

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH**

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

MFA.No. 75 of 2015 ()

**O.A(IIu)/ERS/2014/2014 of RAILWAY CLAIMS TRIBUNAL, ERNAKULAM
DATED 13.08.2015**

APPELLANT(S)/RESPONDENT :

**UNION OF INDIA, REPRESENTED BY
THE GENERAL MANAGER, SOUTHERN RAILWAY, CHENNAI.**

BY ADV. SRI.JAMES KURIAN, SC, RAILWAYS

RESPONDENT(S)/APPLICANTS :

- 1. RAJAN T.T.
AGED 57 YEARS, THILAK NIVAS HOUSE NO.379, WARD NO.22
VALYAKULAM ROAD, EDAKOCHI, KOCHI CORPORATION
PIN-682 010.**
- 2. MINI V.S.
AGED 50 YEARS, W/O.RAJAN, THILAK NIVAS HOUSE NO.379
WARD NO.22, VALYAKULAM ROAD, EDAKOCHI
KOCHI CORPORATION, PIN-682 010.**

**THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON
13-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

**C.K.ABDUL REHIM &
MARY JOSEPH, JJ.**

M.F.A No.75 of 2015

Dated this the 13th day of October, 2015

JUDGMENT

C.K.Abdul Rehim, J.

Union of India represented by the General Manager, Southern Railway, Chennai is in appeal against judgment of the Railway Claims Tribunal, Ernakulam in O.A.(11u)/ERS/2014/0014, dated 13.08.2015.

2. The respondents herein are the applicants before the Tribunal, which was filed claiming compensation of Rs.4 lakhs from the General Manager of Southern Railway, with respect to death of one Sri.Midhunraj, who was working as a welder in Mangalore, who died in an 'untoward incident' occurred on 05.02.2013. The applicants were the parents of the deceased. Allegation was that the deceased accidentally fell down from a train while travelling from Mangalore Central Railway station to Ernakulam, at a place called

Kanwatheertha, Payyathode in Kasargode. Statement in the application was that, on 05.02.2013 the deceased left his work place and reached Mangalore Central Railway station and bought a Train Ticket to Ernakulam and was travelling in a train to Ernakulam. When the police registered a case with respect to his death, some local people had given statements to the effect that the death might have occurred due to hit by a train. Since the body was not identified initially, the police had buried the dead body. Subsequently, with the help of photographs it was identified that the body was that of Sri.Midhunraj. Under such circumstances, it is claimed that since he died due to fall from the train, it being an 'untoward incident' the appellant is liable to pay the amount claimed.

3. The appellant resisted the claim by contending that no 'untoward incident' was reported under Section 124(A) of the Indian Railways Act, 1989 (hereinafter called 'the Act' for short). It was also contended that the Post Mortem certificate would indicate that the death was due to hit by train, and that a person

can be hit or run over by a train, only in case of a trespass. Therefore it is contended that the death of the deceased was not an 'untoward incident' and there is no evidence to the effect that the deceased had fallen from the train, as alleged by the applicants. It is also pointed out that there is no report to the effect that the co-passengers had even pulled the chain, if it would have been a case of fall from the train. According to the appellant the case is other than a fall from the train, and hence will not come under Section 123(c)(2) of the Act. Further, it was also contended that the Train Ticket was not available with the dead body and the case of alleged loss of the ticket could not be accepted.

4. The Tribunal while allowing the claim found that, the police authorities at Manjeswar had investigated the matter and submitted Ext.A1 final report, concluding that the deceased died due to the injuries sustained in an accidental fall from the train, during the course of his journey. Conclusions noted in Ext.A1 final report is that the victim while travelling by train, at about 6.30 p.m., fell

down from the train at the place of occurrence. The final report was submitted seeking for closure of the case treating it as 'death due to fall from train'. The appellant relied on Ext.R1 report prepared by the Railway authorities in which the conclusion was that it was a case of hit by train, which is the cause of death. The Tribunal found that the Railway authorities have mainly relied on the fact that, neither the 'Guard' nor the 'Loco Pilot' of any train have reported to the Station Master about any such 'untoward incident' happened on 05.02.2013. But the Tribunal observed that, mere absence of any such reporting cannot be relied on to conclude that there occurred a hit by the train. If it would have been a hit by the train on a person trespassed into the track, it could have been seen by the Engine crew. But no Engine crew was examined during the trial on behalf of the Railway. Arguments advanced based on the First Information Report and the Post Mortem Report was negatived, finding that the accident occurred in a totally uninhabited area in Kasargod District and there was no reason for the victim

to be present in that area for trespassing into the track, during night time. The Tribunal concluded that in the absence of any eye witness or convincing proof, the findings in Ext.R1 could not be accepted. It is found that from the circumstances and evidence on record, it can only be inferred that the victim had travelled in a train and accidentally fell down from the train on the unfortunate day.

