

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.3720 of 2008

1.V.Perumal
2.Valliammal

... Appellants/Applicants

Vs.

Union of India,
Owning Southern Railway,
Rep. by General Manager,
Chennai - 600 003.

... Respondent/Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987 against the order dated 07.07.2008 passed by the Railway Claims Tribunal, Chennai Bench, in O.A.No.53 of 2006.

For Appellants : Mr.T.Rajamohan

For Respondent : Dr.S.R.Sundaram

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the order dated 07.07.2008 in O.A.No.53 of 2006 passed by the Railway Claims Tribunal, Chennai Bench.

2. Aggrieved over the dismissal of claim petition relating to the death of their son due to the accidental fall from the train, the appellants/claimants have preferred the present appeal.

3. According to the appellants, their son late Baskar @ Baskaran, while travelling in an EMU train on 14.08.2006, had accidentally fallen down from the moving train at about 10.00 a.m between Korattur and Pattaravakkam stations. Due to the accident, he suffered severe head injury and was declared dead at Government General Hospital, Chennai. The respondent filed a reply statement denying all the averments made in the claim petition.

4. It is the contention of the respondent, Railways, that the accident, had happened due to the negligence of deceased and not due to the over crowding of the train. Further, the deceased was not a bona fide passenger and therefore, there was no liability to pay any compensation under Section 124-A of the Railways Act, 1989.

5. The Tribunal framed six issues : whether the deceased was a bona fide passenger, whether the claimants are the only dependants, whether the deceased sustained injuries in an untoward incident while travelling by EMU train on 14.08.2006, and whether the respondent, Railways, disproved the case of the appellants/applicants.

6. On the side of the claimants, two witnesses were examined and Exs.A1 to A7 were marked. On the side of the respondent, two witnesses were examined and two documents were marked. After analysing the evidence let in before the Tribunal, the Tribunal came to a conclusion that the incident, which had taken place on 14.08.2006 was an untoward incident due to the fall from the EMU train. On the issue of bona fide passenger, the Tribunal, discarding the version of A.W.1 and A.W.2 in respect of possession of ticket, concluded that the deceased was not a bona fide passenger.

7. Aggrieved over the same, the appellants has come before this Court with this Civil Miscellaneous Appeal.

8. Heard the rival submissions and perused the materials on hand.

9. A.W.1, who is the father of the deceased, in his evidence, has deposed that their son had travelled in a EMU train on 14.08.2006 in between Korattur and Pattaravakkam and sustained severe head injuries and declared dead at Government Hospital, Chennai. Ex.A1 filed by the claimants/appellants is a copy of the First Information Report (FIR) and Ex.A2 is the postmortem certificate, Ex.A4 is the inquest report and Ex.A5 is the final report. On the basis of the above said four exhibits, it is clear that the deceased had an accidental fall from the crowded running train on 14.08.2006 at about 10.00 a.m in between Korattur and Pattaravakkam stations and sustained severe head injury. The inquest report clearly described the treatment given to the deceased as well as the cause of death.

10. Even though R.Ws.1 and 2, Staff of the Railways, have stated in their evidence, that during their duty hours, they have not received any message from the public regarding fall of the deceased, the Tribunal arrived at a finding that there was an untoward incident and the deceased succumbed due to the

accidental fall from the EMU train. Therefore, it is clear that the son of the claimants died due to the untoward incident, which had happened on 14.08.2006.

11. The claim has been rejected by the Tribunal on the ground that the claimants have not proved by sufficient evidence that the deceased was a bona fide passenger. Whether the deceased was a bona fide passenger or not can be proved by production of Railway ticket. In normal course, it is presumed that the passengers are travelling after securing ticket from the Railway. When the traveler falls down from the train and died, it can be taken that the ticket will remain in his pocket. There are circumstances, where it may have fallen down or damaged or missed. The only presumption is that he has taken a ticket and travelled as a bona fide passenger.

