has held by the catena of Judgments passed by the Hon'ble Apex Court. He has also relied on the Judgments of this Court passed in *Union of India, Southern Railway, representing by its General Manager, Chennai vs. G.Loganayaki and others* reported in **2008 (1) TCJ 108 (Tamil Nadu Current Judgment) 108**; *The Union of India, Southern Railway, representing by its General Manager vs. G.Jayalakshmi and others* reported in **2012 (3) CTC 741**. The Division Bench of Calcutta High



C.M.A.No.1373 of 2017

Court in *Bandana Misra vs. Union of India* reported in *2017 ACJ 2447*;

Union of India vs. Rina Devi reported in *2018 INSC 469 : 2019 (3) SCC 572*.

10. The learned counsel for the Southern Railway would submit that the DRM report relied on by the applicant shows that there is no ticket was found with the deceased, since the deceased has travelled as a non fair paying passenger, she could not be claimed compensation as a victim of untoward accident, the Tribunal after considering the evidence placed on record has rightly arrived its conclusion and prays to confirm the same. He has also relied on the judgment of this Court in *C.M.A.No.3165 of 2019* in *P.Pavalendiri and 4 others vs. The Union of India, Southern Railway, representing by its General Manager*.

11. I have considered the submissions made by both sides and also perused the materials.

12. The DRM report dated 10.02.2014 regarding the occurrence



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is marked as Ex.A1 before the Tribunal. On a perusal of the same, it shows that on 23.10.2011 at about 18.22 hours, the Passenger Train towards Erode to Jolarpet arrived Neikaranpatti Railway Station as scheduled stoppage, while the Guard starting the signal by whistling, a loud shout was heard and the Guard was informed that one old lady is found fallen in between platform and train. Immediately, she was taken from the track with leg injury. Thereafter, she was taken to Salem Railway Junction from there, she was handed over to the Station Manager and on 25.01.2014, the statement of Guard was also recorded. In the meantime, on 24.10.2011, one Subramani, the grand son of the deceased sent a letter stating that the deceased was died due to the injuries sustained by her. On the basis of complaint, inquest was also conducted and they were not found valid ticket from the injured.

13. Before the Tribunal, son of the deceased was examined as A.W.1 and it is recorded by the Tribunal that the train journey ticket of the deceased was lost at the time of incident. The Tribunal has also noted that there is a discrepancy in the pleading, with regard to the ticket, used by the passenger, whether it is a journey ticket or season ticket. He has also stated



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that the deceased was travelled along with one co-passenger namely, Papathi. However, the Tribunal failed to appreciate the dictum laid down by the Hon'ble Apex Court in ***Union of India vs. Rina Devi*** reported in **2019 (3) SCC 572** cited supra, the Hon'ble Apex Court in Paragraph Nos.26 to 29 has considered the burden of proof when the body was found on the railway premises and definition of passenger after considering the various previous Judgements of the Hon'ble Apex Court and various High Courts as held in Paragraph No.29 is as follows:

“29. 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.”

14. In this case, as per the DRM report, it is factually proved that the deceased was fell between the track and the platform while



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detraining at Neikarapatti Railway Station. She was immediately rescued by the railway officials from Neikaranpatti Railway Station then, transferred to the Salem Railway Station and thereafter with the help of the Station Master, she was admitted in to the Government Hospital, Salem, there, she succumbed to injuries. Immediately on her death, inquest was also conducted and Inquest Report has also contains the fact that while detraining from the passenger train, she has sustained injuries.

15. In this case, it is stated by the applicant that she has travelled with a valid train ticket and she was not able to produce the same, since the same is missing. As observed by the Hon'ble Apex Court in ***Union of India vs. Rina Devi*** case, the applicants were able to show that the deceased was died and mere absence of ticket with the injured/deceased will not negative the claim that she was a bonafide passenger.

16. In the affidavit, filed by the applicant stating that she was travelled along with ticket, but it was missing, then, the burden shifts on the railways to prove that she was not a bonafide passenger and the same has not been proved before the Tribunal.



C.M.A.No.1373 of 2017

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Hence, this Court is of the view, that the Tribunal has not properly appreciated the evidence of the applicant, eventhough there is a discrepancy, whether the deceased has travelled by using the journey ticket or season ticket, the fact remains is she was rescued from the track and they were not able to trace the ticket from her is sufficient to hold that she is a bonafide passenger and the presumption is against the railways to rebut the presumption raised against them.

17. In the said circumstances, this Court is of the view that the view taken by the Tribunal is not proper and the same is liable to be set aside. Accordingly, the applicant is entitled for compensation of a sum of Rs.4,00,000/- claimed by the respondent-Southern Railway, under Section 124-A of the Railways Act, 1989.

18. As far as the Judgment relied on by the Railways is concerned, it is a case of accidental fall from the train and the body was found in the track and these presumptions could not be raised with regard to the run over cases. These similar fact has been considered by the Hon'ble



C.M.A.No.1373 of 2017

Apex Court in *Union of India vs. Rina Devi* case cited supra in paragraph No.18. Hence, the decision relied on by the counsel for the respondent relating to run over cases is not applicable to the facts of this case.

19. In the result, the Civil Miscellaneous Appeal is allowed. The respondent-Southern Railway is directed to pay a sum of Rs.4,00,000/- [Rupees Four Lakhs only] as compensation to the claimant along with 9% interest from the date of accident till the date of payment. No costs.

02.08.2023

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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,
VR Section,
High Court, Madras.

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C.M.A.No.1373 of 2017

K.RAJASEKAR,J.

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Pre-delivery Judgment made in
C.M.A.No.1373 of 2017

02.08.2023