

**(2014) 01 MAD CK 0012**

**In the Madras High Court**

**Case No :** C.M.A. No. 85 of 2010 and M.P. No. 1 of 2010

The Union of India

APPELLANT

Vs

A. Logambal, A. Devimeena and A. Lakshmanan

RESPONDENT

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**Date of Decision :** 09-01-2014

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 174  
Railway Claims Tribunal Act, 1987 — Section 23 23(c)(ii)  
Railways Act, 1989 — Section 123(c)(ii) 124A

**Citation :** (2014) 2 ACC 384 : (2014) ACJ 2001 : AIR 2014 Mad 72 : (2014) 1 LW 495

**Hon'ble Judges :** P.R. Shivakumar, J

**Bench :** Single Bench

**Advocate :** J. Harikrishna, for the Appellant; T. Rajamohan, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

P.R. Shivakumar, J.—The Union of India, owner of Southern Railways, is the appellant in the Civil Miscellaneous Appeal preferred u/s 23 of the Railway Claims Tribunal Act, 1987 against the order of the Railway Claims Tribunal, Chennai Bench dated 29.10.2009 made in O.A. No. 2009 00068 awarding a sum of Rs. 4,00,000/- as compensation, which amount was directed to be paid by the appellant herein with an interest at the rate of 6% per annum from the date of filing of the claim application till the date of the order of the Tribunal and thereafter, at the rate of 9% per annum till actual payment. The respondents are respectively the wife, daughter and son of the deceased Adaikalavan. They preferred the above said claim application claiming Rs. 4,00,000/- as compensation from the appellant on the basis of their contention that the said Adaikalavan, while traveling in an electric train (EMU) from Tambaram to Guindy on 01.01.2009 in the morning hours, due to overcrowd and due to jerk and jolt, accidentally fell down near Palavantangal, sustained severe head injuries and died on the spot and that the said accident would fall squarely within the definition of untoward incident as described in Section 23(c)(ii) of the Railways

Act, 1989.

2. The claim was resisted by the appellant herein contending that the death of deceased Adaikalavan was not due to accidental fall from the running train as claimed by the respondents and that the deceased was not a bonafide passenger as claimed by them. It was also contended by the appellant that the incident might be one other than a fall from the running train. It was also contended that the deceased was not a bonafide passenger as the journey ticket was not produced along with the claim application and that the deceased could have been knocked down by the train while trespassing the Railway line.

3. The Tribunal conducted an enquiry in which, on behalf of the respondent herein/applicants, the first respondent/first applicant deposed as AW1 and 7 documents were marked. Since the appellant herein admitted only four documents and did not admit other three documents, four documents alone were marked as Exs. A1 to A4. However, the unmarked documents have also been listed in the list of documents annexed to the order. On behalf of the appellant herein/respondent, no witness was examined and two documents (not marked as exhibits) were produced.

4. The Tribunal, after consideration, accepted the claim of the respondents herein/applicants and rejected the contention of the appellant herein/respondent before the Tribunal and directed the appellant herein/respondent before the Tribunal to pay Rs. 4,00,000/- as compensation together with an interest on the said amount calculated at the rate of 6% per annum from the date of filing of the claim application till the date of order and thereafter, from the date of order till actual payment at the rate of 9% per annum. The said order of the Railway Claims Tribunal, Chennai Bench, dated 29.10.2009 is challenged by the Union of India (appellant herein) in this Civil Miscellaneous Appeal on various grounds set out in the grounds of Civil Miscellaneous Appeal.

5. The point that arises for consideration in this appeal is: "whether the Railway Claims Tribunal committed an error in holding the deceased to be a bonafide passenger and holding that his death occurred due to fall from the running train and hence, in an untoward incident, as described in Section 23(c)(ii) of the Railways Act, 1989?"

6. The arguments advanced by Mr. J. Harikrishna, learned counsel for the appellant and by Mr. T. Rajamohan, learned counsel for the respondents were heard. The materials available on record were also perused.

