



C.M.A.No.119 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.119 of 2021

1.D.Kopila
2.T.Nandakali
3.T.Tankanath Sharma

... Appellants

Vs.

The Union of India
Owning Southern Railway,
Rep. by its General Manager,
Chennai 600 003.

... Respondent

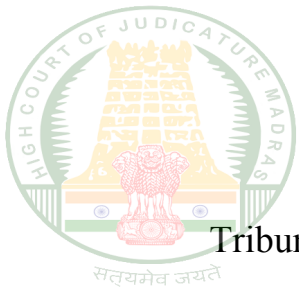
Prayer: Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act, against the Judgement dated 12.3.2015 in O.A.(II-U) 94 of 2014 on the file of Railway Claims Tribunal, Chennai Bench, Chennai.

For Appellants : Mr.S.Parthasarthy

For Respondent : Mrs.A.Shri Jayanthi

JUDGEMENT

This Civil Miscellaneous Appeal has been filed by the appellants/claimants to set aside the order passed by the Railway Claims



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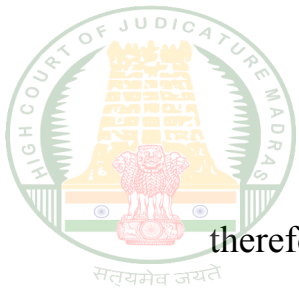
Tribunal, Chennai Bench in O.A.(II-U) 94 of 2014, dated 12.03.2015.

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2. The case of the appellants is that, on 23.09.2013 prior to 7.40 hours, when the deceased Deependra Sharma was travelling in a train from Chennai Central, which was proceeding towards Arakkonam, due to overcrowding, he had accidentally fell down from the running train between Vyasarpadi and Basin Bridge Railway stations at KM 4/4B-6B near down slow line, and due to which, he sustained grievous injuries and died at the spot. Therefore, the appellants being wife and parents of the deceased filed an application before the Railway Claims Tribunal, Chennai Bench, seeking a sum of Rs.4,00,000/- as compensation for the death of the deceased.

3. The Tribunal considering the pleadings, oral and documentary evidence, dismissed the application vide judgment dated 12.03.2015. Aggrieved by the said judgment, the appellants have filed the present appeal before this Court.

4. Learned counsel for the appellants submitted that the Tribunal failed to consider that due to fell down, the police not traced the ticket,



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therefore, it is proved that the deceased is a bonafide passenger, since

there is a possibility for loss of ticket. Further, he submitted that from the investigation of the Railway Police itself, it is proved that the deceased died of the accident due to fall from the train. In view of existence of First Information Report, investigation report and the final report submitted by the Railway Police coupled with the report of the Divisional Railway Manager, all in one voice concluding the case as an accidental fall from the train, without any material to indicate or inter any foul play or any collusive act, the Railways cannot content that it is not an accidental fall from the train. Therefore, he submitted that it was an accidental fall 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 application, which warrants interference of this Court.

5. Per contra, learned counsel for the respondent submitted that though the application is filed by the appellants based on the final report filed by the law enforcing agency, whereas, the DRM report makes it clear that on 23.09.2013, Perambur Railway Police Station registered a case in Crime No.624 of 2014 u/s 174 of Cr.P.C. on the basis of the



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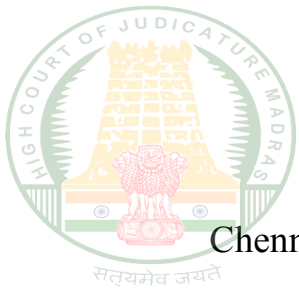
message received from the Station Master, Perambur Railway Station. As

per UTI Cell, a male aged about 35 years suddenly trespassed @ 4/4b-6b on down slow line was hit by train EMU no.43105 @ VPY (Vyasarpadi), injured person was taken by 108 ambulance to GH. Therefore, he submitted that the deceased is not a bonafide passenger, since he trespassed on the down slow line was hit by train, thereby, the accident had happened, which was clearly deposed before the Tribunal. Though no independent eye-witness was examined before the Tribunal, however, the DRM report itself is sufficient to hold that the deceased is not a bonafide passenger. Therefore, by considering all the factual aspects, the Tribunal has rightly dismissed the application, which does not warrant any interference at the hands of this Court. Accordingly, he prays for dismissal of the appeal.

