

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.128 of 2015

1.S.Vijayalakshmi
2.Durgadevi
3.Purushothaman

... Appellants

Vs

The Union of India Owning
Southern Railway
rep. by its General Manager,
Chennai.

... Respondent

Civil Miscellaneous Appeal filed under Section 23(1) of the Railway Tribunal Act against the order dated 6.1.2015 made in O.A.(II-U) No.344 of 2013 on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellants : Mr.S.Parthasarathy

For Respondents : Mrs.T.P.Savitha
Government Advocate

ORDER

This Civil Miscellaneous Appeal is filed by the appellants, who are claimants, against the order dated 06.1.2015 made in O.A.No.(II-U) 344 of 2013 by the Railway Claims Tribunal, Chennai Bench, dismissing the claim petition filed by the appellants, who are legal heirs of the deceased Srinivasan.

2. The appellants herein have contended before the Tribunal that the deceased Srinivasan was a passenger in the EMU train and he was travelling from Tambaram to Chennai Beach and while travelling, the deceased accidentally fell down from the running train between Saidapet and Mambalam Railway Stations and sustained injuries all over the body and thereafter, he succumbed to injuries. According to the appellants, the deceased purchased ticket to travel in the train, but the same was lost.

3. Disputing the version of the appellants, the respondent filed counter stating that the deceased was not a bona fide passenger and no journey ticket was found from the body of the deceased. It is stated that the incident would not attract Section 123(c)(2) of the Railways Act, 1989.

4. Before the Tribunal, the first appellant examined herself as A.W.1 and marked Ex.A1 to A6. On the side of the respondent, no witness was examined, however, the report of the Divisional Railway Manager, Chennai Division, dated 13.1.2014 was produced.

5. The Tribunal, in its order though admitted that there was an accidental falling, it held that in the absence of proof of bona fide travel with ticket, it cannot be termed as an untoward incident for claiming compensation and, thus, dismissed the claim petition. Challenging the same, the appellants have filed the present Civil Miscellaneous Petition.

6. Heard Mr.S.Parthasarathy, learned counsel for the appellants and Smt.T.P.Savitha, learned Government Advocate for the respondent and perused all the material records and judgments produced by either parties.

7. The learned counsel for the appellants submitted that the Tribunal failed to note that only the deceased can state whether he had purchased the ticket or not and in such circumstances, the presumption must be to the effect that the deceased had purchased the ticket. He would submit that the Tribunal failed to note that the accident will not come under the proviso to Section 124(A) of the Railways Act and that the accident was purely an untoward incident. The learned counsel further submitted that the Tribunal failed to note that there is every possibility of losing the ticket in the accident. According to the learned counsel, the deceased was a bona fide passenger and after purchasing ticket only, he had travelled in the train. In support of his submissions, the learned counsel relied upon the following decisions:

- (i) Rathi Menon v. Union of India, reported in AIR 2001 SC 1333;
- (ii) The Union of India owning Southern Railway by its General Manager, Chennai v. G.Jayalakshmi and others, reported in 2012 (3) CTC 741;
- (iii) A.Thanikachalam and others v. Union of India, owning Southern Railway, rep. by its General Manager, Chennai, reported in 2016 (6) CTC 820; and
- (iv) Union of India v. Rina Devi, reported in 2018 (7) SCALE 274.

8. Per contra, the learned Government Advocate submitted that the deceased was not a bona fide passenger and that the

initial onus is on the appellants to prove that the deceased was a bona fide passenger and the same was not discharged by the appellants by producing the journey ticket. She would submit that there is no bona fide in the claim made by the appellants and that the Tribunal was right in dismissing the claim petition filed by the appellants. According to the learned Government Advocate, there is no necessity to interfere with the order of the Tribunal, which is a well-founded one.

9. As per Section 123(c)(2) of the Railways Act, 1989 (hereinafter referred to as "the Act"), 'untoward incident' includes the accidental falling of any passenger from a train carrying passengers.

10. In this regard, it is useful to refer to Section 123(c) of the Act, which reads thus:

"Section 123(c) "Untoward incident" means.-

- (i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987;
- (ii) the making of a violent attack or the commission of robbery or dacoity; or
- (iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or
- (iv) the accidental falling of any passenger from a train carrying passengers."

