

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.05.2017

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.1584 of 2016

1. S.Kannadasan

2. Mrs. K.Vellaiammal

(Parents of the deceased

Ms.Vijayalakshmi)

... Appellant/Appellants

..Vs..

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

... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act, 54 of 1987, against the order dated 03.09.2015 passed by the Railway Claims Tribunal, Chennai Bench, in O.A.(II-U) 188 of 2014.

For Appellants : Mr. T.Rajamohan

For Respondent : M/s. Bhavani Subbarayan

J U D G M E N T

The order passed by the Claims Tribunal, dated 03.09.2015, 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 Vijayalakshmi, who died on 29.08.2013, is under challenge in this appeal.

2. The claimants are the parents, aged 51 and 46 respectively. They are the resident of Redhills, Chennai. On 27.08.2013, Vijayalakshmi informed her parents that she wanted to go to Mambalam and left the house. The deceased travelled from Chennai Beach to Saidapet Railway Station in the EMU Train. In between Egmore and Chetpet Railway Stations, the deceased accidentally fell down from the Train on account of heavy rush, speed, jerk and jolt of the train. She suffered serious head injuries and was shifted to the Government General Hospital. She succumbed to the injuries on 29.08.2013.

2.1. A case was registered in Cr.No.490 of 2013 (Ex.A1), based on the report of the Duty Medical Officer. Inquest report (Ex.A6) was drawn on 29.08.2013. During inquest, a brown colour money purse with cash of Rs.1,290/- along with Ticket bearing No.411251314 was also recovered. The death certificate (Ex.A3) and a legal heir Certificate (Ex.A4) were also filed. The postmortem report (Ex.A2) expressed the opinion that the deceased would appear to have died of effects of Head Injuries sustained. The ticket in question (Ex.A5) was also filed.

3. The Tribunal has given strange observation, interpretation and conclusions, which are based on conjectures. The observation is that when the Ticket had been issued at 12.58 p.m., the incident had been only at 3.15 p.m., when the travel time between Chennai Beach and Saidapet by any EMU Train will not take more than 30 to 40 minutes; showing that the victim during this time had been wandering and further appeared to have been in total confused state of affairs.

3.1. Relying upon this observation by the Tribunal, the learned counsel for the respondent would submit the journey itself is an illegal journey and therefore, the Railway Administration is not responsible for the accident.

3.2. The legality/illegality of the journey is not a question at all to be decided in order to find out the liability of the Railway Administration.

4. The case of the appellant is that the death of the deceased was an untoward incident and therefore, the Railway Administration is liable to pay compensation. But, the contention of the Railway is that the death of the deceased was on account of suicide/invited death and therefore, the Railway Administration is not liable.

4.1. The learned counsel for the appellant relied upon the following set of circumstances, to show that the accident is an untoward incident and it is not a case of suicide.

4.2. The observation made in column 7 of the inquest report, in which, there is a finding regarding the availability of ticket and money of Rs.1290/-; the copy of the ticket is filed, from which it is evident that what is bought is a return ticket, i.e. from Chennai Beach to Saidapet and Saidapet to Chennai Beach; it is also stated that the return ticket is valid till midnight of the next day.

4.3. The inference from this conduct would go to show that the deceased would not have entertained the idea of committing suicide, because for a person intending to commit suicide, the person would not have chosen to buy a ticket at all and muchless a return ticket.

4.4. In the evidence of the father, Loganathan, it is stated during cross-examination that he was told that the deceased fell down from the train. He has denied the suggestion that his daughter jumped from the Train for some reason.

5. 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, is the issue to be considered.

6. Reliance was placed on behalf of the Railway 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. 6.1. 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 insofar 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."

6.2. 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)

6.3. It is not denied by the Railway that the deceased fell down from the train and died while travelling, with a valid ticket. She was, therefore, clearly a "passenger" for the purpose of section 124A as clarified by the Explanation.

