



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2023

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3157 of 2019

1.F.Mariya Jakulin

2. F.Venisa Casilda (Minor)

*Minor Rep. by mother and natural guardian A-1,
Wife, minor daughter & mother of deceased R.Felix*

3. R.Joshphin

... Appellants

Vs

The Union of India Owing,
South Western rep. by
its General Manager,
Hubli.

... Respondent

Civil Miscellaneous Appeal filed under section 23 of the Railways Claims Tribunal against the judgment passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U).No.6/2016 dated 31.08.2016 and enhance the compensation amount to Rs.8,00,000/- from the date of notification dated 22.12.2015.

For Appellants : Mr.P.Rajesh

For Respondent : Mr.M.Vijay Anand

J U D G M E N T

This appeal has been filed by the appellants against the order dated 31.08.2016 passed in O.A.(II-U).No.6/2016, on the file of Railway Claims



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2. It is the case of the appellants that on 14.07.2015, when the deceased namely Felix, was travelling in Uzhavan Express train which was proceeding from Kumbakonam to Chennai Egmore, had accidentally fallen from the running train which resulted in sustaining grievous injuries in his head and died on spot. Therefore, the claimants, who are the dependents of the deceased, filed a claim petition, seeking compensation of Rs.4,00,000/- before the Railway Claims Tribunal under various heads.

3. The Tribunal, considering the pleadings, oral and documentary evidence, dismissed the petition on the ground that the deceased was not a bonafide passenger and was not in possession of a valid train ticket. Aggrieved by the said award, the appellants have filed the appeal before this Court for quashment of the impugned 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 in the Railway Track, which clearly shows its an railway accident. He further submits that in order to prove the presence of the deceased in the train, the appellant examined A.W.2 / the friend of the deceased namely



journey ticket for the travel of the deceased and sent him off by General Compartment of Uzhavan Express and he has also stated that the train was heavily crowded and the deceased travelled in an unreserved compartment. However, during his cross examination he has stated that the deceased had himself taken the ticket and he did not know in which compartment, the deceased had boarded the train. Due to the contra evidence of the friend of the deceased, the Tribunal dismissed the claim made by the claimants on the ground that the deceased is not a bonafide passenger and that the body of the deceased was found ten feet away from the railway track.

5. More so, Exs.A.4 to A.6 makes it clear that the deceased had travelled in the said train with a valid ticket which was procured by his friend and had fallen accidentally from the train which resulted in his death. However, without considering the same, the Tribunal has rejected the claim made by the claimants on the ground that deceased was not a bonafide passenger as the body of the deceased was found ten feet away from the railway track and also that the DRM report lacks credibility which is wholly unsustainable. He further submits that mere DRM report is not sufficient to hold that the deceased was not a bonafide passenger.

6. 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** in the case of **Union of India (UOI) vs. Rina Devi**. *The relevant portion of the said judgment is extracted hereunder:*

“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.”

7. He further submits that the said accident is within the meaning of term untoward incident as defined under Section 123(c)(2) of the Railways Act. The Tribunal without considering the factual position, dismissed the claim petition, which warrants interference of this Court.

8. Per contra, the learned counsel for the respondent submitted that as

per Section 124 A of the Railways Act, 1989, the compensation on account



of an untoward incident would be given only for a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket becomes a victim of an untoward incident, however in the present case on hand neither the bonafide of the victim as a passenger nor his travel and fall from the running train is established. Hence, The Tribunal, considering the factual aspects, rightly dismissed the claim petition, which does not warrant any interference.

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

10. Admittedly, the appellants are the claimants/dependents. They have filed claim petition before the Railway Claims Tribunal seeking compensation 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 an untoward incident under Section 123(c)(2) of the Railways Act, 1989.

11. The claim has been rejected by the respondent 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 respondent is not liable to pay any compensation.

12. From the narration of facts relating to the appeal, two questions emerge before this Court for consideration, viz.,

1) Whether the deceased person was bonafide passenger and the manner of accident leading to the death of the person could be held to be an untoward incident falling within the ambit of [Section 123\(c\)](#) of the Railways Act, 1989 ?

2) Whether the appellants/claimants in this appeal are entitled for compensation under [Section 124A](#) of the Railways Act, 1989 for the death of the deceased persons in an untoward incident ?

13. For better appreciation, Section 123 and 124(A) of the Railways Act are extracted hereunder:

“Section 123 in The Railways Act, 1989

[\(c\)](#) “untoward incident” means—

[\(1\)](#)(i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

[\(ii\)](#) the making of a violent attack or the commission of robbery or dacoity; or



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(iii) the indulging in rioting, shoot-out or arson, by 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.”



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14. From the above said provision, it transpires that any passenger, who accidentally falls from a running train, the same would stand covered under the definition "untoward incident" and once the incident is untoward, it would attract the liability of the Railways to compensate for the death of the said passenger.

15. In the case on hand, except for the fact that no ticket was found on the body of the deceased, the Railways had held that it is not liable to pay the compensation for the death. However, it is not the case of the Railways that the deceased had not fallen from a running train. Mere non-finding of ticket on the person of the deceased would not qualify the person to be not a passenger travelling in a train.

16. On a perusal of the decision rendered by the Hon'ble Apex Court in the case of *Union of India Vs. Rina Devi* reported in **2019 3 SCC 572** makes it clear that mere absence of the ticket on the person of the injured or the deceased will not negative the claim that he was a bonafide passenger. The initial burden fastened on the applicant would be discharged if an affidavit with relevant facts are filed. Once the same is filed, then the burden is shifted on the Railways to prove that the person concerned is not a



bonafide passenger. However, in the case on hand, an affidavit has been filed by the friend of the deceased to prove that the deceased travelled in the train and all the police reports except the DRM report have stated that the deceased had travelled in the said train with a ticket which was procured by his friend and had fallen from the train. Though all these evidence are in favour of the deceased, especially, when an affidavit establishing the fact that the deceased had travelled in the said train, rejecting the claim of the claimants seeking compensation is wholly unsustainable.

17. 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 and mere absence of ticket with injured or deceased will not negative the claim that he was a bona fide passenger. However, in the present case on hand though the ticket was not found in the body of the deceased, it is the duty cast upon the Railway to disprove that the deceased was not a bonafide passenger by way of examining the TTR and co-passenger, however, without examining any oral and documentary evidence, the Tribunal rejected the claim of the claimants which is *per se* unsustainable.



respondent is directed to deposit a sum of Rs.8,00,000/- as compensation to the credit of O.A.(II-U).No.6/2016, 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 40:40:20. On such deposit being made by the respondent, the appellants 1 and 3 are entitled to withdraw their share of compensation by filing appropriate application before the Tribunal and the share of compensation to the second appellant shall be deposited in an interest bearing fixed deposit initially for a period of three years by the Tribunal, which shall be renewed periodically till they attain majority. The interest from out of the fixed deposit shall be paid to the first appellant every quarter for it to be used for the welfare of the minor appellant. After attaining majority, the minor appellant is permitted to withdraw her share by filing appropriate application and establishing her majority before the Tribunal.

No costs.

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Index : Yes/no

Internet : Yes/no

Speaking Order/Non speaking order



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1. General Manager,
The Union of India,
Hubli.
2. The Railway Claims Tribunal, Chennai Bench.
3. The Section Officer,
V.R. Section,
High Court, Madras.



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M.DHANDAPANI.,J.

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