11. In *Union of India v. Prabhakaran Vijaya Kumar and others*, reported in 2008 (4) MLJ 323 (SC), the Hon'ble Supreme Court, while interpreting expression accidental falling of a passenger from a train carrying passengers, which is an untoward incident under Section 123(c)(2) of the Act and the consequential payment of compensation under Section 124A for such untoward incident, has held that it is well settled that if the words used in a beneficial or welfare Statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given liberal and not literal or strict interpretation. In the said decision, the Apex Court in paragraphs 12 to 15 held as follows:

"12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be

preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide *Alembic Chemical Works Co. Ltd. vs. The Workmen* AIR 1961 SC 647 (para 7), *Jeewanlal Ltd. vs. Appellate Authority* AIR 1984 SC 1842 (para 11), *Lalappa Lingappa and others vs. Laxmi Vishnu Textile Mills Ltd.* AIR 1981 SC 852 (para 13), *S. M. Nilajkar vs. Telecom Distt. Manager* (2003) 4 SCC 27(para 12) etc.

13. In *Hindustan Lever Ltd. vs. Ashok Vishnu Kate and others* 1995(6) SCC 326 this Court observed:

"In this connection, we may usefully turn to the decision of this Court in *Workmen vs. American Express International Banking Corporation* wherein Chinnappa Reddy, J. in para 4 of the Report has made the following observations:

The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds*).

In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surender Kumar Verma v. Central Govt. Industrial Tribunal-cum- Labour Court* we had occasion to say:

"Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions."

Francis Bennion in his *Statutory Interpretation*

Second Edn., has dealt with the Functional Construction Rule in Part XV of his book. The nature of purposive construction is dealt with in Part XX at p. 659 thus:

"A purposive construction of an enactment is one which gives effect to the legislative purpose by-
(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or
(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive and strained construction)."

At p. 661 of the same book, the author has considered the topic of "Purposive Construction" in contrast with literal construction. The learned author has observed as under:

"Contrast with literal construction - Although the term 'purposive construction' is not new, its entry into fashion betokens a swing by the appellate courts away from literal construction. Lord Diplock said in 1975: 'If one looks back to the actual decisions of the [House of Lords] on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions'. The matter was summed up by Lord Diplock in this way -

...I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it.

14. In our opinion, if we adopt a restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in Section 123(c) of the Railways Act, we will be depriving a large number of Railway Passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people, who travel by Railway Trains since everybody cannot afford travelling by air or in a private Car. By giving a restrictive and narrow meaning to the expression, we will be depriving a

large number of victims of Train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression 'accidental falling of a Passenger from a Train carrying Passengers' includes accidents when a bona fide Passenger i.e., a Passenger travelling with a valid ticket or pass is trying to enter into a Railway Train and falls down during the process. In other words, a purposive, and not literal interpretation should be given to the expression."

12. On a perusal of the order of the Tribunal, it is seen that in paragraph 5.8, the Tribunal came to the conclusion that though in the case on hand, there was an accidental falling, in the absence of proof of bona fide travel with ticket, it cannot be termed as an "untoward incident" for claiming compensation. The relevant portion of paragraph 5.8 is extracted herein below:

"5.8. Therefore, in this case, though it is admitted that there was an accidental falling, in the absence of proof of bona fide travel with ticket, it cannot be termed as an "untoward incident" for claiming compensation by a combined reading of Section 123(c) and Section 124-A of Railways Act, 1989 as in my considered view, the applicants have failed to discharge the initial burden to prove that the deceased was a bona fide passenger."

13. Thus, when the Tribunal itself came to the conclusion that there was an accidental falling, this Court does not want to elaborate upon the said fact any further and it would be appropriate to proceed to deal with the matter only on the aspect of bona fide passenger.

14. It is apposite to mention that when it is an admitted fact that the deceased died in an untoward incident on the respective date while travelling in the train, the onus is on the Railways to prove that the deceased was not bona fide passenger, since the normal presumption is that a passenger in a train holds a valid ticket.

15. In similar circumstances, in a decision in The Union of India, owning Southern Railway by its General Manager, Chennai v. G.Jayalakshmi and others, reported in 2012 (3) CTC 741, this Court held as follows:

"15. This Court in similar circumstances in the case of S.Poonkodi and others v. The Union of India, Southern Railway, CDJ 2007 MHC 3784, observed as hereunder:

"16. Moreover, if the deceased had travelled

as a Ticketless Traveller, one would normally expect the Railway Authorities to have detected such Ticketless travelling. When a person dies in an accident by falling down from Train, it is not possible for the Legal Representatives to produce the Ticket or valid authority to travel in the Train. Depending upon the facts and circumstances of a given case, the Tribunal/the Appellate Court infer about the deceased being a bona fide Passenger. In the present case, facts and circumstances prima facie indicate that the deceased was a bona fide Passenger, who lost his life in the railway accident.""

