

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.1285 OF 2008

A.Thangaiah Nadar

...

Appellant

Vs.

Union of India,
Owning Southern Railway,
Rep. by General Manager

....

Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987 against the order dated 05.10.2007 passed by the Railway Claims Tribunal, Chennai Bench, in O.A.No.1 of 2003, be modified granting interest at 12% per annum, on the statutory compensation of Rs.4,00,000/- from the date of filing of the claim application, viz., 07.01.2003 till the date of payment and costs of the proceedings.

For Appellant : Mr.T.Rajamohan

For Respondent : Mr.S.R.Sundaram

J U D G M E N T

Aggrieved over the non-award of interest at 12% per annum, on the statutory compensation of Rs.4,00,000/- from the date of filing of the claim application viz., 07.01.2003 till the date of payment and costs of the proceedings, the appellant/claimant is before this Court.

2. The appellant / applicant is the father of the deceased. According to the appellant / applicant, the deceased, while travelling in EMU Train on 28.10.2022, at 20.00 hours, in between Chetpet and Egmore Railway Station, accidentally fell down from the Train and died on the spot. On the death of the deceased, the appellant / applicant, who is the legal representative of the deceased, laid a claim petition before the Railways Claims Tribunal, Chennai Bench.

3. The respondent / Railway filed reply statement, wherein the manner of accident was denied. It was stated in the reply statement that they received a message from the Senior Manager /

Egmore Railway Station that a male aged 28 years old run-over and killed at KM 5/19-A, between Chetpet and Egmore Railway Station, which itself shows that the incident is only run-over and killed and not an accidental fall from the running train and hence, the incident does not fall under "untoward incident". Moreover, no ticket or any valid travel authority was recovered from the deceased or from the incident spot and that the deceased was not at all a bonafide passenger and therefore, they are not liable to pay any compensation.

4. In order to prove the case of the appellant / applicant, the appellant/applicant examined himself as A.W.1 and 7 documents were marked as Exs.A1 to A7. On the side of the respondent, no witnesses were examined and no documents were marked.

5. The Tribunal, after considering the elaborate oral and documentary evidence, has come to a conclusion that the deceased was a bona fide passenger having purchased the ticket and there was an untoward incident as defined under Section 123(C)(2) of the Railways Act, 1989, occurred to the deceased and awarded a sum of Rs.4,00,000/- with interest at the rate of 6% per annum from the date of default till date of actual payment. Aggrieved over the rate of interest awarded, the appellant / applicant is before this Court.

6. Heard the submissions made on either side and perused the materials available on record.

7. So far as the award is concerned, it has become final as both the parties have accepted the same and the respondent has not chosen to file any appeal. Challenge in this appeal by the claimants is as to restriction of interest to 6%.

8. In the case of ANNAPOORANI AND OTHERS VS. UNION OF INDIA, OWNING SOUTHERN RAILWAY [2014 (3) MLJ 879] this Court has held as follows:

"6.2.....relying upon the decision reported in AIR 2009 Supreme Court 3098 ([Thazhathe Purayil Sarabi v. Union of India](#)) the learned counsel for the claimants contends that, even in the absence of Statutory provisions, the power of the Court to grant interest can be taken into account, either by invoking Section 34 CPC or under any other provisions of relevant enactment.

"15. As indicated hereinbefore, apart from the provisions of the [Interest Act](#), Section 34 of the Civil Procedure Code also empowers the

Court to order interest on a decree for payment of money in the following manner :

"34. Interest.-(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, [with further interest at such rate not exceeding six per cent, per annum as the Court deems reasonable on such principal sum from] the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation I.-In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 (5 of 1970).

Explanation II.-For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.]

(2) Where such a decree is silent with respect to the payment of further interest [on such principal sum] from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie".

6.3. On the grounds discussed above, the dismissal of the claim petition by the Railways is unjustified and therefore, the order of the dismissal is set-aside. The Railway Administration / respondent is liable to pay the compensation of Rs.4,00,000/-, along with interest at 6% per annum from the date of petition to till the date of deposit."

9. The Hon'ble Supreme Court in RATHI MENON VS. UNION OF INDIA [2001 ACJ 721] has held that the collocation of the words "as may be prescribed" in Section 124-A of the Act is to be understood as to mean 'as may be prescribed from time to time'. The Hon'ble Supreme Court has observed that what the legislature wanted was that the victim of the accident must be paid compensation and the amount must represent a reality which means the amount should be fair and reasonable compensation. Therefore, liability to pay compensation is on the Railway to the extent as may be prescribed and it would denote that the disbursement of the compensation shall be at the rate prevailing on the date of final adjudication. Further, it is held that the Railways Administration shall pay the award with interest at 12% per annum from the date of order passed by the Tribunal.

10. In the light of the law laid down by the Hon'ble Supreme Court, the award of compensation will carry interest @ 12% per annum. Accordingly, the Railway is directed to deposit the award of Rs.4,00,000/- with interest at 12% per annum from the date of order passed by the Railway Claims Tribunal i.e. 05.10.2007, till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this order.

11. With the above observation and direction, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

bsm/tk

To

1. The Railway Claims Tribunal
Chennai Bench.

2. The General Manager
Union of India,
Southern Railway
Chennai - 600 003.
3. The Section Officer,
VR Section, High Court,
Madras. (2 Copies)

+lcc to Mr.S.R.Sundaram, Advocate, S.R.No.73824

+lcc to Mr.T.Rajamohan, Advocate, S.R.No.73559

C.M.A.NO.1285 OF 2008

kji(co)
cs/16/11/2018



WEB COPY