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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3406 of 2021

1.N.Nathiya
2.N.Makeshvaran(Minor)
3.N.Moshitha(Minor)
4.K.Adhilakshmi .. Appellants

Vs

Union of India
through General Manager
Southern Railway
Chennai-600 003. .. Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 1987, against the judgment dated 23.07.2021 passed by the Railway Claims Tribunal, Chennai Bench, in O.A (II-U)/160/2019.

For Appellants : Mr.B.Thirumalai

For Respondent : Mr.T.P.Savitha

JUDGMENT



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This appeal has been filed by the applicants who made a claim before the Railway Claims Tribunal, Chennai Bench in O.A (II-U)/160/2019 challenging the judgement passed by the Railway Claims Tribunal dated 23.07.2021 dismissing the application filed by the appellants.

2. The claim was filed before the Railway Claims Tribunal seeking for compensation for the death of Nagaraj who travelled as a passenger in the EMU train from Tondiarpet to Ponneri and he had fallen down from the train on 04.12.2017 which resulted in his death. The respondent before the Tribunal have disputed the claim of the applicants by stating that the body of the deceased was found in the upline, though the deceased is said to have travelled in the down line and therefore according to them, the applicants have not established that the deceased had died only due to the fact that he had fallen down from the train.

3. Before the Tribunal, the wife of the deceased namely the 1st



appellant was examined as a witness. She was also cross examined by the respondent. However, on the side of the respondent, no witness was examined. Before the Tribunal the following documents were marked as exhibits on the side of the appellants/applicants:

a) Copy of the FIR, b) Inquest report, c) Final report, d) death certificate, f) legal heir certificate for the deceased.

On the side of the respondent, their investigation report was marked as exhibit under the impugned judgement of the Railway Claims Tribunal dated 23.07.2021 passed in O.A (II-U)/160/2019.

4. The application filed by the appellants/applicants has been dismissed by giving a finding that the deceased had not purchased any ticket for his return journey and therefore, he is not a bonafide passenger and the appellants/applicantt are not entitled to seek compensation as per the provisions of Section 124-A of the Railways Act. Aggrieved by the dismissal of the claim petition, the applicants have filed this appeal.

5. The following are the undisputed facts:



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a) *The deceased was possessing a valid train ticket purchased at 10.00 a.m for his travel by the EMU train from Tondiarpet to Ponneri.*

b) *The body of the deceased was found lying near the Ponneri Railway Station yard which falls between Ponneri Railway Station and Tondiarpet Railway Station.*

c) *The body of the deceased was found on 04.12.2017 at 12.30 hours.*

d) *The deceased was holding a second class travel ticket for travel from Tondiarpet to Ponneri bearing Ticket No.28100905 dated 04.12.2017.*

6. The Tribunal in the impugned judgment has also recorded the undisputed facts. However, only on the ground that since the body of the deceased was found near the railway track in the opposite direction (upline), the Tribunal has dismissed the claim petition by giving a finding that the deceased was not a bonafide passenger. As seen from the Railway ticket which has been marked as an exhibit, the deceased had purchased



the ticket at 10.11 a.m. It is also not in dispute that the respondent were also informed about the incident at 12.30 p.m. as seen from their own investigation report dated 26.11.2019. The deceased was holding a valid train ticket for travel from Tondiarpet to Ponneri. A categorical assertion has been made by the appellants/applicants before the Tribunal through their pleadings and through oral and documentary evidence that the deceased had died only due to the fact that he had fallen down from the train which was proceeding from Tondiarpet to Ponneri. Within 2-1/2 hours, from the time of purchasing of the ticket even according to the respondent, the incident had happened. As according to them, as seen from their own investigation report dated 26.11.2019, the incident happened at 12.30 p.m on 04.12.2017. The travelling time between the Tondiarpet and Ponneri Railway Station is approximately one hour. The deceased had purchased his ticket for his travel only at 10.11 a.m and the alleged incident even according to the respondent, had happened at 12.30 p.m which resulted in the death of the deceased.

