
(2013) 09 MAD CK 0354
In the Madras High Court
Case No : C.M.A. No. 2050 of 2008

M. Shyamala and Others

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0354

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

Bench : Single Bench

Advocate : T. Rajamohan, for the Appellant; M. Udayakumar, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The appellants/applicants have preferred the present appeal against the Order dated 25.04.2008, in O.A. No. 71 of 2004, on the file of the Railway Claims Tribunal, Chennai Bench. The short facts of the case are as follows:-

The appellants, who are the wife, three minor daughters and mother of the deceased R. Murugan, had filed a claim application in O.A. No. 71 of 2004, on the file of the Railway Claims Tribunal, Chennai Bench, claiming a sum of Rs. 4,00,000/- as compensation from the respondent for the death of the said Murugan in a Railway accident.

2. It was submitted that the said R. Murugan had sustained injuries in an untoward incident, which occurred while travelling by EMU between Tiruvallur and Egattur and succumbed to his injuries on being taken to Government General Hospital, Tiruvallur. Hence, the application had been filed against the respondent.

3. The respondent, in their counter statement, had denied the alleged incident. It was submitted that neither the father-in-law of the deceased, who travelled with him nor any of the co-passengers of the deceased had pulled the alarm chain

and stopped the train and that no incident of ICC had been reported as per passenger guard records and that even when the train stopped at Egattur Railway Station, his relative did not inform the train crew or the Railway Authorities about the alleged fall of the deceased from the train. Had the incident been reported to the Railway Authorities, the Railway Authorities might have given proper first aid and might have taken the injured to the nearest hospital.

4. Further, it was submitted that the incident would not come under the category of untoward incident and hence the Railways are not liable to pay compensation u/s 124A(b) of the Railways Act, 1989. It was submitted that the applicants have to prove that the deceased had travelled in the train and that he had a valid ticket and that they are the only legal heirs of the deceased through documentary evidence.

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

i. Whether the applicants can prove that they are the only dependants of the deceased R. Murugan?

ii. Whether the applicants can prove that the deceased was a bonafide passenger at the time of the incident as alleged?

iii. Whether the applicants can prove that R. Murugan sustained injuries in an untoward incident on 20.08.2004 while travelling by EMU between Tiruvallur and Egattur and subsequently succumbed to his injuries on the way to hospital?

iv. Whether the respondent can prove that the applicants are not entitled to any relief for the reasons set out in para 2 of the reply statement?

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

vi. What other relief?

6. On the applicants' side, the first applicant namely wife of the deceased was examined as A.W. 1 and one P. Sooran was examined as A.W. 2 and eight documents were marked as Exs. A1 to A8 namely A.R. Extract, FIR, inquest report, PMC, death report, death certificate, LHC and final report. On the respondent's side one witness was examined as R.W. 1 and the extract of passenger card tickets was marked as Ex. R1.

7. The Tribunal, on scrutiny of Ex. A7, held that all the applicants are the legal heirs and dependants of the deceased. A.W. 2 father-in-law of the deceased, who accompanied the deceased on his travel, had adduced evidence that the journey tickets purchased by the deceased and retained with him appears to have been lost in transit and not retrieved by the police. During cross-examination, he has stated that the ticket was purchased by his son-in-law and that he had purchased tickets from Thiruvallur to Egattur.

8. R.W. 1 K. Vijay, Senior Commercial Clerk, who was on duty at Tiruvallur on the day in question for issue of tickets, had adduced evidence that he was on duty at Tiruvallur Railway Station Booking Office from 06.00 hours to 10.30 hours on 20.08.2004 and further submitted that on that day, during his duty hours, no ticket was issued to Egattur and in support of thereof, he produced the document namely Daily Trains Cash Book of Tiruvallur Station containing details of issued tickets during the relevant period. During cross-examination, he had admitted that if printed card tickets are available for the destination asked for that ticket will be issued to the passengers and the ticket for the next station if the fare is the same, will be issued and further admitted that card tickets for Egattur were available on 20.08.2004.

9. Further, he had admitted that if a passenger asks for a specific ticket, only that ticket will be issued. He had admitted that ticket to Egattur is a rare issue ticket and only two or three tickets are sold to Egattur and most of the tickets are only to Kadambattur and fair for Egattur and Kadambattur are the same. Further, he had clarified that on the following day i.e., 21.08.2004, five tickets were issued to Egattur.

10. Hence, the Railway Tribunal, on scrutiny of the evidence of A.W. 2 and R.W. 1 and on scrutiny of Ex. R1 held that the respondent had proved that on the date of journey i.e., 20.08.2004, no such ticket was issued from the boarding station Tiruvallur and hence held that the deceased was a passenger without valid authority and hence he was not a bonafide passenger.

11. The Tribunal had observed that the learned prosecuting agency had not disputed the accidental fall of the deceased based on the public documents. In order to prove their case, the applicants have filed the extract of accident register as Ex. A1, FIR as Ex. A2, inquest report as Ex. A3, postmortem report as Ex. A4, death report as Ex. P5 and final report as Ex. A8.

