



C.M.A.No.2089 of 2017

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

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1.N.Sivakumari
2.N.Banu Priya
3.N.Prakash

... Appellants

Vs.

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

...

Prayer: Civil Miscellaneous Appeal filed under Section 23 of the Railways Claims Tribunal Act, against the judgment dated 06.11.2015 made in O.A.(II-U) 317 of 2014 on the file of the Railway Tribunal, Chennai Bench.

For Appellants : Mr.S.Parthasarathy

For Respondent : Mr.M.Vijay Anand

JUDGEMENT

Challenging the judgment dated 06.11.2015 made in O.A.(II-U) 317 of 2014 passed by the Railway Tribunal, Chennai Bench, the appellants



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have preferred the present appeal.

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2. The appellants are the wife, daughter and son of deceased Nandagopal. On 28.05.2014 prior to 07.45 hours, when the deceased in order to return from Ambur was travelling in a train which proceeded from Arakkonam to Chennai Central had accidentally fallen down from running train near Perambur Carriage Works Railway Station at KM 06/13A/06/11A up fast line, as a result of which, he sustained grievous injuries and died at the spot. Thereafter, the applicants filed an application claiming a sum of Rs.4,00,000/- for the death of the deceased in O.A.(II-U) 317 of 2014. After adjudication, the Tribunal had dismissed the said application. Assailing the same, the present appeal is filed by the appellants.

3. The learned counsel appearing for the appellants submitted that the deceased was doing leather trade business, for which, he used to go to Ambur frequently and return back to Perambur. On 28.05.2014, the deceased returned from Ambur in train and he accidentally fell down from the running train and died at the spot. In order to prove that the deceased person is a bonafide passenger, the third appellant/son filed an affidavit



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before the Tribunal stating that the deceased contacted first appellant and told he is coming from Ambur by Kaveri Express and requested the first appellant to send the third appellant to pick him in Perambur Railway Station. When such a affidavit is filed before the Tribunal, the Tribunal arrived at a conclusion that the deceased was not a bonafide passenger and dismissed the claim, which is wholly unsustainable.

4. He further submitted that, once the affidavit is filed to prove that the deceased was a bonafide passenger, it is for the respondent to disprove the claim of the appellants. However, without doing so, the Tribunal dismissed the application filed by the appellants, which is not sustainable. In support of his contention, he relied upon the decision of the Apex Court reported in **MANU/SC/0522/2018**.

5. Per contra, the learned counsel appearing for the respondent submitted that, the body of the deceased was recovered from the Perambur Carriage Works Railway Station. However, the body was recovered on 07.45 hrs on 28.05.2014. Before the Tribunal, the third appellant, who was examined as A.W.1 on 14.08.2015. He deposed that the deceased boarded



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the train on 27.05.2014 at 04.00 a.m. and on 28.05.2014 at about 05.00a.m., the deceased contacted the first appellant and told that he is coming from Ambur in Kaveri Express and he would reach Perambur RS at 07.30 p.m. and requested her to send the third appellant to pick him up, thereby the third appellant went to Perambur RS and saw the crowd of the people and after enquiry, he found that his father/deceased's body was recovered from there. However, the proof affidavit did not reveal anything with regard to the ticket purchased by the deceased. He further submitted that, unless the ticket is recovered from the deceased either by the law enforcing agency or by the Railway Authorities, the deceased person is not a bonafide passenger and when the person is not a bonafide passenger, the applicants are not entitled to claim any compensation. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel appearing on behalf of the parties and perused the materials available on record.

7. Admittedly, the body of the deceased was found near Perambur Carriage Works Railway Station at Km 06/13A/06/11A and thereafter, the



appellants filed claim petition before the Tribunal claiming compensation as against the railways authorities. In the present case, as per Section 123 of the Act, if the person purchased valid ticker from the railways and they are termed as bonafide passenger, if they accidentally fell down from the moving train, such person is entitled for claiming compensation. In this regard, it is appropriate to extract Sections 123 and 124 of the Railways Act, 1989, which are as follows :-

123. Definitions.- In this Chapter, unless the context otherwise requires,--

- (a) "accident" means an accident of the nature described in section 124;*
- (b) "dependant" means any of the following relatives of a deceased passenger, namely:--*
 - (i) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his parent;*
 - (ii) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a pre- deceased son, if dependant wholly or partly on the deceased passenger;*
 - (iii) a minor child of a pre-deceased daughter, if wholly dependant on the deceased passenger;*
 - (iv) the paternal grand parent wholly dependant on the deceased passenger.*
- (c) "untoward incident" means--*
 - (1) (i) the commission of a trrorist act within the meaning of sub-section (1) of section (3) of the Terrorist and Distructive Activite (Prevention) Act, 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*



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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.

124A. Compensation on account of untoward accident

When in the course of working a railway an untoward incident accurs, then whether or not there has been any wrongful act, neglaect or default on the part of the railway administration such as would entitle a passenger who has been injured or the department of a passenger who has been killed to maintain an action and recover damages in respect thereof, the the railway administation shall. notwithstanding anything contained in any other law, be liable to pay compensaation to such extent as may be prescribed and to that extent only of loss occassioned by the



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death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to-

- (a) suicide or attempted suicide by him;*
- (b) self-inflicted injury;*
- (c) his own criminal act;*
- (d) any act committed by him in a state of intoxication or insanity;*

(e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation.- For the purpose of this section, "passenger" includes-

- (i) a railway servant on duty; and*
- (ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.*

8. Similar issue came for consideration before the Apex Court reported in **MANU/SC/0522/2018** and the relevant portion of the judgment is as follows :-

"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



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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. A perusal of the above decision makes it clear that mere presence of body on the railways premises will not be conclusive to hold that the deceased was a bonafide passenger, for which, claim for compensation could be maintained. However, absence of ticket with the deceased will not negative the claim if the appellants prove that the deceased was a bonafide passenger who travelled with valid ticket and he accidentally fell down from the moving train, they are entitled to claim compensation. In order to prove that the deceased was a bonafide passenger, it is for the claimants to adduce oral evidence and documentary evidence before the Tribunal. If any eye-witness is available who purchased the ticket and travelled along with the deceased person, then, the burden will shift on the railways to prove that the deceased was not a bona fide passenger. In the present case, no eye-witness was examined to prove that the deceased purchased ticket from the Railways and he was a bonafide passenger. Though the third appellant has filed an affidavit stating that the deceased contacted first appellant and told he is coming from Ambur in Kaveri Express and requested the first



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appellant to send the third appellant to pick him up in Perambur Railway Station, however, the appellants have had not let in any evidence with regard to either the purchase of ticket or travel and fall. In the absence of any evidence, the Tribunal arrived at a conclusion that the deceased was not a bonafide passenger and negated the claim, which cannot be interfered with and this appeal is liable to be dismissed.

10. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

1.The Railway Tribunal,
Chennai Bench.

2.The Section Officer,
V.R.Section,
High Court, Madras.



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M.DHANDAPANI, J.,

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