IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.12.2018

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2059 of 2011

N.Baskar .. Appellant

Versus

Union or India
owning Southern Railway
represented by
General Manager
Chennai. .. Respondent

Civil Miscellaneous Petition filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987 against the order dated 28.09.2010 passed by the Railway Claims Tribunal, Chennai Bench in O.A.No.72 of 2010 be set aside granting an award for the statutory compensation of Rs.4,00,000/- with interest at 12% p.a from the date of filing of the claim application, viz., 27.01.2010 till the date of payment and the costs of the proceedings.

For Appellant : Mr.S.Muthupandiyarajan
For Respondent : Mrs.A.Shri Jayanthi

ORDER

This Civil Miscellaneous Petition has been filed praying to set aside the order dated 28.09.2010 passed by the Railway Claims Tribunal, Chennai Bench in O.A.No.72 of 2010 and to grant an award for the statutory compensation of Rs.4,00,000/- with interest at 12% p.a from the date of filing of the claim application, viz., 27.01.2010 till the date of payment and the costs of the proceedings.

2. The appellant/applicant has filed an application in O.A.No.2010 00072 before the Railway Claims Tribunal, Chennai Bench, claiming compensation for the alleged death of his wife namely Sridevi, who had left the house to meet someone in Government Hospital, Chennai and stated that it was informed by

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the Korukkupet Railway Police that prior to 15.30 hours on 30.05.2007, the deceased, while travelling in any one of the train between Athipattu Pudunagar and Ennore Railway Stations, had fallen down from the train and suffered grievous injuries and died on the spot.

3. The respondent filed a counter stating that the deceased has not accidentally fallen down from the EMU train between Athipattu and Ennore on 30.05.2007 since no co-passengers have seen the incident or stop the train or reported to the Driver or Guard or Station Master and they denied the alleged accident itself as false. They also stated that mere lying of dead body near the track cannot be taken as 'fallen down from train' without any proof that she has fallen down and there may be various causes for the death of the deceased.

4. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the materials available on record.

5. Since the petitioner was married only a year back and that too being a love marriage, the RDO enquiry was ordered. The RDO conducted a detailed enquiry and filed a report and on perusal of the said report, it could be seen that the deceased was suffering from mental depression, which was admitted by the appellant/husband but the same has not been stated by the husband in the application while claiming compensation. The Tribunal mainly relied on the statement of the respondent Railway that they are contrary to each other. The applicant/husband has deposed before the Tahsildar that his wife had gone to meet her maternal grand mother, but she had not gone there, but accidentally fallen down from the train. But the applicant/husband, before the Tribunal, has stated that his wife had gone to meet one of his friend's wife, who was admitted in the Government Hospital, Chennai. The Tribunal relied on the above statements and come to the conclusion that the applicant/husband has not come before the Tribunal with clean hands and has suppressed the real truth and the fact with regard to his wife leaving the home would not have been different and there are different versions in different stages and hiding the fact of mental illness at all the stages would fortify the fact that the applicant's statement is not true and so, the Tribunal has come to the conclusion that when the appellant/ applicant has not approached the Tribunal with clean hands, he is not entitled to any relief. The Tribunal has presumed that the appellant/ applicant even after coming to know of the missing of his alleged beloved wife, whom he married without the consent of her parents, had not taken any steps to find the whereabouts of his dear wife and had even gone to duty without caring for her and hence, his conduct is questionable.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6. The Tribunal also relied on two documents, viz., the report of RDO on one side and final report of the police and the report of the Divisional Railway Manager read together on the other side. The Tribunal has come to the conclusion that eventhough the fall is not in dispute as the same is admitted both in the final report (Ex.A4) and Divisional Railway Manager report (Ex.R1), the point to be decided, based on the findings of the above two documents, is whether the alleged incident attracts Section 123(c)(2) or Section 124-A(d) of the Railways Act,1989. The Tribunal relied on the RDO's report, as it was prepared by a responsible officer soon after the incident and was based on the evidences of witnesses and documents and thus, has a statutory flavour and its probative value would be very high, and hence, great weight has to be given to the said report and cannot be discarded. Thus on the basis of the said document coupled with contradictory statements and behaviour of the applicant/ husband, the Tribunal has come to the conclusion that the husband has not come with clean hands and had given much importance to the RDO's report, wherein it is found that the deceased was under mental depression.