12. It has been mentioned in the inquest report that the deceased had left the house on 20.08.2004 along with his father-in-law Sooran and reached Tiruvallur Railway Station in order to go to Egattur, where his relatives were residing, for distributing the marriage invitation of his sister, which was fixed on 01.09.2004 and that they have boarded an EMU at Tiruvallur Railway Station and travelled in the direction towards Arakkonam by standing at the entrance of the compartment, as the train was very much crowded at 08.00 a.m., and that the deceased had accidentally fallen down in between Egattur and Tiruvallur Railway Station and sustained grievous head injuries.

13. It was also mentioned that the deceased was admitted at Government General Hospital, Tiruvallur and was given treatment and sent to Government General Hospital, Chennai for further treatment. But, he succumbed to his injuries while being taken to Government General Hospital, Chennai. In the final report, the police has concluded that it is a case of accidental death due to falling down from the train. Hence, the Tribunal on scrutiny of documentary evidence

held that the death of the deceased was due to accidental fall from the train.

14. However, the Tribunal, on considering that the deceased had not travelled as a bonafide passenger held that the applicants are not entitled to any compensation and hence dismissed the claim application.

15. Aggrieved by the said Order of dismissal, the appellants/applicants have preferred the present civil miscellaneous appeal.

16. The learned counsel appearing for the appellants has contended in the appeal that the Tribunal had erred in holding that the deceased was not a bona fide passenger and failed to see that the respondent has not produced the statutory report i.e., the report of the Divisional Railway Manager and that in the absence of the same, adverse inference ought to have been drawn on the issue of bonafide passenger. It is contended that the Tribunal failed to note that the applicants have examined A.W. 2 father-in-law of the deceased, who accompanied the deceased on his travel and that he had deposed that the ticket was purchased by his son-in-law at Thiruvallur for the travel to Egattur. It was contended that the Tribunal failed to note that R.W. 1 had admitted in cross-examination that the ticket for the next station will be issued if the fare is the same. He had also admitted that the fare for three stations viz., Egattur, Kadambattur and Chenji Panapakkam are the same and that on the day of the incident, 29 tickets were issued to Chenji Panapakkam. Though no ticket was issued to Egattur on the date of incident, the fare being the same, the ticket to Chenji Panapakkam could have been issued to the deceased.

17. It is also contended that the learned Tribunal failed to note that no evidence had been placed to prove that card ticket to Egattur are available on the day of incident. It is also contended that the Tribunal had failed to note that the respondent had not pleaded anything about the alleged non-issue of the ticket in the reply statement. Hence, it is prayed to set aside the order of the Tribunal and to grant compensation of a sum of Rs. 4,00,000/- with interest at the rate of 12% per annum to the appellants herein.

18. The learned counsel appearing for the respondent has submitted that the deceased had not travelled in the train and no such incident was reported on that day i.e., 20.08.2004, at about 08.00 hours at Egattur Railway Station. The applicants had submitted that the deceased was travelling along with his father-in-law and also travelled with co-passengers and that if such an incident had occurred, the co-passengers could have pulled the alarm chain and stopped the train but, in the instant case, this had not been done. Further, the deceased was not a bona fide passenger as he was not holding a valid journey ticket therefore, the Tribunal had rightly rejected the claim.

19. 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 deceased had fallen from the train between Tiruvallur Railway Station and Egattur as per the evidence and that he

had died due to injuries sustained in the accident. FIR had been registered by the Inspector of Police Arakkonam Railway Police Station, Arakkonam. As per the postmortem report, it is seen that the claimant had sustained head injuries in a railway accident. As such, it is evident that the deceased had travelled as a passenger in the train and hence the accident had occurred due to accidental fall from train.

20. Further, regarding the ticketless travel alleged by the respondent, no evidence had been let in to show that the card tickets for Egattur were available on the day of issuance of ticket. Therefore, this Court is of the view that the deceased met with an "untoward accident" while he was travelling in the train and that the accident had occurred in the railway premises. Hence, this Court directs the respondent herein to pay compensation a sum of Rs. 4,00,000/- with interest at the rate of 9% per annum from the date of filing the claim petition till the date of payment of compensation, into the credit of O.A. No. 71 of 2004, on the file of the Railway Claims Tribunal, Chennai Bench, within a period of six weeks from the date of receipt of a copy of this Judgment.

21. After such a deposit having been made, the Railway Claims Tribunal, Chennai Bench, is directed to disburse the said amount to the major claimants, as per the appropriate ratio to be decided by him and the minor claimants share amount shall be deposited in a nationalized bank as fixed deposit in the cumulative deposit scheme, till they attain the age of a major and hand over the fixed deposit certificates to the mother of the minor claimants. In the result, this civil miscellaneous appeal is allowed and the Order dated 25.04.2008, in O.A. No. 71 of 2004, on the file of the Railway Claims Tribunal, Chennai Bench, is modified. Consequently, connected miscellaneous petitions are closed. There is no order as to costs.