5. Before the Tribunal, arguments were advanced by the appellant much on the aspect that the journey ticket was not recovered. But the Tribunal relied on the testimony of PW1, who was a co-worker of the victim, that he along with the victim and another friend had reached the Mangalore Railway Station, after purchasing some personal belongings in order to see off the victim, and that the victim had bought a Ticket to Ernakulam. After seeing him off, they left the station. PW2 is the person who was present along with PW1. He had spoken on similar terms. Testimony of both the witnesses could not be shaken in any respect, despite

cross-examination conducted on behalf of the appellant. It is also observed that the burden of proof as a passenger, by producing the Train Ticket cannot be insisted upon in the case of death of a person, who is proved to have been died in the course of railway travelling. It is settled law that it is the duty of the Railway to give evidence that a passenger was travelling without a valid Ticket and then only the burden will be shifted to the claimant to prove that he was a bonafide passenger, having a valid Ticket. Relying on the decision of this Court in ***Joji C.John v. Union of India [2002 (1) KLT 678]*** it is held that merely because the ticket is lost during the accident, one cannot be labelled as 'not a bonafide passenger'. The Tribunal found that, in various decisions of the High Court, it is held that a ticket can get lost at the time of accident and the deceased cannot be labelled as 'not a bonafide passenger'. Therefore it was found that the accident was an 'untoward incident' and that the appellant is liable to pay the statutory compensation. Hence the claim was allowed and the

appellant was directed to pay a sum of Rs.4 lakhs to the respondents, along with the interest at the rate of 6% from the date of the application till payment.

6. Learned Standing Counsel for the appellant raised vehement contentions relying on the First Information Report and the Post Mortem certificate. It is pointed out that the FIR by the police was registered on the basis of statement of a lady named Vinaya Bhaskar. It is to the effect that, the death might have been occurred due to a hit by train when he had crossed the Railway Track. But we notice that she is not an eye witness to the incident and she came to know about the incident only when another person informed that a person was seen lying dead on the side of the Railway Track. The version of the first informant is only a probability which she had mentioned. Further contention is relying on the Post Mortem Report. On a perusal of the copy of the same, it is evident that, the Doctor had mentioned that the alleged cause of death as per the Inquest was "death due to trauma by hit by train". Therefore, while concluding the

report the Doctor opined that findings are suggestive of death due to multi organ injury following trauma by hit by train. It is not on the basis of the nature of any of the injuries that such an opinion is formed. But it is only on the basis of the history as alleged in the Inquest Report. On the other hand, we find that there is corroborative evidence collected by the Police authorities from the co-workers to the effect that the deceased had came to Mangalore Railway Station and purchased a Ticket to Ernakulam. Therefore, the evidence on record will clearly probabalise that the deceased had travelled in the train and fallen down at the spot of accident. As observed by the Tribunal, the fact that the Loco Pilot or Guard has not seen the person hit by the train and the fact that the deceased had no occasion to come to such a place which is too remote and uninhabited, would more probabalise the conclusions. Further we notice that, going by the settled legal precedents, the non recovery of the Travel Ticket is insignificant for holding that the accident is an 'untoward incident'. Moreover, the oral testimony of the witnesses

examined as PW 1 and 2 had corroborated the probable case put forth by the claimants, with respect to the fall from the train. We notice that in the matter of settlement of claimants under the Railway Claims Tribunal Act, 1987, the degree of proof required is not that of a criminal trial. Preponderance of probabilities need to be taken while adjudging a claim. In the case at hand, in all probability, the claim put forth by the respondents based on the alleged fall, is justified.

7. Hence, we do not find any illegality, irregularity or error committed by the Tribunal in awarding the claim. Since the appeal is not based on any valuable grounds to take any contrary view, we are not inclined to admit the same.

Accordingly, the appeal is hereby dismissed.

Sd/-
C.K.ABDUL REHIM, JUDGE

Sd/-
MARY JOSEPH, JUDGE

VS