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C.M.A.No.946 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.946 of 2017

1.G.Neelavathi

2.G.Gunasekaran

... 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 Indian Railways Claims Tribunal Act against the order dated 05.10.2015 made in O.A.(II-U) 142/2014 on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellants : Mr.S.Parthasarathy

For respondents : M/s.T.P.Savitha
Caveat not filed



JUDGMENT

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This Civil Miscellaneous Appeal is filed against the order dated 05.10.2015 made in O.A.(II-U) 142/2014 on the file of the Railway Claims Tribunal, Chennai Bench, whereby the Tribunal has dismissed the claim petition filed by the claimants.

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

3. On 02.12.2013 prior to 07.30 hours, the deceased namely Madhavan was travelling in the EMU Train towards Pattravakkam and due to overcrowd he had accidentally fell down between Korattur and Pattravakkam Railway station at KM12/24-25A down fast line resulted in grievous injuries and died on spot. The parents of the deceased filed claim petition claiming Rs.4,00,000/- as compensation from the Railways.

4. The Railways filed reply in the claim petition and contended that the Government Railway Police, Perambur had registered a case in Crime No.736 of 2013 under Section 174 of Cr.P.C based on the information given



WEB COURT

by the Station Master Villivakkam regarding dead body found in the railway track between Korattur and Patravakkam Railway Station. The deceased was not a passenger and there is no belonging near the body of the deceased. Subsequently on 10.01.2014 one Swaminathan gave a man missing complaint before Madhavaram Police Station stating that deceased Madhavan was missing from 01.12.2013 and subsequently, based on the investigation the missing person was identified as the deceased in Cr.No.736 of 2013. In the Postmortem report it revealed that it was not the case of accidental fall from Train. The deceased was not having any valid train ticket at the time of accident and his death could not be considered as untoward incident as defined under Section 123 (c)(2) of the Railways Act 1982, hence the Railways not liable to pay the compensation.

5. Before the Tribunal, on the side of the claimants A.W1 and A.W2 were examined, Exs.A1 and A2 were marked and on the side of respondents, a report of DRM, Chennai was marked, Investigating Officer was examined as RW1.

6. Tribunal after considering the evidence placed on record has arrived its conclusion that deceased was not a bonafide passenger, hence



C.M.A.No.946 of 2017

compensation could not be granted. Aggrieved over the above finding, this

Appeal has been filed by the claimant.

7. Learned counsel for the claimants submits that there is a ample evidence placed on record by the claimants to show that deceased was travelled in the train and subsequently fell down due to over crowding and succumbed to injuries. The Tribunal has also failed to take note of the final report filed by the Investigating Officer who has conducted investigation regarding the death of the deceased. Eventhough no ticket was found in the body of the deceased, in the light of the judgment passed by the Hon'ble Apex Court ***Union of India vs. Rina Devi***, reported in 2019 (3) SCC 572 the presumption is to be drawn with regard to the bonafide passenger based on the facts placed on record on the side of the claimant herein and the same has not been followed by the Tribunal and prays to set aside the judgement of the Tribunal.

8. Learned counsel for the Railways has submitted that they have marked report of the DRM which has not been opposed at the time of marking and it speaks for itself to the fact that the deceased was not died by falling from the running train and the postmortem report marked before the



Tribunal also corroborates the report of the DRM to show that the deceased is not a passenger. The Tribunal has rightly held after appreciating the evidence placed on record that deceased is not a bonafide passenger, thus no compensation would be awarded to the claimants.