7. The Tribunal had considered the 'mental depression' as insane and by relying on the Chambers English Dictionary, according to which, insane means not sane or of sound mind, mental disorder causing one to act against the society or legal demands of society; madness.

8. The Tribunal has also relied on the report that before the Tahsildar, the applicant/husband himself deposed that before the incident, for the past one month, his wife was suffering from mental depression and on consultation, he had purchased medicines for his wife's mental depression and this would clearly establish that she has fallen down from the train because of her mental condition, which had been proved by the report of the RDO and the arguments advanced by the Department officials.

9. The Tribunal, by referring Section 124-A(d) that no compensation shall be payable to a passenger, if the passenger dies due to any act committed in a state of insanity, has come to the conclusion that the death of the deceased would clearly attract the proviso of Section 124-A(d) of the Act. The Tribunal has not gone into the aspect of a bonafide passenger, still for her heath, the family would not become entitled to compensation as her death falls under the exception category referred to above and has dismissed the application filed by the applicant/husband based on the RDO's report. Against which, the applicant/husband has preferred this Civil Miscellaneous Appeal.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

10. It could be seen that from the enquiry report, first information report, postmortem certificate, copy of the final report and death certificate and as per final report, the police have concluded and treated the case as 'accidental death due to fall from running train' prior to 15.30 hours on 30.05.2007, while the deceased was travelling in any of the train between Athipattu Pudunagar and Ennore Railway Station at km 15/45-43 upline. The Tribunal is not an expert to give a finding that whether 'mental depression' amounts to 'insanity'.

11. As per Webster's New World Dictionary and Thesaurus, depression means,

> "despair, despondency, sadness, sorrow, unhappiness, gloom, dejection, melancholy, misery, wretchedness, trouble, mortification, worry, discouragement, dispiritedness, hopelessness, pessimism, distress, desperation, desolation, dreariness, heaviness of spirit, dullness, disconsolation, downheartedness, woefulness, lugubriousness, moroseness, cheerlessness, disconsolateness, melancholia, dolor, dolefulness, darkness, bleakness, oppression, low-spiritedness, lowness, gloominess, glumness, disheartenment, hypochondria, vapors, malaise, clinical depression, dysthymia, slough of despond, grief, sadness. "

12. As per Webster's New World Dictionary and Thesaurus, Insane means,

> "not sane; mentally ill or deranged; demented; mad: crazy, crazed, mad, wild, raging, frenzied, lunatic, schizophrenic, psychotic, psychopathic, psychoneurotic, paranoid, non compos mentis (Latin), maniacal, raving, demented, rabid, berserk, unbalanced, unhinged, act of one's mind, out of one's head, moonstruck, unsettled, mentally unsound, mentally diseased, sick, suffering from hallucinations, bereft of reason, daft, deluded, possessed, stark mad, having a devil, obsessed, disordered, touched, addlebrained, addlepated, addleheaded "

13. As per Oxford Dictionary, depression means,

> "feeling of unhappiness that lasts for a long time. Depression can be a medical condition and may have physical signs, for example being unable to sleep, etc."

14. As per Oxford Dictionary, insane means,

> "crazy or mentally ill, mad"

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

15. Hence, suffering with 'mental depression' is concerned, it is only a feeling of sadness, loss of interest or pleasure, low energy, poor concentration. Sadness, unhappiness, sorrow, illness, dejection, low spirit, despondency, despair, heavy heartedness, hopelessness have been termed as depression. So a person who is suffering from depression cannot be called as a person of insane.