12. The burden lies on the Railways to prove that the deceased was not a bona fide passenger. The Railway Claims Tribunal has rightly framed the issues as to whether the Railways disproved that the deceased was not a bona fide passenger or not. There was no evidence on the side of the Railways on this aspect.

13. The learned counsel appearing for the appellants would rely on judgment of this Court in the case of The Union of India owning Southern Railway by its General Manager, Chennai Vs. G.Jayalakshmi and others, reported in 2012 (3) CTC 741. This Court in similar circumstances dealing with Section 123(c) and 124-A of the Railways Act categorically found that the burden is on Railways to prove that the passenger was not a bona fide passenger and he did not possess any ticket. The normal presumption is that the passengers in the train hold valid tickets. Holding so this Court awarded compensation to the claimants. The very same judgment was followed by another bench of this Court in the case of S.Kannadasan and Another Vs. Union of India owning Southern Railway by its General Manager, Chennai, reported in (2017) 5 MLJ 543.

14. As held by this Court in the judgment mentioned above, the deceased is presumed to be a bona fide passenger and holding a valid ticket. In the absence of any contrary evidence, the Tribunal ought not to have dismissed the claim, on the ground that the deceased was not a bona fide passenger. Therefore, this Court is inclined to set aside the order passed by the Railway Claims Tribunal in O.A.No.53 of 2006 dated 14.11.2006.

15. The only question remains is the award of compensation. As per the contention of the learned counsel for the appellants, the claim was made under the Railway Accidents

and Untoward Incidents (Compensation) Rules, 1990. As per Rule 3, amount of compensation payable in respect of death for injuries, shall be as specified in the Schedule. Part I of the Schedule specified the compensation payable to the cause of death.

16. The learned counsel appearing for the appellants would produce the Notification of the Ministry of Railways (Railway Board) dated 22.12.2016, wherein, Part I of the Schedule under Rule 3 of the Rules prescribed Rs.8,00,000/- as the compensation.

17. The learned counsel appearing for the respondent, Railways vehemently contested that the claim amount shall be fixed as per the rate prevailed at the time of accident.

18. The learned counsel for the appellant would draw our attention to the judgment of the Hon'ble Supreme Court in the case of Rathi Menon Vs. Union of India reported in 2001 ACJ 721, wherein, it is held that liability to pay compensation is to the extent prescribed under the Rules in force. The Hon'ble Supreme Court has explained the word "as may be prescribed" shall be construed as fixed from time to time. In that judgment, it has been held at the time of determination or at the time of final decision for awarding compensation. The relevant portion of the said judgment reads as under:-

"The collocation of the words as may be prescribed in Section 124A of the Act is to be understood as to mean as may be prescribed from time to time. The relevance of the date of untoward incident is that the right to claim compensation from the Railway Administration would be acquired by the injured on that date. The statute did not fix the amount of compensation, but left it to be determined by the Central Government from time to time by means of rules. This delegation to the Central Government indicates that it was difficult for the Parliament to fix the amount because compensation amount is a varying phenomenon and the Government would be in a far advantages position to ascertain what would be the just and reasonable compensation in respect of a myriad different kinds of injuries by taking into account very many factors. 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. Government have the better wherewithals to

ascertain and fix such amount. It is for the said reason that the Parliament left it to the Government to discharge that function. Sections 124 and 124A of the Act speak the same language that the Railway Administration shall be liable to pay compensation. As pointed above, it is the liability of the Railway Administration to pay compensation to such extent as may be prescribed. Hence the time of ordering payment is more important to determine as to what is the extent of the compensation which is prescribed by the rules to be disbursed to the claimant.

Very same view was followed by the High Court of Kerala in the case of R.Geetha Vs.Union of India and another reported in AIR 2005 Kerala 33. The Kerala High Court has held the compensation under untoward incident is payable at the rate as existing on date of final decision. Considering erosion of value of money, Rules were amended and it has been enhanced from Rs.2,00,000/- to Rs.4,00,000/-. Accordingly, the High Court of Kerala has awarded the compensation as per the amended provisions with interest at the rate of 6% payable from the date of final decision till payment.

