

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.12.2018

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.391 of 2011

and

M.P.No.1 of 2012

1. M.A.Subhan
2. Sabira

.. Appellants

Versus

The Union of India
owning Southern Railway
represented by its
General Manager
Chennai-3.

.. Respondent

Civil Miscellaneous Petition filed under Section 23(1) of the Railway Claims Tribunal Act 1987 against the order dated 11.11.2010 passed by the Railway Claims Tribunal, Chennai Bench in O.A.No.74 of 2010 and to award the amount of Rs.4,00,000/- with interest and costs.

For Appellants : Mr.N.M.Elumalai

For Respondent : Mrs.T.P.Savitha
Standing Counsel for Railways

ORDER

This Civil Miscellaneous Petition has been filed praying to set aside the order dated 11.11.2010 passed by the Railway Claims Tribunal, Chennai Bench in O.A.No.74 of 2010 and to award the amount of Rs.4,00,000/- with interest and costs.

2. The appellants/applicants have filed an application in O.A.No.2010 00074 before the Railway Claims Tribunal, Chennai Bench, claiming compensation of Rs.4,00,000/- together with interest alleging that on 02.02.2010 at about 21.00 hours, while their son, viz., deceased M.A.Hidayathullah was travelling in EMU train from Ambattur to Tiruvotriyur, at Basin Bridge railway station, due to overcrowd, he had accidentally fallen down from the train, sustained grievous head injury and admitted at the Government General Hospital, Chennai, but died on 03.02.2010 at about 03.15 hours.

3. The respondent filed a counter stating that the deceased has not accidentally fallen down from the train at Basin Bridge Railway Station on 02.02.2010, 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 finding a journey ticket along with the deceased does not mean that the deceased was a bonafide passenger and travelled in train on that day. Therefore, they stated that the alleged incident might be one other than fall from train, for which the respondent is not liable to pay compensation under Section 124-A of the Railways Act, 1989 and accordingly, prays for the dismissal of the application.

4. The Tribunal, after careful consideration of the witnesses and evidences on both sides and also based on the admission of the respondent and as per Ex.R2, came to the conclusion that the deceased was a bonafide passenger and had fallen from running train. However, the Tribunal, based on Ex.R1 as well as the deposition of RW1, came to the conclusion that the injured was under the influence of alcohol at the time of admission in the Government Hospital, Chennai, after the fall from train and therefore, the Railways are exempted from payment of compensation under Section 124-A(d) of the Railways Act, 1989, under which no compensation shall be payable by the Railway Administration if the passenger dies or suffers injury due to any act committed by him in a state of intoxication or insanity. Aggrieved over the same, the applicants/parents of the deceased have preferred this Civil Miscellaneous Appeal.

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

6. Since the Tribunal, according to the admission of the respondent and as per Ex.R2, has come to the conclusion that the deceased was a bonafide passenger and had fallen down from running train, which is not disputed by the respondent herein, this Court is not inclined to go into detail in that aspect, but inclined to confirm the same.

7. The point to be decided in this Civil Miscellaneous Appeal is whether the injured was under intoxication at the time of his fallen down from the train.

8. In the Chief examination, RW-1 has mentioned that he had not mentioned in his inquest report regarding the accident register or its contents and further had not gone through the

report of the accident register and had put his final report only on the basis of postmortem report. On perusal, it could be seen that the postmortem report does not disclose regarding the influence of alcohol and it is stated in the postmortem report that stomach contains 200ml of green colour fluid with no smell or odour and the person would appear to have died of multiple injuries, 2 to 3 hours prior to postmortem. While preparing the final report, Investigating Officer has not bothered to look into the report of the accident register and to record the statement of the Doctor, who has seen the deceased first time when he was admitted in the hospital, to prove that the patient was under the influence of alcohol. The respondent has not taken any steps to call the Doctor regarding the stage at which he was brought in to the hospital, to prove their case. In the absence of Doctor's evidence, the Tribunal ought not to have denied the compensation to the appellants herein. Moreover, at the time of admission, the deceased was alive, but no steps were taken to send the blood samples for examination, whether the patient was under the influence of alcohol at the time of admission and in the absence of any entry to prove that the patient was under the influence of alcohol and due to which, he had fallen down from the train, this Court is of the view that the Railway Department has not proved that the deceased was in intoxication at the time of his fallen down from running train. In the above circumstances, the order of the Tribunal is set aside.

9. The learned counsel for the appellants/applicants 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 as prescribed as on this date is payable with interest at 9% per annum from the date of filing of claim.

10. 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.

11. 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 02.02.2010.

12. In view of the above, this Civil Miscellaneous Appeal is allowed. The order dated 11.11.2010 passed by the Railway Claims Tribunal, Chennai Bench in O.A.No.74 of 2010 is set aside. The appellants/applicants/parents are entitled to a sum of Rs.4,00,000/- as compensation for the death of their son. The parents are equally entitled for the said compensation. 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 appellants/parents are permitted to withdraw their share with proportionate interest, by filing a formal petition before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Insp.Cell)

//True Copy//

mra

Sub Assistant Registrar

To

The General Manager
Union of India
owning Southern Railway
Chennai.

+1 cc to M/s.T.P.Savitha, Advocate, S.R.No.89182

C.M.A.No.391 of 2011
and
M.P.No.1 of 2012

BR(CO)
SSM(06/05/2019).