7. The only ground on which the award of the Railway Claims Tribunal is challenged by the appellant is that the respondents who are the wife, daughter and son of the deceased Adaikalavan were not able to produce any proof that the deceased Adaikalavan was a bonafide passenger travelling in the Electric Motor Unit between Tambaram and Guindy on 01.01.2009 in the early morning and that he slipped and fell down near Palavantangal. The respondents herein did not accompany the deceased during his alleged journey from Tambaram to Guindy

during which he fell down and died according to them. However, the first respondent deposed in clear terms, as AW1, that her husband fell down and died while he was travelling in the Electric Motor Unit from Tambaram to Guindy. Of course, it is true that the respondents have not produced the train ticket purchased by the deceased for his travel between Tambaram to Guindy and that they were not in a position to furnish the particulars regarding the time at which he purchased the ticket and the number of the ticket. It is common sense that the legal heirs of the deceased, who were not accompanying the deceased during his alleged journey from Tambaram to Guindy, cannot be expected to produce the ticket or furnish the particulars of the ticket purchased by the deceased for the said journey. In case of an accidental death on the railway track, the railway police would have the full control over the inquest and investigation of the case. In this case, the Station Master of Tambaram Railway Station by name Chandrasekaran gave a written complaint to Tambaram Railway informing them that passengers had reported to the station controller that a dead body of a male aged about 50 years was found at K.M 18/35 at PZA UP-Suburban line. Based on the said written information, a case was registered in F.I.R. No. 1 of 2009 u/s 174 Cr.P.C. on the file of the Railway police Tambaram. Xerox copy of the FIR has been marked as Ex. A1. Copy of the Postmortem report marked as Ex. A2 shows that the deceased died due to shock and haemorrhage caused by head injury involving fracture of the skull bone on the occipital region and also the base of the skull. Hematoma was also present. Copy of the death report has been marked as Ex. A4. Copy of the inquest report prepared by the Sub-Inspector of Police, Railway Police, Tambaram has also been produced by the respondent. But, strangely, the said document was not marked as an exhibit on the side of the respondents/applicants simply because the appellant herein did not admit the reliability of the same.

8. In this regard, it is pertinent to note that even the appellant herein had not produced any other authenticated copy of the inquest report to show that the copy of the inquest report certified by the Sub-Inspector of Police, Tambaram Railway Police was not true. The appellant also has not examined the author of the inquest report. It is also pertinent to note that the genuineness of the inquest report has not been challenged and on the other hand, it seems the said document was not marked since the appellant did not give consent for marking it. Similar is the fate of the final report submitted by the Investigating Officer to the Executing Magistrate. In both the documents, it has been stated in clear terms that the deceased Adaikalavan was travelling from Tambaram to Guindy on 01.01.2009 at about 08.00 a.m. and during the said journey he accidentally slipped and fell down from the train near Palavantangal, sustained head injuries and died on the spot. The Panchayatdhars examined by the Investigating Officer at the time of inquest also opined that the death of the deceased was due to accidental fall from the running train. When the Panchayatdhars, in one voice, had opined that the death was due to accidental fallen from the train and the Investigating Officer has also filed a final report after investigation stating that

the deceased had accidentally fallen down from the train, though the Tribunal failed to mark those documents, it has rightly come to the conclusion that the death of the deceased Adaikalavan was due to accidental fall from the running train. In the absence of any other evidence adduced on the side of the appellant herein the conclusion of the Tribunal that the death of deceased Adaikalavan occurred due to accidental fall from the running train does not suffer from any defect or infirmity warranting interference in this appeal by this Court.

9. However, the learned counsel for the appellant has made an attempt by contending that since there is no proof that the deceased was holding a valid ticket for his alleged travel from Tambaram to Guindy, it should be inferred that he was not a bonafide passenger and on the other hand he was a trespasser and that while attempting to cross the railway line, he could have got slipped. The said contention of the learned counsel for the appellant is far fetched and it is totally untenable and unsustainable. The mere fact that ticket was not produced by the respondents herein will not justify any inference that the deceased was not holding a valid travel ticket. A person will not be permitted to travel in the train without keeping the ticket with him and hence, the respondents cannot be blamed for not producing the ticket purchased by the deceased. In case of death due to injuries on the railway track, when the applicants claiming compensation contend that the same was a death due to accidental fall from the train, before finding fault with the applicants for not producing the ticket or copy of the ticket and not furnishing the particulars of the ticket, the Tribunal should consider which of the rival parties is placed in a better position to produce proof in this regard. The Railway line is under the control of the Railway Authorities, Railway Police and Railway Protection Force. Any trespasser of the Railway can be prosecuted. It is not the case of the appellant that soon after the occurrence and before the police or the Railway Authorities came to the spot, the respondents came there and they were in a position to search the belongings of the deceased.