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

7. Admittedly, the appellants are the dependents of the deceased.

They have filed an application before the Railway Claims Tribunal,

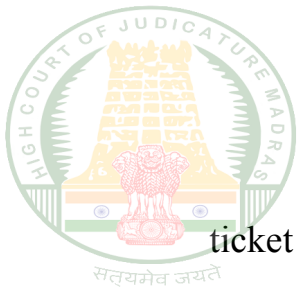


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Chennai Bench for the death of the deceased. The Tribunal has dismissed the said application on the ground that the deceased was not a bonafide passenger and that the death was not on account of a fall from a train to qualify as untoward incident under Section 123(c)(2) of the Railways Act, 1989.

8. 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. However, the said contention and the finding rendered on the said contention could not be accepted for the simple reason that the appellants have filed an affidavit before the Tribunal and deposed the manner in which the accident had happened. In order to disprove the same, no independent eye-witness or the Station Master, who passed the message to the Police was not examined before the Tribunal. Therefore, the finding rendered by the Tribunal with regard to the deceased not having travelled in the train is wholly erroneous and perverse.

9. Further, it is to be pointed out that merely because the said



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ticket was not available on the person of the deceased nor it was produced by the appellants/applicants could be a reason to reject the claim made by the applicants. It is to be pointed out that when a calamity of this nature occurs, the thinking of the ordinary and normal person would be only to rush the injured to the hospital and not to look after the belongings, including the ticket on the premise that if the deceased dies, then it would be required for the purpose of claiming compensation. Only to offset the non-availability of ticket, the appellants raised a plea before the Tribunal that as per the reply statement of the respondent, the injured person was taken by 108 ambulance to hospital and hence, there is a possibility of injured losing the journey ticket in transit. In this background, it is relevant to extract the relevant portion of the order passed by the Apex Court in Civil Appeal No.8605 of 2024, which are extracted hereunder :-

*"13. From the recapitulation of the various judicial pronouncements leading to the present appeal, it can be seen that the primary issue is whether the deceased was travelling on the train in question. In **Rina Devi** (supra), a two-Judge Bench of this Court considered the question of the party on which the burden of proof will lie in cases where the body of*



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the deceased is found on railway premises. This Court held that the initial burden would be on the claimant, which could be discharged by filing an affidavit of the relevant facts. Once the claimant did so, the burden would then shift to the Railways. Significantly, it also held that the mere absence of a ticket would not negate the claim that the deceased was a bona fide passenger. The relevant extract from the ruling of the Court is reproduced below:

*“29. 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.”*

(emphasis supplied)

14. In the present case, the appellant had duly filed an affidavit stating the facts and adverting to the



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report arising from the investigation conducted by the respondent, which showed that the deceased was travelling on the train and that his death was caused by a fall during the course of his travel. The burden of proof then shifted to the Railways, which has not discharged its burden. Therefore, the presumption that the deceased was a bona fide passenger on the train in question was not rebutted."

10. A perusal of the above makes it clear that the appellants have discharged their initial burden by proving that the deceased had travelled in the train and accidentally fell down from the moving train, thereby, he is a bonafide passenger. Then, the burden of proof is shifted to the respondent, which has not discharged its burden. Therefore, the presumption that the deceased was a bonafide passenger on the train in question was not rebutted and thereby, the respondent cannot wriggle out of their duty and responsibility to compensate the appellants/applicants on account of the death of the deceased.

11. In the result, the Civil Miscellaneous Appeal is allowed and the respondent is directed to deposit a sum of Rs.8,00,000/- as compensation to the credit of O.A.(II-U) 94 of 2014, along with interest



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at the rate of 6% per annum, from the date of petition till the date of realization, within a period of four (4) 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 60:20:20. On such deposit being made by the respondent, the appellants are entitled to withdraw their share of compensation by filing appropriate application before the Tribunal. No costs.

19.12.2024

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

The General Manager,
Union of India,
Owning Southern Railway,
Chennai 600 003.



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M.DHANDAPANI, J.

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