

(2013) 11 MAD CK 0087
In the Madras High Court
Case No : C.M.A. No. 3220 of 2009

A. Mani and M. Lakshmi

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 06-11-2013

Acts Referred:

Citation : (2013) 11 MAD CK 0087

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : A. Arasu Ganesah, for the Appellant; J. Harikrishna, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The appellants/applicants have preferred the present appeal against the Order dated 06.04.2009, in O.A. No. 88 of

2006, on the file of the Railways Claims Tribunal, Chennai Bench. The short facts of the case are as follows:-

The applicants, who are the parents of the deceased Prabhakaran, had filed a claim application in O.A. No. 88 of 2006, on the file of the Railways

Claims Tribunal, Chennai Bench, claiming a sum of Rs. 4,00,000/- as compensation from the respondent for the death of the said Prabhakaran in a

Railway accident.

2. It was submitted that on 12.05.2001, at about 09.30 hours, the deceased Prabhakaran boarded the electric train bound towards Chennai

Central Railway Station at Thiruvotriyur. When he was about to get down from the Train at Korukkupet Railway Station, due to the huge crowd in

the train, he was pushed out by the crowd and due to which he fell down from

the train in between Tondiarpet and Korukkupet Railway Station at KM 3/15-13 up-line about 100 meters north of Korukkupet Railway Station and sustained injuries and died. Hence, the applicants had filed the claim application against the respondent for claiming compensation.

3. The respondent, in their counter affidavit, had denied the averments made in the claim petition that the deceased had boarded the electric train at

Thiruvottiyur and travelled in the train on 12.05.2001. The averments made in the claim petition that he had accidentally slipped and fallen down

from the train at Korukkupet Railway Station was also not admitted. Further, it was submitted that the death was caused only due to the

negligence of the deceased, who was crossing the railway track carelessly and that he had dashed himself against the moving train, resulting in his

death and that this fact had been clearly brought out in the final report and Para-IX of the inquest report. It was further submitted that the deceased

was not a bona fide passenger and he did not have a valid ticket.

4. On considering the averments of both sides, the Tribunal had framed six issues for consideration namely:

i. Whether the applicants proved that M. Prabhakaran, s/o. A. Mani was a bona fide passenger at the time of incident as alleged?

ii. Whether the applicants proved that they are the only dependants of the deceased M. Prabhakaran?

iii. Whether the applicants proved that the deceased M. Prabhakaran died in an untoward incident on 12.05.2001 at about 09.30 hours while

travelling by EMU train between Tondiarpet and Korukkupet RS at KM 3/15-13?

iv. Whether the respondent proved that the applicants are not entitled to any relief for the reasons set out in paras 2 & 6 of the reply statement and

whether the respondent disproved the case of the applicants?

v. Whether the applicants are entitled to any compensation and if so, how much? and

vi. What other relief?

5. On the applicants' side, two witnesses were examined as A.Ws. 1 and 2 and seven documents were marked as Exs. A1 to A7 namely copy of

FIR, copy of inquest report, copy of final report, death certificate, PMC, LHC and I.D. Card. On the respondent's side, no witness was let in and

no document was marked.

6. On scrutiny of Ex. A6, it is seen that the deceased was an unmarried man and that the applicants are the legal heirs of the deceased. The

Tribunal, on observing that no contrary evidence had been adduced by the respondent, held that the applicants are the only dependants of the

deceased Prabhakaran u/s 123(b)(i) of the Railways Act, 1989.

7. A.W. 2 eye-witness had categorically adduced evidence that he had travelled along with the deceased and that he had witnessed the fall of the

deceased from the train. Further, he deposed that when the train was about to reach Korukkupet Railway Station, the deceased Prabhakaran

went out to spit and fell down from the train. He deposed further that after the train reached Korukkupet Railway Station, he had rushed to his

sister's house, to inform her about the accident, which is about 2 Kms., from Korukkupet Railway Station and that after conveying the information

to his sister, he had not visited the site of the accident. The Tribunal was at a loss as to why A.W. 2 had not rushed to the spot to tender assistance

to the person, who had fallen down and why he had gone to a place, which is far away from the accident spot. the Tribunal observed from the

evidence of A.W. 2 that he does not know how the police had conducted the investigation and that the police had not enquired with him about the

incident. The Tribunal opined that if he had really witnessed the incident, he would have certainly informed the matter to the Police and the Police

would have recorded his statement. Hence, the Tribunal, on scrutiny of evidence of A.W. 2, held that he was not an eye-witness to the incident

and hence held his evidence as not reliable.