16. It is no doubt true that the position of law as provided in Section 106 of the Indian Evidence Act is that if a fact is within the special knowledge of a person, the burden of proving such fact is on that person and as provided in Illustration (b) of that Section, if a person is charged with travelling on a railway without a ticket, the burden of proving that he had a ticket is upon him. But such principle is not applicable to a case of dead person, who was proved to have died in the course of railway travel and whose body was taken in custody of the Railway Police. In such a situation, it is the duty of the Railway Authority to adduce evidence that the deceased was without a valid ticket and if such evidence is given, the onus shifts upon the claimants to prove that the deceased was a bona fide passenger having a valid ticket.

17. In The Union of India owning Southern Railway by its General Manager, Chennai v. G.Jayalakshmi and others, supra, the issue that came up for consideration is, the deceased lost ticket during accident and the contention of the Railways that the incident happened due to negligence on the part of the deceased and claimant has failed to prove that the deceased was travelling with valid ticket. Holding that normal presumption is, passenger in train holds valid ticket and burden is on Railways to prove that the deceased is not a bona fide passenger and also accidental falling of passengers from train carrying passengers would come within the purview of "untoward incident" and that the claimants are entitled to claim compensation, in paragraph 17, the learned Single Judge of this Court held as under:

"17. ... In this case, as no person on behalf of the Railways has given any such evidence nor as any person come forward to disclose as to what articles were found with the victim, I am of the considered view that the initial burden of providing the said fact had not been discharged. In such circumstances, in the absence of any evidence of

the Railway Authorities asserting absence of valid ticket, I am of the opinion that there is no just reason to discard the evidence of the claimants. Therefore, the Tribunal is perfectly justified in rejecting the contention of the Appellant that the deceased was not a bona fide passenger. The Tribunal is perfectly justified in holding that the deceased died on account of the accidental falling from the train and therefore, I do not find any warrant for interference with the said findings."

18. Similar is the view taken by another learned Single Judge of this Court in A.Thanikachalam and others v. Union of India, owning Southern Railway, rep. by its General Manager, Chennai, supra, wherein, it has been held as under:

"16. In such circumstances, in the absence of any Evidence of the Railway Authorities asserting absence of valid Ticket, I am of the opinion that there is no just reason to discard the evidence of the Claimants.

17. In the light of the above, since the issue squarely falls with the definition of Untoward Accident under Section 123-C(2) of the Railways Act, 1989 and that the Appellants/Claimants in each case are entitled to the Compensation as provided in the Schedule to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, the impugned orders dated 10.9.2008 and 29.4.2008 passed in O.A.Nos.51 & 121 of 2006 by the Railway Claims Tribunal are set aside and both the Civil Miscellaneous Appeals are allowed."

19. In the case on hand, admittedly, no person on behalf of the respondent Railways has given any such evidence, nor has any person come forward to disclose as to the deceased travelled without ticket. More so, by relying upon the decision of the Delhi High Court in Geetha v. Union of India, reported in 2014 ACJ 1505, the Tribunal held that the initial onus is on the appellants to prove that the deceased was a bona fide passenger and this was not discharged by the appellants by producing the journey ticket.

20. When it is an admitted fact that the deceased died in an untoward incident on the fateful day while travelling in the train, the onus is strictly on the Railways to prove that the deceased was not a bona fide passenger, since the normal presumption is that a passenger in a train holds a valid ticket. Moreover, if the deceased had travelled as a ticketless traveller, one would normally expect the Railway Authorities to have detected such ticketless travelling.

21. When a person dies in an accident by falling down from train, it is not possible for the legal heirs to produce the ticket or valid authority to travel in the train. Depending upon the facts and circumstances of a given case, the Tribunal and/or the Appellate Court infers about the deceased being a bona fide passenger. In the present case, facts and circumstances prima facie indicate that the deceased was a bona fide passenger, who lost his life in the railway accident.

22. In its order, the Tribunal itself recorded that a cash of Rs.2,510/- was recovered from the body of the deceased. Though in the claim petition, the appellants stated that the deceased was a coolie, at the time of accident, he was in possession of Rs.2,510/- in his pocket, which would establish that having such amount of cash in his pocket, the deceased would have definitely purchased the train ticket for his travel. Thus, the presumption is only after purchasing of the travel ticket, the deceased travelled in the train. To negative the said presumption, the respondent Railways has not produced any materials. When the deceased had Rs.2,510/- in his pocket at the time of accident, how he could travel without purchasing ticket for his travel that too, the maximum ticket rate would be Rs.15/- or Rs.20/-. Because of accidental fall, there is every possibility of losing the ticket in the accident.