7. It is impossible for the accident to have happened while the



deceased was returning back from Ponneri to Tondiarpet (upline) within a short time which is not possible as the travelling time from Tondiarpet to Ponneri is approximately one hour. However, the Tribunal under the impugned judgement has disbelieved the contentions of the applicants and has believed the contentions of the respondent that the deceased was not in possession of any valid train ticket and he was not a bonafide Railway passenger since the body of the deceased was found near the track in the upline and not near the track in the down line for which the deceased was holding a valid railway ticket. The reasoning given by the Tribunal under the impugned judgement is perverse and is not based upon the evidence available on record for the following reasons:

a) The deceased had purchased the ticket only at 10.11 hours on the date of the travel from Tondiarpet to Ponneri.

b) The accident was also noticed by the respondent as seen from their own investigation report at 12.30 p.m on the very same day as they were informed that the deceased was lying near the railway track in the down line.



c) The appellants were examined as witnesses. The

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first appellant/applicant is the wife of the deceased. She has also categorically deposed both in her chief examination as well as in her cross examination that the deceased had travelled to Ponneri for his employment on the fateful date i.e on 04.12.2017.

d) There is no contra evidence through any independent witness or independent report produced by the respondent to disprove the claim of the appellants/applicants that the deceased had died only due to the fall from the train on route from Tondiarpet to Ponneri Railway Station on 04.12.2017.

8. The appellants have also substantiated their claim through production of valid train ticket purchased at 10.11 hours on 04.12.2017 for travel from Tondiarpet to Ponneri Railway Station. The travel time between Tondiarpet to Ponneri Railway Station by EMU train is approximately one hour. The deceased purchased a ticket at 10.11 hours and even according to the respondents, they were informed about the



accident at 12.30 p.m on the very same date. Therefore, it is impossible to give a finding that the deceased was not possessing a valid train ticket since his body was lying in the opposite direction (upline). Just because, the body is found near the railway track in upline it cannot be established that the deceased did not fall down from the train while proceeding in the down line i.e from Tondiarpet to Ponneri. The evidence available on record will clearly prove that the deceased had died only due to the fall from the train while he was possessing a valid train ticket from Tondiarpet to Ponneri Railway Station.

9. Excepting for production of the investigation report dated 26.11.2019 by the respondent which is not an independent report, the respondent has neither examined the official who submitted the investigation report dated 26.11.2019 nor have they produced any other independent report to prove their contention that the deceased was not a bonafide passenger and he did not die as a result of a fall from the train. By total non-application of mind to the aforementioned facts which are supported by oral and documentary evidence, the Tribunal has given a perverse finding by holding that the deceased was not a bonafide passenger



and therefore, the appellants/applicants are not entitled to claim compensation as per the provisions of Section 124-A of the Railways Act.

10. Being a bonafide passenger and having conclusively established through the oral and documentary evidence that the deceased was a bonafide passenger and had fallen down from the train which has resulted in his death, the Tribunal ought to have awarded compensation to the appellants/applicants as claimed in the claim petition. The Hon'ble Supreme Court in the case of **Union of India vs. Rina Devi** reported in **(2019) 3 Supreme Court Cases 572** has held that once the compensation claim is proved, the claimant is entitled for a sum of Rs.8,00,000/- towards compensation which is the statutory compensation payable as per the provisions of the Railways Act.

11. For the foregoing reasons, the impugned judgement of the Railway Claims Tribunal dated 23.07.2021 is hereby set aside and this Civil Miscellaneous Appeal is allowed. The respondent is directed to deposit a sum of Rs.8,00,000/- (Rupees eight lakhs only) within a period of twelve weeks from the date of receipt of a copy of this judgement and



deposit the said amount before the Tribunal and the appellants/applicants are permitted to withdraw the same by filing an appropriate application.

05.07.2024

Internet: Yes/No

Index: Yes/No

Speaking order/Non-speaking order
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To

1.General Manager
Southern Railway
Chennai-600 003.

2.The Railway Claims Tribunal
Chennai Bench, in O.A (II-U)/160/2019

3.The Record Clerk,
VR Section,
High Court, Madras.

ABDUL QUDDHOSE, J.



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