10. It is quite probable that the train ticket purchased by the deceased would have been lost in the accident. Under such circumstances, if the Railway Authorities are of the view that the deceased was not a traveller in the train and on the other hand, he was a trespasser crossing the railway track and during such attempt to cross the Railway track he was knocked down by the train, the Railway Authorities are placed in a better position to adduce positive evidence in proof of the said contention. Neither the EMU driver nor any other employee of the concerned Railways was examined to speak about the nature in which the accident took place leading to the death of deceased Adaikalavan. The Railway Authorities could have examined any other person who witnessed the occurrence in order to prove their contention that the deceased was a Trespasser who got killed by the train while he was crossing the Railway track. The appellant, having been placed in a better position to adduce evidence in proof of its contention that the deceased was a trespasser crossing the Railway line, has failed to adduce any evidence in this regard. On the other hand, the inquest conducted by the independent agency, namely the railway police and the investigation conducted

by the Sub-Inspector of Police, Railway Police, Tambaram show that the deceased was a passenger in the Electric Motor Unit and he slipped and fell down near Palavantangal and died due to head injuries.

11. The Tribunal rightly held that the inquest report and the final report of the police were enough to discharge the burden of proof cast on the respondents herein/applicants and on the other hand, the appellant, who contended the deceased to be a trespasser crossing the railway line, failed to discharge the onus of proving its contention by adducing evidence. Therefore, the finding of the Tribunal that the deceased was a bonafide passenger and he died due to accidental fall from the running train is based on proper appreciation of evidence and hence, no interference can be made. On the other hand, the said finding has got to be confirmed.

12. Though the competent authority, namely the Executing Magistrate/Tahsildar, Tambaram has issued the Legal Heirship certificate showing the respondents herein, being the wife, daughter and son of the deceased Adaikalavan as his legal heirs, the appellant has chosen to resist the marking of the said document also. Though the same was not assigned an exhibit number, the Tribunal rightly relied on the said document to hold that the respondents herein alone were the legal heirs of deceased Adaikalavan. We have seen that the finding of the Tribunal that the deceased accidentally fell down from the running train and died due to head injuries was based on proper appreciation of evidence and hence could not be interfered with. Such a death due to accidental fall from the running train will no doubt come under the definition of untoward incident found in Section 123(c)(ii) of the Railways Act, 1989. We have also seen that the attempt made by the appellant to project the death of the deceased as one of death of a trespasser trying to cross the railway line, was proved to be an utter failure and that the deceased was rightly held to be a bonafide passenger by the Tribunal. As the occurrence in which the deceased Adaikalavan died has been held to be a fall from the running train, unless it comes within any one of exceptions in Section 124A, the appellant shall be held liable since the death should be held to be the consequence of an untoward incident, namely an accidental fall from the running train. In view of the above said findings, this Court does not find any defect or infirmity in the order of the Tribunal fixing the liability on the appellant herein to pay compensation to the respondents, who are the legal heirs of deceased Adaikalavan. The amount awarded by the Tribunal is also in accordance with Schedule provided in the Railway Accident (Compensation) Rules, 1990 notified u/s 124A, a fixed amount of compensation. The Tribunal has also rightly exercised its discretion to award reasonable interest on the amount of compensation by directing payment of interest at the rate of 6% per annum from the date of filing of the claim application till the date of the order of the Tribunal and at the rate of 9% per annum from the date of the order of the Tribunal till actual payment. There is no defect or infirmity, whatsoever, in the order of the Tribunal warranting any interference. There is no merit in the appeal and the appeal deserves to be dismissed.

In the result, the Civil Miscellaneous Appeal is dismissed with costs confirming the order of the Railway Claims Tribunal, Chennai Bench dated 29.10.2009. Consequently, the connected miscellaneous petition is closed.