



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.10.2023

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1439 of 2017

1. Dinesh
2. D.Meena

... Appellants

Vs

Union of India Owing,
Southern Railway,
Rep. By its General Manager,
Chennai – 600 003.

... Respondent

Civil Miscellaneous Appeal filed under Section 23(1) of Railways Claims Tribunal Act, to set aside the judgment dated 29.01.2016 and made in O.A.(II -U) 224 / 2014 on the file of Railway Tribunal, Chennai Bench and allow the same.

For Appellants : Mr.S.Partha Sarathy

For Respondent : Mr.C.V.Ramachandra Murthy

J U D G M E N T

This appeal has been filed by the appellants against the order dated 29.01.2016 in O.A.(II -U) 224 / 2014 passed by the Railway Tribunal, Chennai Bench.

2. It is the case of the appellants that on 27.11.2013 at about 8:20

hours while the deceased namely Devnath was travelling in a train which



was proceeding from Chennai to Arakkonam, due to over crowding, the deceased had accidentally fallen from the running train which resulted in sustaining grievous injuries in head and died. Thereafter, the claimants, who are the dependents of the deceased, filed a claim petition, seeking compensation of Rs.4,00,000/- before the Railway Claims Tribunal under various heads.

3. The Tribunal, considering the pleadings, oral and documentary evidence, dismissed the petition on the ground that the deceased was not a bonafide passenger and was not in possession of a valid train ticket. Aggrieved by the said award, the appellants have filed the appeal before this Court for quashment of the impugned award.

4. The learned counsel for the appellants submitted that admittedly, the deceased died due to railway accident and the body of the deceased was found place in the Railway Track, which clearly shows its an railway accident. He further submits that in order to prove the presence of the deceased in the train, AW.1 who is the father of the deceased deposed that on 27.11.2013 at about 7:00 hours, his son / deceased contacted him over phone that he was going to Arakkonam in Brindavan Express from Chennai Central, the Tribunal. Though it is duty cast upon the Tribunal to disprove the claim made by the claimants, the Tribunal has neither examined the TTR



(Travelling Ticket Examiner) nor the co-passengers who travelled along with the deceased in order to find out as to whether the deceased was in possession of a valid train ticket. In the absence of such evidence, rejecting the claim made by the claimants vide impugned award cannot be sustained. In support of his contention he relied upon the decision rendered by the Hon'ble Apex Court in the case of *Union of India (UOI) vs. Rina Devi* reported in **MANU SC 0522 2018**.

5. More so, Ex.A6 / Final report makes it clear that the deceased had fallen accidentally from the train. He further submits that though the ticket purchased by the deceased was lost only due to the said accident, however, the Tribunal has rejected the claim made by the claimants on the ground that deceased was not a bonafide passenger as no ticket was found at the time of inquest which is wholly unsustainable.

6. He further submits that the said accident is within the meaning of term untoward incident as defined under Section 123(c)(2) of the Railways Act. The Tribunal without considering the factual position, dismissed the claim petition, which warrants interference of this Court.

<https://www.mhc.tn.gov.in/judis> 7. Per contra, the learned counsel for the respondent submitted that as per Section 124 A of the Railways Act, 1989, the compensation on account



of an untoward incident would be given only for a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket becomes a victim of an untoward incident, however in the present case on hand the deceased was not a bonafide passenger as he was not in possession of a valid ticket while he was travelling in the train. Hence, The Tribunal, considering the factual aspects, rightly dismissed the claim petition, which does not warrant any interference.

8. Heard the learned counsel for the appellants and the learned counsel for the respondent and also perused the materials available on record.

9. Admittedly, the appellants are the claimants/dependents. They have filed claim petition before the Railway Claims Tribunal seeking compensation for the death of the deceased. The Tribunal has dismissed the said petition on the ground that the deceased was not a bonafide passenger and that the death was not on account of a fall from a train to qualify an untoward incident under Section 123(c)(2) of the Railways Act, 1989.

10. The claim has been rejected by the respondent on the ground that the ticket on which the deceased had travelled had not been produced, which shows that the deceased could not have travelled in the train and, therefore, the respondent is not liable to pay any compensation.



