



CMA No. 253 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 253 of 2022

1.Sundari

2.Gowtham

3.Santhiya

(Appellants 2 and 3, being minors, represented
by their mother / first appellant)

4.Rajeshwari

... Appellants

Versus

Union of India

Owing Southern Railway

Rep. by General Manager

Chennai – 600003.

... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 23(3) of the
Railway Claims Tribunal Act against the Judgment dated 25.03.2021
made in O.A. No. (II-U)/MAS/138 of 2019 on the file of the Railway
Tribunal, Chennai Bench.

For Appellants : Mr. K.V. Muthu Visakan.

For Respondent : No appearance.



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J U D G M E N T

The appellants have preferred the above appeal challenging the order dated 25.03.2021 made in O.A. No. (II-U)/MAS/138 of 2019 on the file of the Railway Tribunal, Chennai Bench.

2.The appellants have filed the claim petition before the Tribunal stating that they are the legal heirs of the deceased who had travelled in a general compartment in an electric train with his brother in law between Villivakkam and Ambattur on 19.01.2018; that the deceased accidentally slipped and fell down from the train and sustained grievous injuries and died on the spot.

3.The respondent herein filed a reply statement stating that no such incident took place on the said date, that no travel authority was recovered from the deceased; that the location where the body was found is an area where many people trespass across the tracks and this is not an untoward incident and that the deceased is not a bonafide passenger and prayed for dismissing the application.



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4.The appellants examined AW1 who is said to be the co-passenger of the deceased and marked nine documents. On the side of the respondent, DRM report with copies of documents was filed.

5.The Tribunal found that the appellants had not established that the deceased was a bonafide passenger and that the deceased could have trespassed into the track as the place where the body was found, was prone to such trespass. The Tribunal also found that no travel ticket was recovered from the body of the deceased. The Tribunal therefore held that the deceased could not have died due to the fall from the train and hence, the deceased cannot be said to be a bonafide passenger.

6.The learned counsel for the appellants submitted that the appellants had examined AW1 who had deposed that the deceased travelled along with him in the said train. The learned counsel relied upon the inquest report Ex.A.6 in which it is recorded that the deceased died due to the fall from a train. The First Information Report in Crime No.19 of 2018 on the file of the GRP, Chennai also reveal that the



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deceased was lying near a track between Villivakkam and Ambattur.

The police conducted investigation and filed a final report closing the case treating it as accidental death due to fall from train. Therefore, the learned counsel submitted that merely because there is no ticket found in the body of the deceased, it cannot be said that the deceased was not a bonafide passenger and hence, prayed that the order of the Tribunal has to be set aside and a just compensation be awarded to the appellants.

7. Though notice has been served on the respondent and a learned Counsel had entered appearance, there was no representation for the respondent on 14.07.2023 and 19.07.2023. Therefore, this Court directed the appellants to serve copy of the notice to the office of the Assistant Solicitor General of India. The learned counsel has served the copy and produced the proof of Service. However, there is no representation for the respondent. Hence, this Court is inclined to passed order on merits.

8. This Court finds that the Tribunal after observing that no travel ticket was recovered from the body of the deceased and the fact that the place where the body of the deceased was found is prone to trespass, held



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that the deceased was not a bonafide passenger. It is seen from the order of the Tribunal that the Tribunal had not considered the inquest report and the other documents such as final report of the Police filed on behalf of the appellants. It is also seen that AW1, brother in law of the deceased had deposed before the Tribunal that the deceased travelled along with him in the train and that he fell down from the train. From the documents produced on behalf of the appellants and the evidence of AW1, it is clear that the appellants have discharged their initial burden of showing that the deceased was a bonafide passenger. The proof affidavit of AW1 reads as follows;

“2....Further submit that my deceased brother-in-law had purchased a Journey ticket for Ambattur there after we both entered in to the Platform at that time we had seen one EMU / Electric Train is going to move, due to heavy rush in the morning hours on Friday, we had boarded around 9.20 hrs in the next to next of the General compartment / coach.”