16. May be the one had not gone to her grandparents place as stated or she had gone to meet her husband's friend's wife is not known to any of us. The deceased had travelled in the train and fallen down from the train and the fall has been stated in the final report and the Tribunal has not a fact finding authority to presume that only due to the insanity, the deceased has fallen down from the train and died. It is only a 'mental depression' since as per the statement of the husband it is a love marriage and there is rift between the family and she would have some sadness or unhappiness, for which the husband has purchased the medicine and they cannot presume that the husband has not searched for his wife and gone to office and they cannot validate the love and affection of the husband. In a petition claiming compensation for the death of his beloved wife due to fall from the train, they cannot presume personal character of the husband and deny compensation.

17. It could be seen from the RDO's report that there was no dowry harassment and the marriage is love marriage and prior to the incident, for the past one month, the deceased was not able to sleep properly and hence he took her to the Doctor and on consultation, bought medicines to her and the parents of the deceased were not talking to the deceased and hence they have not even care to do the last right of their daughter and hence, the husband himself has done all the funeral rituals, which would prove the reason for the deceased's unhappiness and only within the year she has died and that may not be the reason for her death.

18. This Court perused the Inquest report dated 25.06.2007 regarding the death of the deceased, wherein it has been stated that the appellant attended the enquiry and stated that since it was a love marriage, neither dowry was demanded nor given and for the past one month, his wife was suffering from mental depression and on consultation, he purchased medicines and gave the same to her. The Tahsildar had also informed that the panchayatdars had conducted enquiry and stated that the deceased was under mental depression for some time and accidentally fell down from the train and died, which has been signed by the Secretary to District Tahsildar (incharge).

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

19. When the death due to the 'accidental fall from train' has been proved and in the absence of any proof to show that the deceased was an insane person and in view of the similar statement of the RDO that the deceased has mental depression, which is not the mental insanity, the incident would not attract Section 124-A(d) and therefore, the conclusion arrived at by the Tribunal is wrong and hence, this Court is to interfere with the impugned order of the Tribunal.

20. The learned counsel for the appellant/applicant submitted that as per the Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 2016, the amount of compensation has been enhanced from Rs.4,00,000/- to Rs.8,00,000/-, with effect from 01.01.2017 and by virtue of the judgment passed by the Supreme Court in Civil Appeal No.4945 of 2018 dated 09.05.2018, the quantum of compensation is payable with interest at 9% per annum from the date of filing of claim.

21. The Hon'ble Supreme Court in a judgment in Civil Appeal No.4945 of 2018 reported in AIR 2018 Supreme Court 2362 (Union of India ..vs.. Rina Devi) has held that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases and in the absence of any specific statutory provision, interest can be awarded from the date of accident itself, when the liability of the Railways arises upto the date of payment.

22. On perusal of the Railway Gazette Notification dated 22.12.2016, it could be seen that there is an amendment to the sub-rule (2) in Rule 3 of Railway Accidents and Untoward Incidents (Compensation) Rules and the same reads as follows:-

> " (i) in sub-rule (2), for the words "rupees four lakhs", the words "eight lakhs" shall be substituted;
>
> (ii) in the second proviso to sub-rule (3), for the words "rupees eighty thousand", the words "rupees one lakh sixty thousand" shall be substituted."

The said amendment came into force only from 01.01.2017, ie., prospective effect alone is given and no retrospective effect is given to the said amendment. Hence, the said amendment is not applicable to the present case, since in this case, the accident occur prior to the amendment came into force i.e., on 30.05.2007.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

23. In view of the above, this Civil Miscellaneous Appeal is allowed. The order dated 28.09.2010 passed by the Railway Claims Tribunal, Chennai Bench in O.A.No.72 of 2010 is set aside. The appellant/applicant/husband is entitled to a sum of Rs.4,00,000/- as compensation for the death of his wife. The respondent is directed to deposit the said compensation with interest at the rate of 6% p.a. from the date of accident till the date of realisation. After such deposit, the appellant is permitted to withdraw the same, by filing a formal petition before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mra

To

The General Manager
Union or India
owning Southern Railway
Chennai.

+1cc to Mrs.A.Shri Jayanthi, Advocate sr.89179
+1cc to Mr.Rajmohan, Advocate sr.89644

C.M.A.No.2059 of 2011

nr(co)
nr 12/06/2019

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/