8. The Tribunal, on scrutiny of Ex. A2 inquest report, observed that the Panchayatdars had opined at Para No. 9 that on 12.05.2001, before

10.45 a.m., at KM 3/15-13 up-line between Tondiarpet-Korukkupet Railway Station, while some train was coming, the deceased in his

carelessness and negligence, while crossing the track, was hit by the train and died on the spot. The Tribunal, on perusal of postmortem certificate,

observed that the nature of injuries sustained by the deceased would prove that it was a case of trespass. In the final report, as per Ex. A4, the

Police have reiterated the findings of the Panchayatdars and have concluded that the deceased died while crossing the track and was hit by the

train and treated the case as accidental death. The Tribunal opined that the conduct of the deceased as well as the manner of incident, do not fall under the category of "Untoward Incident".

9. The Tribunal, on observing that the applicants had not examined I.O., to disprove the inquest and final report. The Tribunal held that the contentions of the applicants that I.O. did not appear inspite of summons would not serve any purpose. The Tribunal opined that if the applicants did not place reliance on the findings of the Police, they could have moved the proper forum for directions to reinvestigate the case. Having failed to initiate such judicious steps, the Tribunal held that the applicants are now estopped from claiming that they are not relying on the inquest and final reports.

10. Therefore, the Tribunal opined that the applicants had not proved that the deceased Prabhakaran died in an untoward incident on 12.05.2001, at about 09.30 hours, while travelling by EMU train between Tondiarpet and Korukkupet Railway Station at KM 3/15-13 and hence held that the respondent had proved that the applicants are not entitled to any relief and hence dismissed the claim.

11. Aggrieved by the order of dismissal, the claimants have preferred the present civil miscellaneous appeal.

12. The learned counsel appearing for the appellants has contended in the appeal that the Tribunal ought to have accepted the evidence of the eye-witness i.e., R. Babu (A.W. 2), who travelled along with the deceased in the train and grossly erred in rejecting his substantial evidence on flimsy and frivolous reasons. Further, it is contended that the Tribunal failed to note that the eyewitness M. Gopi shown in the Police records had expired before the commencement of the trial in the case. It is also contended that the Tribunal erred in solely relying on Exs. A2 and A4, which are documents written by the Police and failed to appreciate that the author of documents of Exs. A2 and A4 i.e., the investigation officer, never turned up with relevant records in Crime No. 173 of 2001 and never subjected himself for cross-examination, in spite of several summon sent by the Tribunal, which was issued on the application of the applicants. It is also contended that the Tribunal ought to have drawn adverse inference against the findings in Exs. A2 and A4 as the investigation officer failed to appear before

the Tribunal to support his records. It is contended further that the Panchayatdars are not eye-witnesses to the untoward incident but have only witnessed the recovery of the corpus from the place it was lying and as such ought not to have relied on inquest report Ex. A2, wherein it was stated that the deceased died while crossing the track, which is contrary to law and untenable. Further, it is contended that the Tribunal failed to note that the respondent had not adduced any oral or documentary evidence on their side to prove that the deceased was a trespasser. Hence, it is prayed to set aside the order of the Tribunal and to grant compensation of Rs. 4,00,000/-.

13. The learned counsel appearing for the respondent has submitted that the deceased was not a bona fide passenger and he had not travelled in the train as alleged by the applicants. Further, the incident cannot be termed as "accidental fall" from train and as such it will not come under the definition of "untoward incident" u/s 123 of the Railways Act. The deceased had succumbed to his injuries while he was crossing the railway track in a negligent manner and not on account of fresh accident.

14. On verifying the factual position of the case and arguments advanced by the learned counsels on either side and on perusing the dismissal order of the Tribunal, this Court is of the view that the FIR had been registered by the Railway Police authorities and that subsequently in the final report, it was mentioned that the deceased had trespassed into the railway track. In order to prove the same, the investigation officer had not been examined to prove the final report, as he is an authorised person. Besides this, the rough sketch had not been marked to indicate the position at which he had crossed the railway track. However, it is seen that the accident had taken place within the railway premises. Therefore, this Court is inclined to grant compensation of a sum of Rs. 4,00,000/- to the aggrieved claimants with interest at the rate of 9% per annum from the date of filing the claim petition till the date of payment of compensation.

15. This Court directs the respondent herein to execute this Court's Judgment, within a period of four weeks from the date of receipt of a copy of this Judgment, by way of depositing the compensation to the credit of O.A. No. 88 of 2006, on the file of the Railways Claims Tribunal, Chennai Bench.

16. After such a deposit having been made, the Presiding Officer of the Railway Claims Tribunal, Chennai Bench, to disburse the compensation amount to the claimants, equally, after receiving a memo, along with a copy of this Judgment. In the result, this civil miscellaneous appeal is allowed and the Order dated 06.04.2009, in O.A. No. 88 of 2006, on the file of the Railways Claims Tribunal, Chennai Bench, is set aside. No costs.