23. At the risk of repetition it is reiterated that the Apex Court as well as this Court had time and again held that the burden of proving that the victim is not a bona fide passenger lies on the Railways and that non-production of railway ticket is not fatal to the case of the claimants. Therefore, the Tribunal should not have dismissed the petition on that ground.

24. In the case on hand, as stated supra, as no person on behalf of the Railways has given any such evidence nor has any person come forward to disclose as to what articles were found with the victim, I am of the considered view that the initial burden of proving the said fact had not been discharged by the Railways. In such circumstances, in the absence of any evidence of the Railway Authorities asserting absence of valid ticket, I am of the opinion that there is no just reason to discard the evidence of the first appellant, who is a widow and lost her husband at the age of 38 years. In the light of the above, since the issue squarely falls within the definition of untoward accident under Section 123(c) (2) of the Act, the claimants are entitled to the compensation as provided in the Schedule to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990.

25. As far as the quantum of compensation is concerned, by placing reliance upon the Amended Rules of Railway Accidents and

Untoward Incidents (Compensation) Rules, 1990, the learned counsel for the appellants submitted that now quantum has been enhanced from Rs.4.00 lakhs to Rs.8.00 and prayed for awarding of Rs.8.00 lakhs in favour of the appellants.

26. It is pertinent to mention that earlier, the Rule permits Rs.4.00 lakhs as compensation. In *Rathi Menon v. Union of India*, reported in (2001) 3 SCC 714, the Hon'ble Supreme Court has considered the question whether the compensation to be applied would be as per Rules applicable on the date of the order or as per the Rules in force at the time of accident or the untoward incident. Reversing the view taken by the Kerala High Court in M.F.A. Nos.1292 and 1293 of 1998, dated 12.8.1999 that the liability to pay compensation arises as soon as accident happens and not when the quantum is determined, the Hon'ble Supreme Court held that liability is to pay compensation 'as may be prescribed', which means as on the date of the order of the Tribunal.

27. The Hon'ble Supreme Court in a recent decision in *Union of India v. Rina Devi*, reported in 2018 (7) SCALE 274 has considered the issue whether the quantum of compensation should be as per the prescribed rate of compensation as on the date of application/incident or on the date of order awarding compensation. In paragraph 15.1 the Hon'ble Supreme Court held as thus:

"15.1. In *Rathi Menon* (supra), this Court considered the question whether the compensation to be applied would be as per Rules applicable on the date of the order or as per the Rules in force at the time of accident or the untoward incident. Reversing the view taken by the Kerala High Court that the liability to pay compensation arises as soon as accident happens and not when the quantum is determined, this Court held that liability is to pay compensation 'as may be prescribed' which means as on the date of the order of the Tribunal. This Court observed that if interpretation placed by the Kerala High Court was to be accepted and the claimant was to get compensation in terms of the market value which prevailed on the date of the accident, the money value of the compensation will be reduced value on account of lapse of time. The revision of rate by the Central Government may itself show that the money value has come down. The Tribunal must apply the rate applicable as per the Rules at the time of making of the order for payment of compensation."

28. Thus, with the amendment of Rule 4 of the 1990 Rules with effect from January 1, 2017, the amount of compensation payable in case of death of a passenger as a result of untoward

incident has been enhanced from Rs.4.00 lakhs to Rs.8.00 lakhs. There is no quarrel over the amendment of Rule 4 of the 1990 Rules by the respondent enhancing the compensation from Rs.4.00 lakhs to Rs.8.00 lakhs.

29. For the reasons aforesaid, this Court sets aside the impugned order of the Tribunal and allows the Claim Application in O.A.(II-U) 344 of 2013 by holding that the appellants are entitled to compensation of a sum of Rs.8,00,000/- with interest at the rate of 7.5% per annum from the respondent Railways from the date of lodging of the Claim Application before the Tribunal till the date of payment. The compensation awarded by this Court together with interest shall be paid by the respondent by issuing an account payee cheque in favour of the appellants. Such cheque shall be deposited in the office of the Registrar General of this Court within a period of twelve weeks from the date of receipt of a copy of this order, whereupon the appellants shall be entitled to collect the same from the Registrar General in equal share upon proving their identity and in accordance with law. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

To

- 1.The Railway Claims Tribunal,
Chennai Bench.
- 2.The Registrar General,
High Court,Madras.
- 3.The General Manager,
Southern Railway,
Chennai.
- 4.The Section Officer,
VR Section, HighCourt, Madras.

+1cc to Mr.S.Parthasarathy, Advocate, S.R.No.62031
+1cc to Mr.T.P.Savitha, Advocate, S.R.No.61977

C.M.A.No.128 of 2015

VBA (CO)

rrs 14/09/2018.