6.4. Under section 124A, the liability to pay compensation is regardless of any wrongful act, neglect or default on the part of the Railway Administration. But the proviso to the section says that the railway administration would have no liability to pay any compensation in case death of the passenger or injury to him was caused due to any of the reasons enumerated in clauses (a) to (e).

6.5. The Tribunal gravely erred in holding that the appellants were not entitled to any compensation under section 124A of the Act, because the deceased had died by falling down from the train because of suicide.

6.6. First, the case of the Railway that the deceased was standing at the open door of the train compartment in a negligent manner from where she fell down is entirely based on speculation. There is admittedly no eyewitness before the Tribunal to speak about the suicide theory of the Railway Administration.

6.7. Secondly, even if it were to be assumed that the deceased had fallen down from the train on account of her own

negligence it will not have any effect on the compensation payable under section 124 A of the Act.

6.8. Only where there is an intention or mental element is involved in falling down, then the Railway Administration will not be liable. In other words, the liability of the Railway is a strict liability subject to the exceptions provided under Section 124A of the Railways Act.

7. It is the contention of the learned counsel appearing for the claimants that the Railway Administration has not taken a specific plea with reference to the cause of death of the deceased and that the respondent has gone to the extent of taking a false plea and therefore, on this sole ground, the order passed by the Claims Tribunal has to be set-aside.

7.1. Paragraph 9 of the order passed by the Claims Tribunal would go to show that it was within the knowledge of the Tribunal that the Railway has taken a false defence and there is an observation that the respondent has to take remedial measures. Still, the Tribunal has not chosen to award the claim, but has chosen to dismiss the claim.

7.2. In paragraph 7 of the Claim Petition, the claimants have mentioned about the details of the ticket along with ticket number and that those details also find a place in the Inquest Report. But the respondent has taken a false plea that: (a) the deceased was not a bona fide passenger; and (b) the Inquest Report confirms that no ticket was found with the deceased.

7.3. This statement of the respondent is patently false and contrary to records and would amount to making a false statement. Such a conduct from the State is unwarranted and the Tribunal has taken a serious note of it, as detailed in paragraph 9 of the order of the Tribunal. There is no necessity to take a false defence, unless there is an intention to defeat the claim of the claimants. The very conduct of the respondent, in taking a false plea in the counter itself, would go to show that the claim for compensation cannot be false.

8. The Railway has relied upon the statement of Senior Passenger Guard wherein he has stated that a female aged about 25 years had jumped out of the train; when he was examined by the Tribunal, what he would state is that one of the passengers informed him that the other passenger jumped out of the train, but he has not furnished the particulars about the passenger; he has also stated that he does not know the particulars about the passenger.

8.1. If really the passenger has informed the Guard, the Guard must be in a position to say, who is that passenger.

9. The learned counsel for the respondent also relied upon the investigation report of the Railway Protection Force, wherein the finding is that the deceased had voluntarily jumped out of the train, with an intention to commit suicide. But this finding is once again based upon the statement of the co-passenger and the statement of the Guard; neither the passenger has been examined nor the details of the passenger have been furnished; the report of the Head Constable dated 22.08.2014 only states that one lady passenger fell down from the train and the same was informed to, 'on duty' SIPF; then, it is not known how the theory of jumping out of the train was introduced; the message, dated 27.08.2013, from IPF/MS reads that one lady passenger has fallen down; therefore, when the initial statement was that, when the deceased had fallen down, the subsequent statement that she jumped out of the train with an intention to commit suicide, could not be believed in the absence of any supporting materials.

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 counter filed by the Railways. There is a bald suggestion to the father that the jumping of the deceased from the train was on account of some other reason.

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.

12. 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/-.

13. The learned counsel for the appellants submitted that it is the rate, 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.

13.1. 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.

13.2. 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.

14. 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.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

srk

To

1. Railway Claims Tribunal, Chennai Bench
2. The Section Officer, V.R.Section, High Court, Madras

+2cc to Mr.T.Rajamohan, Advocate in Sr.No.37936

C.M.A.No.1584 of 2016

CA(CO)
NR(09/06/2017)