

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2017

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.1565 of 2016

1. Mrs. M.P.Geetha
2. M.Prakash
3. M.P.Sujitha

... Appellants

(Third Appellant declared major and the first appellant discharged of the guardianship, vide order, dated 18.07.2016, made in CMP No.9994 of 2016, by this Court)

..Vs..

The Union of India,
owning Southern Railway,
Rep. By its General Manager,
Chennai 600 003

... Respondent

Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act, 54 of 1987, against the award, dated 02.02.2016, passed by the Railway Claims Tribunal, Chennai Bench, in O.A.(II-U) No.39 of 2015.

For Appellants : Mr. N.Ramesh

For Respondent : Mr. C.V.Ramachandra Murthy

J U D G M E N T

The award passed by the Claims Tribunal, dated 02.02.2016, dismissing the application filed under Section 16 of the Railway Claims Tribunal Act, 1987, read with Sections 123 (c) (2) and 124 (A) of the Railways Act, 1989, claiming a sum of Rs.4,00,000/- as compensation in respect of death of M.P.Sunil, who died on 25.03.2014, in a Railway Accident, is under challenge in this Appeal.

2. Originally, the claim petition was filed by the claimants, who are the parents, aged 39 and 49, and unmarried sister, aged 17. Subsequently, during the year 2016, a petition has been filed seeking to declare the third appellant herein / third claimant, as major, and to discharge the first appellant

herein from the legal guardianship. After hearing both sides, the said petition came to be allowed, as prayed for and the third appellant herein / third claimant, was declared as major and the first appellant herein was discharged from legal guardianship of the third appellant herein.

2.1. The claimants are the residents of Chittur District, Andhra Pradesh. On 24.03.2014, M.P.Sunil, went to college to attend his third year B.Sc., examination and boarded an unknown train at Puttur to go to Nagari. On the evening of 24.03.2014, while the deceased was travelling, he might have fallen down accidentally from the running train at Kms 106/27 to 29 in the Railway line between Puttur and Vepagunta Railway Stations, as a result, dragged about 100 Mts and died on account of injuries in vital part. The postmortem report was that the deceased died due to haemorrhage shock and cardio respiratory arrest.

2.2. A case was registered in Cr.No.21 of 2014 (Ex.A1), based on the memo issued by the SS/Platform, Renigunta, which is based on the message and information given by Mr.A.Babu, Keyman. Inquest report (Ex.A5) was drawn on the same date.

2.3. After investigation, the Sub-Inspector of Police, Reniguntta (RPS) laid the final report holding the death to be an accidental death and that no foul play is suspected (Ex.A-6).

3. The followings are the issues which had been framed by the Tribunal for consideration:-

(i) Whether the deceased was a bonafide passenger as alleged?

(ii) Was there any untoward incident on 25.03.2014 as defined under Section 123 (c) (2) of the Railways Act, 1989?

(iii) Whether the appellants are entitled to compensation?

4. The Railway Claims Tribunal dismissed the claim application of the claimants on a finding that the claimants failed to establish that the deceased fell down from the train accidentally. However, the Tribunal has deprecated the approach of the Railways in branding the death as suicide without any materials. Challenging the order of the Tribunal, this Appeal is filed.

5. The main contention raised by the learned counsel appearing for the appellants is that, when the Tribunal has rejected the plea of suicide, it should have concluded that the deceased was a bonafide passenger and that the death of the deceased was an "untoward incident".

6. Therefore, the issue to be considered is, whether the appellants were able to prove that the death of the deceased was due to an "untoward incident" as defined under section 123 of the Railways Act.

7. Reliance was placed on behalf of the Railways on the proviso to section 124A of the Act, which provides that no compensation will be payable under that section by the railway administration if the passenger died or suffered injury due to: (a) suicide or attempted suicide by him, (b) self-inflicted injury or (c) his own criminal act.

7.1. Chapter XIII of the Railways Act, 1989, deals with the Liability of Railway Administration for Death and Injury to Passengers due to Accidents. Section 123, the first section of the Chapter, has the definition clauses. Clause (c) defines "untoward incident" which in so far as relevant for the present is as under:

"123 (c) untoward incident means-

- (1) (i) xxxxxxxx
- (ii) xxxxxxxx
- (iii) xxxxxxxx (2) the accidental falling of any passenger from a train carrying passengers."