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1) Whether the deceased person was bonafide passenger and the manner of accident leading to the death of the person could be held to be an untoward incident falling within the ambit of [Section 123\(c\)](#) of the Railways Act, 1989 ?

2) Whether the appellants/claimants in this appeal are entitled for compensation under [Section 124A](#) of the Railways Act, 1989 for the death of the deceased persons in an untoward incident ?

12. For better appreciation, Section 123 and 124(A) of the Railways Act are extracted hereunder:

“Section 123 in The Railways Act, 1989

[\(c\)](#) “untoward incident” means—

[\(1\)](#)(i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

[\(ii\)](#) the making of a violent attack or the commission of robbery or dacoity; or

[\(iii\)](#) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any



platform or in any other place within the precincts of a railway station; or

(2)the accidental falling of any passenger from a train carrying passengers.]

124. Extent of liability.—When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or has suffered a loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident. Explanation.—For the purposes of this section “passenger” includes a railway servant on duty.”

<https://www.mhc.tn.gov.in/judis> 12. From the above said provision, it transpires that any passenger,

who accidentally falls from a running train, the same would stand covered



under the definition "untoward incident" and once the incident is untoward, it would attract the liability of the Railways to compensate for the death of the said passenger.

13. In the case on hand, except for the fact that no ticket was found on the person of the deceased, the Railways had held that it is not liable to pay the compensation for the death. However, it is not the case of the Railways that the deceased had not fallen from a running train. Mere non-finding of ticket on the person of the deceased would not qualify the person to be not a passenger travelling in a train. No person is required to carry the ticket on his person and the ticket may very well have been in his personal belongings, which would have got lost in the happenings leading to the death of the deceased.

14. It is to be pointed out that when a calamity of this nature occurs, the thinking of the ordinary and normal person would be only to rush the injured to the hospital and not to look after the belongings, including the ticket on the premise that if the deceased dies, then it would be required for the purpose of claiming compensation. However, it is the duty cast upon the Tribunal to examine the TTR and co-passengers in order to find out whether the deceased was in possession of valid ticket or not. Without doing so, the respondent cannot wriggle out of their duty and responsibility to compensate



the claimants on account of the death of the deceased.

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15. Further, when the co-passengers in the train have identified the deceased as a passenger in the train and to contradict the same, the Railways not having examined the Ticket Examiner to speak about the possibility of the deceased not having travelled in the train, as otherwise the non-possession of ticket by the deceased would have come to his knowledge leading to the disembarkation of the deceased from the train, the only inference that could be drawn is that the deceased was travelling in the train and met with the untoward incident in which she died and, therefore, applying the provisions u/s 123 and 124, the claimants of the deceased would be entitled for compensation.

16. On a perusal of the decision relied upon by the learned counsel for the petitioner in the case of *Union of India (UOI) vs. Rina Devi* reported in *MANU SC 0522 2018*, it reveals 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 and mere absence of ticket with injured or deceased will not negative the claim that he was a bona fide passenger. However, in the present case on hand though the ticket was not found in the body of the deceased, it is the duty cast upon the Railway to disprove that the deceased was not a bonafide



passenger by way of examining the TTR and co-passenger, however, without examining any oral and documentary evidence, the Tribunal rejected the claim of the claimants which is *per se* unsustainable.

17. For the reasons aforesaid, the Civil Miscellaneous Appeal is allowed and the respondent is directed to pay a sum of Rs.4,00,000/- as compensation along with applicable interest, from the date of petition till the date of realization, within a period of eight (8) weeks from the date of receipt of a copy of this judgment. Out of the compensation amount, the appellants are entitled to receive the same in the ratio of 50:50. On such deposit being made, the appellants are permitted to withdraw the compensation as awarded by this Court along with interest and costs, by filing an appropriate application before the Court concerned. No costs.

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Index : Yes/no

Internet : Yes/no

Speaking Order/Non speaking order



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To

1. General Manager,
Union of India
Owning Southern Railway,
Chennai.
2. The Railway Claims Tribunal, Chennai Bench.



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M.DHANDAPANI.,J.

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