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C.M.A.No.124 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.12.2023

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.124 of 2020

1. J.D.Krishnan
2. J.K.Komala
3. P.Eagambal

...Appellants

Vs

The Union of India owning,
Southern Railway,
Rep. By its General Manager,
Chennai – 600 003.

...Respondent

Civil Miscellaneous Appeal filed under Section 23 of Railway Claims Tribunal Act, 1987, to set aside the judgment dated 24.07.2018 made in O.A.(II -U) No.172 of 2017 on the file of Railway Claims Tribunal, Chennai Bench.

For Appellants : Mr.R.Sekaran

For Respondent : Mr.M.Vijay Anand

J U D G M E N T

This Civil Miscellaneous appeal has been filed as against the order passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II -U)

<https://www.mhc.tn.gov.in/judis> No.172 of 2017 dated 24.07.2018.



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2. It is the case of the appellants that on 14.09.2016 when the deceased Venkatesh was travelling in the Avadi-Chennai train, due to over crowding, the deceased accidentally fell from the running train in between Avadi and Annanur, which resulted in sustaining grievous injuries in head and the deceased died during the course of shifting him from G.H. Avadi to Kilpauk Govt. Medical College and Hospital. 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. After contest, 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 same, the appellants have filed this appeal before this Court for quashment of the impugned award.

3. The learned counsel for the appellants submitted that admittedly, the deceased died due to the injuries sustained by him in the above said railway accident. He further submits that, the claim of the appellants was rejected solely on the ground that the two police officials who accompanied the deceased to the hospital immediately after the accident deposed that they collected a xerox copy of the ration card, mobile number and small papers



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from the purse and pocket of the deceased and no money or valid travelling authority was recovered from the deceased and thereby, the Railway Tribunal held that the deceased was not a bonafide passenger and also based on the AR copy, in which it is stated that the deceased/patient was drowsy and had “alcoholic smell”, which is perverse. It is the further submission of the learned counsel that the Inquest report reveals that the ticket/traveling authority for 14.09.2016 i.e., the date of accident was recovered from the pant pocket of the deceased, which is more than sufficient to hold that the deceased was a bonafide passenger, which was not properly adjudicated by the Tribunal. It is the further submission of the learned counsel that the deposition of the police officials who accompanied the deceased to the hospital immediately after the accident does not reveal anything with regard to recovery of any articles from his pant pockets and they have only stated that they recovered xerox copy of ration card, some small papers from his purse and pocket and there were no valuable items, money or any traveling authority, and there was no clarity with regard to whether any material was recovered from the pant pocket of the deceased. Further, though the Railway Tribunal, by relying upon the accident register have held that the deceased was under the influence of alcohol at the time of accident, however, the post-mortem report did not reveal any intake of alcohol by the



deceased and when there is no mention in the postmortem report with regard to consumption of alcohol by the deceased, the post-mortem report ought to form the basis for adjudicating the presence of alcohol and the AR copy cannot be said to be a substantive evidence negating the post-mortem certificate. It is the further submission of the learned counsel that merely because the deceased smelled of alcohol cannot be held that he had consumed alcohol. However, the tribunal, mechanically based on the AR copy had held the deceased to have consumed alcohol, without appreciating the post-mortem certificate and, therefore, the impugned award passed by the Railway Tribunal is perverse and the same has to necessarily be interfered with.

4. Learned counsel appearing for the respondent submitted that, it is clear from the depositions made by the police officials who accompanied the deceased to the hospital immediately after the accident that, they collected a xerox copy of the ration card, mobile number and small papers from the purse and pocket of the deceased and no money or valid travelling authority was recovered from the deceased, and thereby the tribunal arrived a conclusion that the deceased was not a bonafide passenger and rejected the claim made by the appellants/dependents of the deceased, which cannot



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be said to be erroneous and the same does not warrants interference of this court. However, he fairly submitted that, the postmortem report did not reveal that the deceased was under the influence of alcohol or even no mention was made with regard to smell of alcohol from the deceased.

