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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.12.2023

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.4679 of 2019

1. K.Suresh
2. V.Sasikala
3. M.Lakshmi
4. J.Poongodi

...

Appellants

Vs

Union of India
Owning Southern Railway,
Rep. By its General Manager,
Chennai.

... Respondent

Civil Miscellaneous Appeal filed under Article 173 of Motor Vehicles Act 1988, against the order dated 27.08.2019 in O.A.No.(II-U)/44/2009 passed by the Railway Claims Tribunal, Chennai Bench.

For Appellant : Mr.S.Parthasarathy

For Respondents : Mr.M.Vijaya Anand , Standing Counsel

J U D G M E N T

This appeal has been filed by the appellants against the order dated 27.08.2019 in O.A.No.(II-U)/44/2009 passed by the Railway Claims Tribunal, Chennai Bench,



mother was travelling from Guidy RS to reach Chennai Park RS in the train by sitting near the compartment door due to over crowding, before Egmore RS, she tried to stand up, lost her balance and due to jerk, fell down from the running train and sustained injuries in the head and died on the spot itself. Thereafter, the claimants, who are the dependents of the deceased, filed a claim petition, seeking compensation of Rs.8,00,000/- before the Railway Claims Tribunal under various heads.

3. The Tribunal, considering the pleadings, oral and documentary evidence, dismissed the petition. Aggrieved by the said award, the appellants has filed the appeal before this Court for quashment of the 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. AW2 has clearly deposed that he had purchased the ticket and gave to the deceased. There is every possibility for loss of ticket while recovering the body. The deceased died due to rush, sped and jerk of the train. It was an accidental fall within the meaning of term untoward incident as defined under Section 123(c)(2) of the Railways Act. The Tribunal



warrants interference of this Court.

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5. Per contra, the learned counsel for the respondent submitted that the alleged incident had occurred on 04.12.2005 and inquest was concluded on the same day. One Devendiran whose statement, the claimant had relied upon to establish that the deceased was a bonafide passenger, had stated that the deceased had told him that she had been deserted by her kith and kin. The learned counsel further submitted that the deceased was a bonafide passenger not the applicants were dependents of the deceased and hence, Railways are not liable to pay the compensation under Section 124 A of the Railways Act. The Tribunal, considering the factual aspects, rightly dismissed the claim petition, which does not warrant any interference.

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

7. Admittedly, the appellants are the claimants/dependents. They have filed claim petition before the Railway Claims Tribunal for the death of the deceased. The Tribunal has dismissed the said petition on the ground that



account of a fall from a train to qualify as untoward incident under Section 123(c)(2) of the Railways Act, 1989.

7. The claim has been rejected by the respondents 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 respondents are not liable to pay any compensation. However, the said contention and the finding rendered on the said contention could not be accepted for the simple reason that A.W.2 had been examined on behalf of the claimants, who had clearly deposed that he had taken the ticket for the deceased and handed it over to her. Though A.W.2 had been cross-examined, no contradiction had been elicited from A.W.2 with reference to the above deposition. Further, the respondents have not placed any material whatsoever to counter the aforesaid evidence of A.W.2. Therefore, the finding rendered by the Tribunal with regard to the deceased not having travelled in the train is wholly erroneous and perverse.

8. Further, it is to be pointed out that merely because the said ticket was not available on the person of the deceased nor it was produced by the claimants could be a reason to reject the claim made by the claimants. 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. Only to offset the non-availability of ticket, which was with the deceased A.W.2 was examined to prove that it was A.W.2, who procured the ticket and given the same to the deceased. So long as the deposition of A.W.2 is unshaken on the aforesaid aspect, the respondents cannot wriggle out of their duty and responsibility to compensate the claimants on account of the death of the deceased.

9. In the result, the Civil Miscellaneous Appeal is allowed and the respondent is directed to pay a sum of Rs.8,00,000/- as compensation along with interest at the rate of 6% per annum, from the date of petition till the date of realization, within a period of four 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 25:25:25:25. 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.

19.12.2023



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Index : Yes/no

Internet : Yes/no

Speaking Order/Non speaking order

To

1. Union of India
Owning Southern Railway,
Rep. By its General Manager,
Chennai.

2. The Railway Claims Tribunal, Chennai Bench.

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