19. When the same issue was considered by this Court in S.Kannadasan's case cited supra, this Court has also taken the same view that the amount of compensation payable as per the Government

Notification prevailed on the date of final decision and the very same judgment, following the judgment of the Hon'ble Supreme Court in the case of Thazhathe Purayil Sarabi & Ors. Vs. Union of India & Anr, reported in AIR 2009 Supreme Court 3098, has awarded interest at the rate of 6% per annum under the provision of Section 34 of the Civil Procedure Code.

20. This Court, as per the latest Notification of the Ministry of Railways (Railway Board) dated 22.12.2016, holds that the claimants are entitled to get compensation of Rs.8,00,000/- for the death of their son in an untoward incident.

21. The respondent, Railways, is directed to deposit a sum of Rs.8,00,000/- (Rupees eight lakhs only) for the untoward incident, which had taken place on 14.08.2006 in which the son of the claimants died due to the accidental fall from the train, with interest at the rate of 6% per annum from the date of petition, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are entitled to withdraw the amount.

22. With the above observations and directions, this Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

asi

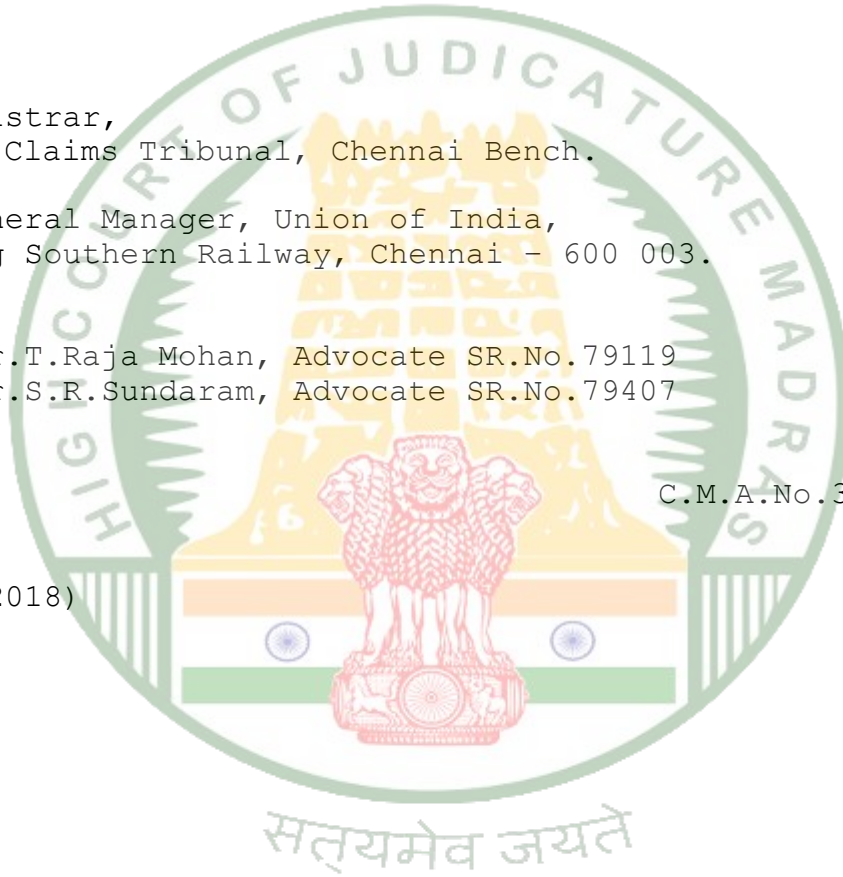
To

- 1.The Registrar,
Railway Claims Tribunal, Chennai Bench.
2. The General Manager, Union of India,
Owning Southern Railway, Chennai - 600 003.

+2cc to Mr.T.Raja Mohan, Advocate SR.No.79119
+1cc to Mr.S.R.Sundaram, Advocate SR.No.79407

C.M.A.No.3720 of 2008

CA(CO)
GN(06/04/2018)



WEB COPY