9. I have considered the submissions made by both sides and perused the records.

10. The claimants have examined brother of the deceased as A.W.2, who has purchased the ticket for the deceased to travel and has stated that, he was working in Sipson Company at Melakadai and the deceased was working as Apprentice at Wheels India Company at Padi and was staying at Patravakkam. On 01.12.2013 his brother came to his room at Molakadai in order to give his salary. After some time both left the room and reached Perambur Railway Station and he purchased ticket for his brother's travel from Perambur to Patravakkam and thereafter his brother boarded in the EMU train to Patravakkam. After his departure, AW1 went to his native place Manakarambai, Tanjore District on the same day to meet his family members and to give the salary to his father. After few days he came back to Chennai but there was no communication received from his brother and he



C.M.A.No.946 of 2017

came to know that his brother did not returned to his room from 01.12.2013 onwards. Thereafter he informed the same to his family members and after searching in various places, he went to police station and made a police complaint on 09.01.2014 at Korattur Police Station but the police refused to take his complaint, subsequently he went to Madharavam Police Station on 10.01.2014 and a man missing case was registered in Crime No.36 of 2014 on 10.01.2014, thereafter the investigation revealed that his brother was found dead in the railway track and a case in Crime No.736 of 2013 under Section 174 of Cr.P.C was registered in Perambur Railway Police. In the cross examination he has stated that he was not aware of the fare paid for the purchase of the ticket and stated that his brother only purchased the ticket. He denied the suggestion that his brother did not travel by train and that the deceased had trespassed into the railway track and succumbed.

11. The father of the deceased was examined as AW1 and he has stated that the deceased is his younger son was working at Wheels India Company, Padi and he was staying at Patravakkam. His elder son Saminathan staying at Melakadai. Usually, after receiving the salary, any one of his sons will come to native place for handing over the salary and return back to Chennai. As such, his son Swamynathan came to native place on



02.12.2013 and returned to Chennai on 09.12.2013. On 12.12.2013 his elder son informed him from Chennai that deceased Madhavan was not returned to room from 01.12.2013. Accordingly, he went to Chennai and searched in various places and after making enquires with friends and relatives, they decided to lodge police complaint on 09.01.2014 and accordingly on 10.01.2014 a man missing case was registered at Madhavaram Police Station. He has also stated that after reaching Perambur Police Station, photographs of deceased Madhavan was shown to him and he has confirmed that the body found in the photograph is his son. The evidence A.W1 and A.W2 was corroborated with each other.

12. The Railways have examined RW1-the Special Sub Inspector of Railway Police, Perambur who investigated the case and filed final report. The questions were put to him relating to inquest-EX.A5 and final report- A6 filed by him in which he has categorically stated that after the investigation in Crime No.736 of 2013, he filed the final report and also states that deceased body was buried at Washermanpet burial ground. He has narrated various steps for identifying the deceased including report made to State Crime Record Bureau. He admits that identification of the body was made based on the complaint registered in Madhavaram police Station. He has denied the



WEB C

suggestion of the Railways that in order to bring the case to end, he filed the final report quickly as accidental death. RW1 further stated that he has not found any ticket from deceased body. In the inquest as well as final report, the Investigation Officer has concluded that the deceased travelled in the EMU from Perumbur to Patravakkam and before reaching to Patravakkam he fell down and sustained injuries.

13. The evidence adduced on the side of the claimants is corroborated by the evidence of RW.1, who has conducted the investigation and filed a final report, confirming that deceased was died by accidental fall while travelling to Pakkavakkam. This being evidence placed on record, the burden shifts on the Railways to prove that the deceased was not travelled in the Train.

14. In this case the Railways have not examined any witness to disprove the evidence placed on record on the side of the claimants to show that deceased was not travelled in the EMU Train and he is only trespasser. Hon'ble Apex Court in *United India Insurance vs. Rina Devi* cited supra in para 17.4 has considered the case of the victim, who was not having valid train ticket has held that the ocular evidence of witness who purchased a



valid ticket for travelling or who has accompanied the deceased and seen purchase of ticket testified and subjected himself for cross examination and his version is corroborated by any other evidence, then it is sufficient to shift the burden from the claimants to the Railways to show that the deceased is not a bonafide passenger. Para 17.4 of the judgment of the Hon'ble Apex Court in ***United India Insurance vs. Rina Devi*** cited reads 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 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.”

and the Hon'ble Apex Court in ***Kamukayi and Ors. vs. Union of India (UOI) and Ors*** reported in AIR2023SC2761, has held as under:

