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C.M.A. No.2542 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.2542 of 2021

1.Sundarammal

2.Sivandam

.. Appellants

vs.

Union of India through General Manager,
Southern Railway, Chennai.

.. Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 23(1) of Railway Claims Tribunal against the fair and decretal order passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U)/139/2019 dated 23.07.2021.

For Appellants : Mr.S.Parthasarathy

For Respondent : Mr.M.Vijay Anand

JUDGMENT

This appeal has been filed by the appellants/claimants, aggrieved by the judgment dated 23.07.2021 passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U)/139/2019.

2.Under the impugned judgment, the claim of the appellants/



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claimants seeking compensation for the death of their son Durai Murugan, who, according to them, died due to a fall from the train, has been dismissed.

3.Learned counsel for the appellants/claimants drew the attention of this Court to the impugned judgment and would submit that despite the appellants/claimants having discharged their initial burden of proving their case that their son Durai Murugan died only as a result of a fall from the train, the Tribunal has erroneously dismissed the claim of the appellants/claimants on the ground that the train ticket was not recovered from the possession of the deceased. According to the learned counsel for the appellants/claimants, the Tribunal has dismissed the claim by erroneously holding that mere presence of the dead body in the precincts of the railway premises cannot be conclusive evidence of an untoward incident. He would further submit that the deceased fell down from the train on 14.05.2019 and was injured and it was only the respondent's officials, who took him to the hospital and they are fully aware that only due to the fall from the train, the deceased had sustained injuries, which resulted in his death on 20.05.2019. He would also submit that though the incident happened on 14.05.2019, inquest was conducted on the



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deceased only on 20.05.2019 and therefore, retrieving the ticket from the deceased after a lapse of more than six days is impossible. Therefore, according to the learned counsel for the appellants/claimants, erroneously, by total non-application of mind to the evidence available on record, the Tribunal has dismissed the claim of the appellants/ claimants, who are the parents of the deceased.

4.On the other hand, the learned Standing Counsel for the respondent would submit that since the ticket was not retrieved from the deceased and the enquiry conducted with the employer of the deceased, i.e. M/s.Saravana Stores also reveals that the deceased was not their permanent employee and he did not attend work on the date of the travel, only based on the circumstantial evidence, the Tribunal has rightly dismissed the claim of the appellants/claimants as the deceased was not a bonafide passenger.

5.Under the impugned judgment, the reason for dismissing the claim is not based on any independent report. The witnesses, whose statements were recorded in the Investigation Report, submitted by the



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respondent, were also not examined as witnesses before the Tribunal.

The retrieval of the body of Durai Murugan on 14.05.2019 at 2.30 a.m. by the respondent for taking him to the hospital is not disputed by the respondent as seen from the evidence available on record.

6. Admittedly, the appellants'/claimants' son Durai Murugan died only on 20.05.2019. The inquest was conducted by the respondent only on 20.05.2019 from 16.00 hours to 18.00 hours at Rajiv Gandhi Government General Hospital, Chennai and the body was sent for post mortem. The respondent's report (DRM report) reveals that enquires were made with Shri G.Packrisamy, ASIPF/TMV, Shri M.Kumarasamy, Trolleyman/TMV, Shri P.Venkatesan, Loco Pilot of Train No.12654/ Rock Fort Exp & Shri C.N.Anish Kumar, Constable (RPF)/TMV and as per their statements, it was recorded in the DRM's report that the deceased Durai Murugan was travelling in a train from Chennai to Tanjavur and had fallen from running train at Km.158/15-13 between VM and MYP. However, only on the ground that since the deceased was not possessing a valid train ticket for his journey from Chennai to Tanjavur, the Tribunal has dismissed the claim of the appellants/claimants by holding that mere presence of the dead body in the precincts



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of the railway premises cannot be conclusive evidence of an untoward incident.

7.In the decision rendered in the case of **Union of India vs. Rina Devi** dated **09.05.2018** in **Civil Appeal No.4945 of 2018**, the Hon'ble Supreme Court has made it clear that mere absence of ticket with such injured or deceased will not negative the claim that he was a bonafide passenger. It would suffice that the initial burden of the appellants/claimants 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.

8.In the case on hand, the appellants/claimants have discharged their initial burden of filing of an affidavit of the relevant facts and they have also filed documents, which are marked as exhibits in respect of their claim that the deceased had died only as a result of a fall from the train during his journey from Chennai to Tanjavur. However, the respondent, excepting for filing their DRM report, which is not an independent report, have not examined any of the officials mentioned in the report, who have given statements with regard to the alleged accident.



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The Tribunal has given its finding only based on the DRM report as well as the inquest report, which are not independent reports as the appellants/claimants were also not parties to it.

9.Since the respondent has not examined any of their officials, who have given statements with regard to the alleged incident, they have not discharged their burden of disproving the contentions of the appellants/claimants, who have discharged their initial burden as required under the judgment of the Hon'ble Supreme Court in Union of India vs. Rina Devi dated 09.05.2018 rendered in Civil Appeal No.4945 of 2018. None of the officials mentioned in the respondent's DRM report have been examined as a witness to enable the appellants/claimants to cross examine with regard to the veracity of their statements.

10.For the foregoing reasons, this Court is of the considered view that in the interest of justice, the matter will have to be remanded back to the very same Tribunal for fresh consideration, on merits and in accordance with law, after permitting both the appellants/claimants and the respondent to examine witnesses in respect of their respective contentions.



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11.It is made clear that if the respondent fails to examine any of the witnesses mentioned in the DRM report of the respondent, adverse inference will have to be drawn against them and the appellants'/ claimants' contention that the deceased Durai Murugan died only as a result of the fall from the train during his journey from Chennai to Tanjavur has to be believed and the Tribunal, while passing the award, will have to take note of the said fact. The Tribunal, on remand is directed to pass a judgment, after affording a fair opportunity to both the parties to put forth their respective contentions with supporting oral and documentary evidence, within a period of four months from the date of receipt of a copy of this judgment. Accordingly, this appeal is disposed of. No costs.

09.07.2024

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ABDUL QUDDHOSE, J.

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To

- 1.The Railway Claims Tribunal,
Chennai Bench.
- 2.The Section Officer,
V.R. Section, High Court, Madras.

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