



C.M.A.No.452 of 2020

HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2023

CORAM :

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

C.M.A.No.452 of 2020

1. V.Krishnammal
2. A.Veeraperumal

... 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 23.09.2015 made in O.A.(II-U) 282 of 2013 on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellants : Mr.S.Parthasarathy

For Respondent : Mr.M.Vijay Anand

JUDGEMENT

Challenging the judgment dated 23.09.2015 made in O.A.(II-U) 282 of 2013 passed by the Railway Tribunal, Chennai Bench, the appellants have preferred the present appeal.



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2. The appellants are the parents of the deceased Mariswaran. On 21.06.2013 prior to 18.45 hours, when the deceased was travelling in an electric train which proceeded towards Avadi Railway station, he had accidentally fallen down from the running train between Korattur and Patravakkam railway station, due to which, he sustained grievous injuries and died at the place of incident. Thereafter, the applicants filed an application claiming compensation in a sum of Rs.4,00,000/- for the death of the deceased in O.A.(II-U) 282 of 2013. After adjudication, the Tribunal had dismissed the said application. Assailing the same, the present appeal is filed by the appellants herein.

3. The learned counsel appearing for the appellants submitted that the deceased was a Mason and he is 30 years old. While he was travelling in the train which proceeded towards Avadi, he had accidentally fallen down from the running train. He further submits that in order to prove the presence of the deceased in the train, AW.1 who is the mother of the deceased deposed that her son used to visit his native place once in a month, who died in an untoward incident and had accidentally fallen from the train.



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When such an 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. Though it is duty cast upon the Railways to disprove the claim made by the claimants before the Tribunal, Railways has neither examined the TTR (Travelling Ticket Examiner) nor the co-passengers who travelled along with the deceased in order to find out as to whether the deceased was in possession of a valid train ticket or not. In the absence of such evidence, rejecting the claim made by the claimants vide impugned award cannot be sustained. In support of his contention he relied upon the decision rendered by the Hon'ble Apex Court in the case of *Union of India (UOI) vs. Rina Devi* reported in *MANU SC 0522 2018*.

4. Per contra, the learned counsel appearing 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 the deceased was not a bonafide passenger as he was not in possession of a valid ticket while he was travelling in the train. Hence, The Tribunal, considering the factual



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aspects, rightly dismissed the claim petition, which does not warrant any interference.

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

6. Admittedly, the appellants are the claimants/dependents. It is seen that the body of the deceased was found between Korattur and Patravakkam Railway Station at Km 13/12-13. Thereafter, the appellants have filed claim petition before the Tribunal claiming compensation as against the railway authorities 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.

7. 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,



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therefore, the respondent is not liable to pay any compensation.

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8. 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 ?

9. 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



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(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 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



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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.”

10. 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. However, in the present case on hand when the Tribunal examined A.W.1 / mother of the deceased, she has neither proved the originating station from where the deceased boarded a particular train and the destination nor she is the eye witness to the incident. In the absence of any proof that the person concerned is not a bonafide passenger, the Railways are not liable to compensate the applicants.

11. Even as per the clarification and deposition made by the Doctor who conducted postmortem, it is clear that the deceased chest had grease



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marks, which are generally not seen unless a person is hit by the engine of the Train. As such the Tribunal held that the deceased was not a bona fide passenger, which does not warrant any interference of this Court.

12. 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, the applicants have not examined any eye witness and even from the testimony of A.W.1, it reveals that she was not aware as to where the deceased was working as well as residing, though in the proof affidavit it was stated that the deceased was working as Carpenter and staying at Chennai in rented premises. Onus to prove the fact is upon a person who asserts existence of such a fact. Thus the condition precedent which are required to be satisfied for laying a legal claim, one has to establish that the person who suffers such incident was a



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passenger as well as the said accident was an untoward incident. 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.

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

30.11.2023

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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