5. Heard learned counsel for the appellants and the learned counsel appearing for the respondent and perused the material documents placed on record.

6. 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 deceased was under the influence/smell of alcohol.

7. The claim has been rejected by the respondent on the ground that the ticket on which the deceased had travelled was not available on the person of the deceased at the time of travel, which has been spoken to by the police officials accompanying the body. However, it should not be lost sight of that the said ticket/travelling authority was later recovered at the time of



inquest, which is evident from the inquest report. This clearly proves that the deceased was a bona fide passenger in the train and during the journey fell down and succumbed to the injuries. In the absence of any materials with regard to the deceased consuming alcohol and the contents of the AR copy having been negated by the post-mortem certificate, the finding with regard to the deceased being under the influence of alcohol cannot be sustained.

8. The fact that the deceased died due to the injuries sustained by him when he had accidentally fallen from the running train due to overcrowding is not in dispute and the same is evident from the deposition of the police officials who have accompanied the deceased to the hospital immediately after the accident. On 14.09.2016, the deceased was initially found in injured condition at Km.19/17-15A between Avadi and Annanur and was shifted to G.H.Avadi by 108 ambulance with the help of the police officials who accompanied the deceased to the hospital and with the help of the general public. Merely because of the fact that the deceased was in a drowsy state and he had not revealed anything other than his name when the constable who had accompanied the deceased in 108 ambulance questioned him cannot be taken to mean that he was under the influence of alcohol.



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The drowsiness could have been caused due to the grievous nature of injuries sustained by him. Though the two police officials who accompanied the deceased to the hospital immediately after the accident deposed that they collected a xerox copy of the ration card, mobile number and small papers from the purse and pocket of the deceased and no money or valid travelling authority was recovered from the deceased, however, there is no clarity with regard to the pockets from which the articles were collected. There is no clear deposition from the police officials that they had searched the pant pockets of the deceased as well. In such a situation, when the travelling authority had been recovered from the pant pocket of the deceased during the inquest, the said material retrieved at the time of inquest would outweigh the deposition made by the police officials that the deceased was not in possession of a valid traveling authority for his travel on 14.09.2016 i.e., the date of accident.

9. When the railway tribunal doubts the recovery of travelling authority at the time of inquest, it has to examine necessary evidence to arrive at a conclusion that the ticket was introduced illegally, which was not done so by the Railway department and in the absence of any witness, the conclusion arrived at by the Railway tribunal is not acceptable. Hence, this



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Court holds that the deceased was a bonafide passenger and had fallen down from the train and succumbed to the injuries.

10. Insofar as the smell of alcohol alleged to have been found on the deceased as is evident from the AR report, however, in view of the fair stand taken by the learned counsel for the respondent that the post-mortem certificate, which does not reveal any alcohol on the person of the deceased would have more evidentiary value than the AR copy, the finding relating to the deceased being under the influence of alcohol is wholly perverse and, accordingly, the said finding is set aside.

11. Accordingly, for the reasons aforesaid, the impugned award dated 24.07.2018 made in O.A.(II -U) No.172 of 2017 is set aside and this appeal is allowed and this Court awards a sum of Rs.8,00,000/- as compensation to the victim to be payable by the respondent to the appellants/claimants and the respondent is directed to deposit the compensation amount as awarded by this Court to the credit of O.A.(II -U) No.172 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of six weeks (6) from the date of receipt of a copy of this judgment. Out of the compensation amount, the respective appellants



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are entitled for compensation in the ratio of 25:25:50. On such deposit being made, the Railway Tribunal is directed to transfer the award amount directly to the bank account of the appellants/claimants through RTGS within a period of two weeks thereafter. No costs.

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Index : Yes/No
Internet : Yes/No
Speaking Order : Yes/No

To

1. The Railway Claims Tribunal, Chennai Bench.



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M.DHANDAPANI, J.

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