



C.M.A.No.71 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM :

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

C.M.A.No.71 of 2021

1.D.Manuvel

2.M.Mary Thangam

... 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, 1989, to set aside the judgment passed by the Railway Claims Tribunal, Chennai bench in O.A.(II-U)48/2016, dated 24.01.2017 and enhance the compensation amount Rs.8,00,000/- from the date of notification dated 22.12.2015 and allow this appeal.

For Appellants : Mr.Selvirajesh

For Respondent : Mr.M.Vijay Anand



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JUDGEMENT

This Civil Miscellaneous Appeal has been filed by the appellants against the judgement dated 24.01.2017 in O.A.No.(II-U)/48/2016 passed by the Railway Claims Tribunal, Chennai.

2. The case of the appellants is that, on 09.08.2015, after finishing the work, the deceased Samuvel came to Tuticorin Melur Railway Station and having procured an unreserved ticket for his travel from Tuticorin Melur to Vanchi Maniyachi Junction boarded in Train No.16235 Tuticorin-Mysore Express. When said train departed from Kailasapuram RS, due to heavy crowd, jerk and jolt of the train, deceased lost his balance and accidentally fell down from the running train at KM 634/500-600 and sustained fatal injuries. Immediately, the deceased was admitted in Government Hospital, Tuticorin till 15.08.2015 and thereafter shifted for further treatment to Tuticorin AVM Hospital, but without responding to treatment, he succumbed to injuries on the same day at about 2.20 a.m. Thereafter, the appellants, who are the dependents of the deceased filed an application claiming compensation of Rs.4,00,000/-



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before the Railway Claims Tribunal under various heads.

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3. The Tribunal, considering the pleadings, oral and documentary evidence, dismissed the application vide judgement dated 24.01.2017. Aggrieved by the said judgement, the appellants have filed the present appeal before this Court.

4. The learned counsel for the appellants submitted that the deceased died due to the accidental injuries sustained by the him during the railway accident and the deceased laid on the platform with fatal injuries clearly shows its an railway accident. AW1, who is the father of the deceased has clearly deposed that the deceased was working as chef in hotel at Tuticorin for the past four months and he used to travel daily. Initially, the deceased purchased seasonal ticket for the said journey which cost around Rs.100/-. To avoid squad checking and as he used to remove shirt worn by him in which pocket he used to keep the travel season ticket, however he lost the same, thereby he has purchased specific ticket for the journey date, which has been produced before the Tribunal. The said deposition of AW2 was supported by the evidence of



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RW2, who deposed before the Tribunal that he produced the original journey ticket meant for journey from Tuticorin Melur to Vanchi Maniyachi Junction for Rs.30/- by Class II M and in the reverse side of the said ticket, the date is stamped as 9.8.2015. Both the sides have verified the ticket and returned to him. Further, final report was also filed before the Tribunal and as per the said final report, the deceased is a bonafide passenger. In order to disprove the same, except the evidence of RW1 and DRM report, no other independent witnesses were examined. However, believing the evidence of RW1 and the DRM report, the Tribunal arrived at a conclusion that the deceased is not a bonafide passenger and dismissed the claim of the appellants, which warrants interference of this Court.

5. Per contra, the learned counsel for the respondent submitted that the immediately after the accident, no recovery was made either by the law enforcing agency or by the railway employees. Initially, the railway employees stopped the train and took the injured person to the hospital. On the date of accident, no recovery was made from the injured person and subsequently, the journey ticket was planted for the purpose of



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getting compensation from the railways. The guard of the Train No.16235/RW1, who is an eye-witness to the accident had deposed that he applied the emergency brake and stopped the train after noticing that the injured person had tried to board the moving train in coach No.14432 and not only he provided first-aid to him, but also identified him from the documents available with him and informed the same to the appellants/parents of the deceased. Thereafter, the injured person was admitted in the hospital and he died inspite of the treatment given to him. Therefore, RW1 categorically deposed that the journey ticket was not available with the injured person at the time of accident. 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 respondent and also perused the materials available on record.

7. Admittedly, the appellants are the dependents of the deceased.



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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 the deceased was not a bonafide passenger and that the death was not on account of a fall from a train to qualify as untoward incident under Section 123(c)(2) of the Railways Act, 1989.

8. The claim has been rejected by the respondent on the ground that at the time of accident, the deceased did not have any valid ticket and making a reference of such ticket at a later stage do not inspire confidence, on which the Tribunal arrived at a conclusion that deceased was not a bonafide passenger and, therefore, the appellants would not be entitled to any compensation. However, the said finding rendered by the Tribunal could not be accepted for the simple reason that AW1 had been examined on behalf of the applicants, who had clearly deposed that the deceased had purchased the ticket and travelled in the train, which deposition has been supported by the evidence of RW2. Further, as per the evidence of AW1, the deceased purchased the ticket and travelled in the train. There is every possibility for loss of ticket while taking the injured person to the hospital. The injured person fell down from the train



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due to rush, sped and jerk of the train and thereafter died due to the accidental injuries. Hence, it was an accidental fall within the meaning of term untoward incident as defined under Section 123(c)(2) of the Railways Act. Therefore, the finding rendered by the Tribunal regarding bonafide passenger as well as untoward incident with regard to the deceased is wholly erroneous and perverse.

9. Further, it is to be pointed out that merely because the said ticket was not available on the person of the deceased at the time of accident nor it was produced by the claimants at a later stage 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 at the time of accident, AW1 was examined to prove that the deceased purchased ticket and travelled in the train. So long as the deposition of AW1 is unshaken on the aforesaid aspect, the respondent cannot wriggle out of their duty



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and responsibility to compensate the claimants on account of the death of the deceased.

10. 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 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
Speaking order / Non-speaking order
NCC : Yes / No
sp



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WEB COPY To

- 1.The General Manager,
The Union of India owning Southern Railway,
Chennai – 600 003.
- 2.The Section Officer,
V.R. Section,
High Court, Madras.



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M.DHANDAPANI, J.,

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