7.2. Section 124A of the Act provides as follows:

"124A. Compensation on account of untoward incident. - When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to -

- (a) suicide or attempted suicide by him;
- (b) self-inflicted injury;
- (c) his own criminal act;
- (d) any act committed by him in a state of intoxication or insanity;
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation - For the purposes of this section, "passenger" includes -

(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident." (emphasis added)

7.3. There is no allegation by the Railway that the deceased died due to his own criminal act of either getting down from the running train or by crossing the track, by trespass, etc.,

8. The main circumstance to be considered is that the deceased was dragged upto 100 sleepers in the middle of the track. It supports the probability that the deceased might have fallen down accidentally from the running train. This probability is supported by the inquest report and also by the final report filed by the Police.

8.1. But the learned counsel for the Railways submitted that if there had been a fall from the moving train, the body would have been found outside the track and not in the middle of the track. On the first phase of it, the argument looked plausible, but on a deeper analysis, it is found that the Railway track is under the exclusive custody of the Railways. Public have only limited access for limited purpose. When the body is found within the premises, right under the nose of Railways, the possibility of manipulating the place in which the dead body was found cannot be ruled out. The initial falling might have been in some other place and the body could have been dragged to elsewhere. But, the fact remains that it was within the precincts of Railways and therefore, it is for the Railways to explain how the body could have been found in the middle of the track. Further, in case of suicide, one can expect the body to be in a perpendicular position to that of the Railway track and it could not have been found in a vertical direction to that of the Railway track. The report of the Sub-Inspector of Police holding that the death is an accidental death corroborates the case of the appellants.

9. The contention of the Railways is that the ticket is not produced and therefore, the deceased could not have been a passenger. To controvert the same, the learned counsel for the appellants relied upon the following decisions:-

(i) CDJ 2016 MHC 2261 (A.Thanikachalam and others v. The Union of India):-

"... onus is on Railways to prove that deceased were not bona fide passengers, since normal presumption is that passenger in train holds valid ticket.."

(ii) 2016 ACJ 1882 (Shaik Mahboob Basha and others v. Union of India):-

".... presumption that generally every passenger holds a journey ticket unless the contrary is proved is applicable...."

(iii) 2014 ACJ 2001 (Union of India v. A.Logambal and others):-

"Probability of train ticket purchased by the deceased being lost in the accident cannot be ruled out.."

9.1. These decisions would go to show that the contention of the Railways is not acceptable, as there is every possibility of ticket having been lost as the body had been dragged crossing 100 sleepers.

10. The learned counsel for the appellants relied upon the decision of the Hon'ble Supreme Court reported in 2008 ACJ 1924 (Union of India v. Deomani Devi) wherein it has been held that the Railway cannot avoid such liability, when no case has been set-up or any evidence produced that the incident is covered by any of the exceptions contained in Section 124A of the Act.

10.1. This decision is squarely applicable to the facts of the case. The theory of suicide is not specifically stated in the reply statement filed by the Railways.

10.2. Therefore, this Court is of the view that the Railway Administration is liable for the death of the deceased as it is proved to be an untoward incident.

11. Then the next issue, what is the quantum of compensation payable.

11.1. Admittedly, at the time when the petition was filed, a sum of Rs.4,00,000/- has been claimed. Now a Government Notification, dated 22.12.2015, is relied upon under which Rs.4,00,000/- has been enhanced to Rs.8,00,000/-.

11.2. The learned counsel for the appellants submitted that

it is the rate of compensation, as existed on the date of final decision that has to be taken into consideration and not the rate payable, as on the date of the accident, in the cases filed invoking the provisions of socio welfare legislation.

11.3. This contention of the learned counsel for the appellants / claimants is directly supported by the decision reported in (2005 (1) TAC 207 : AIR 2005 Kerala 33 (Geetha v. Union of India) where-under it has been held that the compensation on account of untoward incident is payable at the rate as existing on the date of final decision. Therefore, the amount of compensation payable would be Rs.8,00,000/-, as per the Government Notification, dated 22.12.2015, i.e., the rate applicable on the date of final decision.

11.4. In terms of the judgment reported in AIR 2009 SC 3098 (Thazhath Purayil Sarabi v. Union of India) the respondent is liable to pay interest, even in the absence of statutory provisions and the rate of interest is 6% per annum, in terms of Section 34 CPC.

12. In the result, the order of dismissal by the Claims Tribunal is set-aside and this Civil Miscellaneous Appeal is allowed, directing the Railway Administration / respondent herein, to pay to the appellants a sum of Rs.8,00,000/- as compensation, with interest at 6% per annum, from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this judgment. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

srk

To

1. Railway Claims Tribunal, Chennai Bench

2. The Section Officer, V.R.Section, High Court, Madras

+1cc to Mr.C.V.Ramachandra murthy, Advocate, S.R.No.92073

C.M.A.No.1565 of 2016

GMR (CO)

RRK (20/03/2018)