“21. The said judgment was further explained by this Court in the case of Radha Yadav (supra), relevant para 11 is reproduced as thus: 11. The issue raised in the matter does not really require any elaboration as in our



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C.M.A.No.946 of 2017

view, the judgment of this Court in *Rina Devi* is very clear. What this Court has laid down is that the amount of compensation payable on the date of accident with reasonable rate of interest shall first be calculated. If the amount so calculated is less than the amount prescribed as on the date of the award, the claimant would be entitled to higher of these two amounts. Therefore, if the liability had arisen before the amendment was brought in, the basic figure would be as per the Schedule as was in existence before the amendment and on such basic figure reasonable rate of interest would be calculated. If there be any difference between the amount so calculated and the amount prescribed in the Schedule as on the date of the award, the higher of two figures would be the measure of compensation. For instance, in case of a death in an accident which occurred before amendment, the basic figure would be Rs. 4,00,000/-. If, after applying reasonable rate of interest, the final figure were to be less than Rs. 8,00,000/-, which was brought in by way of amendment, the claimant would be entitled to Rs. 8,00,000/-. If, however, the amount of original compensation with rate of interest were to exceed the sum of Rs. 8,00,000/- the compensation would be in terms of figure in excess of Rs. 8,00,000/-. The idea is to afford the benefit of the amendment, to the extent possible. Thus, according to us, the matter is crystal clear. The issue does not need any further clarification or elaboration. 22. The said view has been reaffirmed by this Court in the case of *Union of India v. Dilip and Ors.* MANU/SC/1996/2019. 23. Accordingly and as per above discussion we allow this



C.M.A.No.946 of 2017

appeal and set aside the impugned judgment dated 26.03.2021 passed by the High Court and also the Claims Tribunal dated 29.06.2017. Consequently, claim application is allowed. The Appellants are held entitled for compensation to the tune of Rs. 4,00,000/- along with interest @ 7% p.a. from the date of filing the claim application till its realisation. It is made clear that after applying the rate of interest, if the final figure is less than Rs. 8,00,000/-, then Appellants shall be entitled to Rs. 8,00,000/-. The amount of compensation be satisfied by the Respondents within a period of eight weeks.”

15. In the case on hand, the claimant not only examined A.W.2 who has seen the deceased purchased the ticket and boarded the train and also relied on the evidence of RW.1 to corroborate the case of claimant that the deceased was fell down from running train. Thereby, the claimants have proved their case that the deceased is bonafide passenger and died in the untoward incident as defined under Section 124-A of the Railways Act. Accordingly they are entitle for compensation as claimed by them. The Hon'ble Apex Court in ***Union of India vs. Radha Yadav*** reported in 2019 (3) SCC 410 has considered the point whether compensation to be paid as per the recent amendment to schedule of compensation to be awarded or as per earlier compensation, and has held that the calculation has to be made with regard to the compensation of Rs.4,00,000/- prior to the amendment



C.M.A.No.946 of 2017

along with interest and if the final figure was less than Rs.8,00,000/- then the claimant would be entitled to Rs.8,00,000/-. If the amount of original compensation with rate of interest were to exceed the sum of Rs.8,00,000/-, compensation would be in terms of figure in excess of Rs.8,00,000/-.

16. On such calculation, I am of the view that awarding of Rs.8,00,000/- as on the date of award would be appropriate. In view of the above discussion, this Court awards Rs.8,00,000/- as compensation to the claimants and the Railways is directed to deposit the same, within a period of six weeks from the date of receipt of copy of this order. In case, if there is a delay in payment, the Railways is liable to pay the compensation along with interest at the rate of 9% per annum from the date of receipt of order till the date of realization.

17. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

29.08.2023

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Index:Yes/No

Speaking Order:Yes/No



C.M.A.No.946 of 2017

Neutral Citation Case: Yes/No

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To:

1. The Railway Claims Tribunal,
Chennai Bench.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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C.M.A.No.946 of 2017

K.RAJASEKAR,J.

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C.M.A.No.946 of 2017

29.08.2023



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C.M.A.No.946 of 2017