Nothing has been elicited in the cross-examination to discredit him. In fact, he had reiterated the above fact in the cross-examination. The Honourable Supreme Court in ***Kamukayi and Others Vs. Union of India and Others*** reported in **2023 SCC Online SC 642** had held that in similar



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circumstances that if by acceptable evidence, the claimants have established that the deceased passenger was having valid ticket, it is for the railway administration to disprove the said fact. The relevant observation reads as follows;

“18. Now, reverting to the issue whether the deceased was a bona fide passenger? In this regard, the ocular statement of AW1- Manikandan, son of the deceased, who procured a valid train ticket for travel from Lalapettai to Karur and handed it over to the deceased is on record. As per the statement of AW1, the averments made in the claim petition have been testified and even in the cross-examination, he has reiterated that ticket for deceased from Lalapettai to Karur was purchased for a sum of Rs. 10/- and sent him off at Station to go to Karur. The deceased fell down at Mahadanapuram Railway Station. The said averment of the claim petition and the statement of D. Ravisankar, Station Master finds support from inquest report prepared by the Inquest Officer on the date of incidence i.e. 27.9.2014 and the final report prepared by the Investigation Officer, Railway Police Station Trichy on 14.11.2014. The said reports have been referred to in the investigation report dated 7.6.2017. Considering the material brought on record, in our view, the initial



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burden that the deceased passenger was having a valid ticket has been discharged shifting onus on the Railway Administration to disprove the said fact. Nothing has been placed before Claims Tribunal or brought on record during the course of hearing that the Railway Administration has discharged the burden of not having the valid railway ticket with the deceased passenger, except to say that during recovery ticket was not found. In absence of any cogent evidence, notwithstanding anything contained in any other law, the Railway Administration shall be liable to pay compensation as prescribed.”

The above observations squarely apply to the facts of the instant case.

9.The initial burden has been discharged and no contrary evidence has been let in by the respondent. Further, it is seen that one cannot presume the fact that the deceased could have died due to crossing of the railway track as held by the Tribunal. Such a presumption is not justified more so in a petition of this nature filed under the Railways Act which is a beneficial legislation and should receive a liberal and wider interpretation. The respondent had not let in any evidence to contradict the evidence let in by the appellants. Further, it is well settled that



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merely because no travel ticket was found in the body of the deceased, it is not a conclusive proof of the fact that the deceased was a ticketless passenger. Therefore, this Court is of the view that the order passed by the Tribunal dismissing the claim petition as no untoward incident as stipulated under Section 123 (c)(2) of the Railways Act had taken place is erroneous. Hence, the order of the Tribunal is set aside and this Court holds that the appellants are entitled to compensation.

10. Accordingly, this Civil Miscellaneous Appeal is allowed and this Court holds that the appellants are entitled to a compensation of Rs.8,00,000/- being the fixed compensation payable to the appellants together with interest at the rate of 9% per annum (excluding the default period, if any) from the date of accident till the date of payment. Out of the award amount, the first appellant is entitled to a sum of Rs.4,00,000/-, the second appellant is entitled to a sum of Rs.2,00,000/-, the third appellant is entitled to a sum of Rs.1,00,000/- and the fourth appellant is entitled to a sum of Rs.1,00,000/-. The respondent is directed to deposit the award amount now determined by this Court along with interest and costs within a period of four (4) weeks from the date of a receipt of copy of this Judgment. On such deposit the appellants 1 to 4 are permitted to



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withdraw their share of the award amount along with proportionate interest and costs as per the apportionment fixed by this Court. The share of the minor appellants 2 and 3 shall be deposited in the interest bearing Fixed Deposit in a Nationalized Bank till they attain the age of majority. The first appellant is permitted to withdraw the accrued interest once in every three months. The appellants are directed to pay the necessary Court Fee if any on the award amount. No costs.

24.07.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Railway Claims Tribunal,
Chennai Bench.



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SUNDER MOHAN, J

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