

---

**(2013) 09 MAD CK 0154**  
**In the Madras High Court**  
**Case No : C.M.A. No. 1578 of 2009**

The Union of India

APPELLANT

Vs

A. Subburayan and Pusparani

RESPONDENT

---

**Date of Decision :** 16-09-2013

**Acts Referred:**

**Citation :** (2014) 1 AnWR 608 : (2014) 1 MLJ 347

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

**Bench :** Single Bench

**Advocate :** V. Haribabu, for the Appellant; R. Natesh Kumar, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

C.S. Karnan, J.—The appellant/respondent has preferred the present appeal against the Order dated 21.11.2008, in O.A. No. 25 of 2005, on the file of the Railways Claims Tribunal, Chennai Bench and set aside the same. The short facts of the case are as follows:—The deceased Arulraj boarded a Train MAS, on 09.02.2005, at about 09.30 a.m., in order to go to Arakkonam. Due to heavy rush and jerk in the train, the deceased, who was standing near the entrance, had fallen down from the running train, in between Thiruninravur and Veppampattu Railway Station. As a result, the deceased had sustained injuries and succumbed to it. Hence, the legal heirs/parents of the deceased had filed an application in O.A. No. 25 of 2005, on the file of the Railways Claims Tribunal, Chennai Bench, against the Union of India owing Southern Railway, claiming a compensation of Rs. 4,00,000/-.

2. The General Manager, Southern Railway, had filed a counter statement and resisted the claim application. It was submitted that on 09.02.2003, at 07.30 hours, a person informed the appellant's Pointsman at Thiruninravur that a male dead body was found at the end of the platform No. 3 towards Tiruvallur. On knowing this, the Duty Station Master had instructed the Pointsman to verify the veracity of the information given by the person. The Pointsman had also

confirmed the information and hence the Station Master, Thiruninravur had sent a message to RPSI, Tiruvallur, that a male dead body, aged about 26 years, was found at KM 29/16, in between Upline and loopline, in between Road 3 and 4 and based on which a first information report was registered in Crime No. 29 of 2005 on 09.02.2005, by the Inspector of Railway Police, Arakkonam and subsequently, the body was identified by the relatives as that of the deceased S. Arulraj and therefore denied the applicants' averments that the deceased purchased a ticket at 09.15 a.m., on 09.02.2005, boarded the Train MAS at 09.30 and allegedly fallen down near Thiruninravur as false.

3. The appellant/respondent had further submitted that had the deceased actually fallen down from the Train as alleged in the application, there would have been a chain pulling and the co-passengers could have noticed and informed the Police of the Station Master. But, nothing of this sort had happened and therefore denied the alleged happening fallen down as false.

4. Further, the appellant/respondent had denied that the deceased had purchased any ticket on 09.02.2005, at Avadi Railway Station, for a travel from Avadi to Tiruvallore. The Inquest Report prepared by the Inspector of Railway Police, Arakkonam, in Crime No. 29 of 2005, did not indicate that the deceased had possessed a valid travel authority. Therefore, the deceased was not a bona fide passenger within the meaning of Section 2(29) of the Railways Act, 1989 and hence he prayed to dismiss the application.

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

- i. Whether the applicants proved that the deceased was a bona fide passenger at the time of incident as alleged?
- ii. Whether the applicants proved that the deceased S. Arulraj died in an untoward incident on 09.02.2005 while travelling by EMU train No. MA 5 in between Thiruninravur-Veppampattu Railway Station at KM 29/16-19?
- iii. Whether the respondent proved that the applicants are not entitled to any relief for the reasons set out in Para 2 of the reply statement?
- iv. Whether the applicants are entitled to any compensation? and if so
- v. What relief?

6. On the applicants' side two witnesses were examined as A.Ws.1 and 2 and nine documents were marked as Exs.A1 to A9 namely FIR, Sketch, Inquest Report, PMC, Death Report, Death Certificate, Final Report, LHC and Message from SM. On the respondent's side one witness was examined as R.W.1 and two documents were marked as Exs.R1 and R2 namely letter from SM/TI to GM/Court and copy of message from SM/TI.

7. A.W.1 had filed a proof affidavit and stated that the police had informed him that they were not able to recover the dead body and properties, which includes

the train ticket.

8. A.W.2 had stated in his affidavit that after completion of the work on 09.02.2005, morning at about 09.00 a.m., he took Arulraj to Avadi Railway Station on his bike and he took the second class train ticket from Avadi to Tiruvallur and handed over the same to Arulraj, with a sum of Rs. 300/-. In his cross-examination, he denied the suggestion that he did not purchase the ticket for the deceased and had further denied that he was deposing falsely.

9. On considering the evidences of the witnesses and on scrutinizing the documents marked by both sides, the Railway Claims Tribunal, Chennai Bench, had directed the appellant/respondent to pay a sum of Rs. 4,00,000/- to the parents of the deceased.

10. Against the said Order, the appellant/respondent has preferred the present civil miscellaneous appeal.

11. The highly competent counsel has vehemently argued that the applicants herein had filed O.A. No. 25 of 2005, on the file of the Railways Claims Tribunal, Chennai Bench, claiming compensation of Rs. 4,00,000/- for the death of their son S. Arulraj, who died on 09.02.2005, alleged to be at about 09.30 hours by falling from Train No. MAS, which went to Arakkonam, while running. The applicants had mentioned in their application that the deceased was working as a daily labourer and he was a resident of Tiruvallur Taluk and District.

12. Further, the learned counsel has argued that on 09.02.2005, at 07.30 hours, a person had informed the appellant's Pointsman at Thiruninravur that a male body was found at the end of the platform No. 3 towards Tiruvalur. On knowing this, the Duty Station Master had instructed the Pointsman to verify the veracity of the information given by the person. The Pointsman had also confirmed the information and hence the Station Master, Thiruninravur, had sent a message to RPSI, Tiruvellore that a male dead body, aged about 26 years, was found at KM 29/16, in between Upline and loopline, in between Road 3 and 4 and based on which a first information report was registered in Crime No. 29 of 2005 on 09.02.2005, by the Inspector of Railway Police, Arakkonam and subsequently, the body was identified by the relatives as that of the deceased S. Arulraj.

13. Further, the highly competent counsel has argued that in the application it was mentioned that the deceased had possessed a Second Class ordinary ticket, dated 09.02.2005 time 09.30 a.m., valid from Avadi to Tiruvallur, but the travel ticket was not retrieved by the Police.

14. Further, it was mentioned that after completion of work, the deceased was returning from Avadi to his house at Tiruvallur, arrived at Avadi Railway Station, at around 09.15 a.m., and around 09.30 a.m., got into the said train and that due to the heavy rush and jerk in the train, the deceased, who travelled by standing near the entrance, fell down from the running train in between Thiruninravur-Veppampattu Railway Station at KM26/16-18 and thereby he

sustained grievous injuries on his head and fractures in the right hand and right thigh and died on the spot and that the incident was purely an untoward incident.

15. The very competent counsel has further argued that if the deceased had fallen down from the moving train, there would have been a chain pulling and the co-passengers could have noticed and informed the Police of the Station Master. But, nothing of this sort had happened and therefore the alleged falling down is totally false and concocted.

16. Further, the learned counsel has argued that u/s 156 of the Railways Act, 1989, any passenger or any other person travelling on the roof or step or footboard of any carriage or any other part of the train not intended for the use of the passengers is punishable with imprisonment and fine and may be removed from the Railway by any Railway servant. But, in the instant case, the accident had happened due to the careless and negligent act of the deceased.

17. The learned counsel has further pointed out that as per the application of the applicants, they have mentioned that the deceased had travelled by standing near the door. As such, the passenger was totally careless and highly negligent and therefore the same cannot be termed as "untoward incident" to attract compensation u/s 124A of the Act.

18. Further, the learned counsel has argued that according to the Inspector of Railway Police, who is the competent authority to give statement, had stated that the deceased was not a bona fide passenger. The Station Master was examined as R.W.1 and he had stated that the deceased had expired at 07.30 a.m. As such, a strong dispute has arisen over the veracity of the accident itself. Therefore, the claim is a false one and hence the learned counsel prays the Court to set aside the impugned order.

19. The highly competent counsel appearing for the respondents/applicants has argued that the applicants had never filed any application before the Railway Claims Tribunal, Chennai Bench, as one more parallel claim petition. Further, in the criminal case in Crime No. 29 of 2005, registered by the Inspector of Railway Police, Arakkonam, it has been stated that the deceased had died as a railway passenger.

20. A.W.2 Co-employee of the deceased had taken the deceased to Avadi Railway Station and purchased a ticket at Avadi Railway Station and handed it over to the deceased. As such, the deceased was a bona fide passenger and travelled in the train MAS on 09.02.2005, around 09.30 hours.

21. Further, the learned counsel has argued that after the accident, the Pointsman informed to the Railway Police that a dead body was found on the railway line. Supporting the said accident, FIR, Sketch, Inquest Report, Postmortem Certificate, Message from Station Master had been marked as exhibits and as such there is no lacuna in the impugned order. The claimants are the aged parents of the deceased, who were depending upon the income of the

deceased and he was the breadwinner of the family.

22. On verifying the factual position of the case and arguments advanced by the learned counsels on either side and on perusing the impugned order of the Tribunal, this Court does not find any short comings in the conclusions arrived at regarding liability and quantum of compensation.

23. This Court is of the view that the learned counsel for the appellant had raised a point that the deceased was not a bona fide passenger, since he had not possessed a valid train ticket to travel in the train. This point, on the face of it, seems to be appropriate. But, in the instant case, the deceased had lost his life and the question of whether or not the ticket was bought by him and had not been traced could not be ascertained accurately as the deceased, who is the competent person to throw light on the matter, had died in injuries caused in the accident and as such the above contentions raised on this point is rejected.

24. Further, the deceased had died in the railway premises. Regarding the accident, FIR had been registered by the Inspector of Railway Police, Arakkonam and the concerned Inspector had conducted inquest report and based on which, postmortem was conducted. Hence, this Court declines to entertain the appeal and therefore this Court confirms the order of the Tribunal.

25. Already, this Court has directed the appellant to pay a sum of Rs. 50,000/- each to the respondents 1 and 2 and to deposit the remaining balance amount of Rs. 3,00,000/- along with interest and cost to the credit of O.A. No. 25 of 2005, on the file of Railway Claims Tribunal, Chennai Bench, and on such deposit, the Tribunal was directed to invest the amount in the Indian Bank, High Court Extension Counter, Chennai, initially for a period of three years.

26. Now, the applicants/respondents are permitted to withdraw their balance of apportioned share amount, with accrued interest thereon, lying in the credit of O.A. No. 25 of 2005, on the file of Railway Claims Tribunal, Chennai Bench, after filing a memo along with a copy of this Order, before the Railway Claims Tribunal, Chennai Bench. In the result, this civil miscellaneous appeal is dismissed and the Order dated 21.11.2008, in O.A. No. 25 of 2005, on the file of the Railways Claims Tribunal, Chennai Bench, is confirmed. Consequently, connected miscellaneous petitions are closed. There is no order as to costs.