

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.1701 of 2015

Smt.Bhagyavathy
W/o.Late Kandamuthan &
M/o.Deceased K.Vinod.

... Appellant/Applicant

Vs.

Union of India Owing
Owing 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 17.04.2015 made in O.A.No.(II-U) 334 of 2013 on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellant : Mr.T.Rajamohan

For Respondent : Mr.C.V.Ramachandramurthy

JUDGMENT

The claimant who lost their claim in O.A.No.334 of 2013 before the Railway Tribunal has approached this Court in the above appeal.

2. The brief facts are that a body of a certain Vinod, aged 26 years at the relevant time of accident was found on the track by a keyman at Madukarai on 19.11.2012 at 08.15 hrs., This was reported by him. It is in this circumstance, the claimant/mother of the deceased had moved the Railway Claims Tribunal seeking compensation under Section 16 of Railway Claims Tribunal Act, 1987 read with Section 123(c) (2) and 124-A of Railways Act, 1989.

3. It is alleged in the claim petition that the deceased Vinod had left for Tiruppur on 17.11.2012 at about 8 p.m. for meeting his friend. On 18.11.2012, Vinod informed the appellant/claimant that he would return after his visit to Tiruppur, but on

19.11.2012, the appellant/mother of the deceased, was informed by the Railway Police, Podanur, that her son for his down ward journey from Tiruppur to his hometown in Kerala, had boarded some train before 8.15 a.m., on 19.11.2012 and that he had accidentally fallen down from the running train at Madukarai Yard and was caught in the wheels of the train and died on the spot.

4. Before the Railway Tribunal, the appellant/claimant had marked Exts.A1 to A6. Ext.A1 is the FIR and Ext.A2 is the inquest Report, which are relevant for the current purpose. For the Department, none was examined. The Divisional Railway Manager filed his report, dated 03.03.2014.

5. The Railway Tribunal rejected the claim of the appellant/claimant on the ground that (a) the deceased Vinod was not a bonafide passenger since no ticket was recovered from him and (b) no untoward incident of the claim as defined under Section 123(c) (2) of the Railways Act, had taken place.

6. The learned counsel for the appellant/claimant submitted that the approach of the Railway Tribunal is contrary to ordinary course of human conduct, since in a situation where an accident takes place, or where the body lies in an open place, it will be extremely difficult to preserve the ticket and hence to insist that ticket be either recovered from the body or is preserved and produced by the claimant is asking for the impossible, and it would defeat the object of the beneficial part of the legislation. On the same ground, the Railway Tribunal also held that it was not an accidental fall. The learned counsel added that the burden is on the Railways to establish that the victim had not died due to any untoward incident, and in order to establish the same, the Railway Tribunal ought to have examined at least the engine driver of the train or some other officials at the relevant time of the accident. It is important for the appellant to prove that the victim had fallen accidentally from the train during travel. In the circumstances such as this, the law does not expect one to prove that which is incapable of being proved or become it is impossible of proving.

7. Refuting the contention of the learned counsel for the appellant, the learned counsel appearing for the Railways contended that it is not a case of some one falling from the train, since the body was found by the keyman in the sides of the track and therefore, it is impossible for anyone to have noticed how this body happened to be there where it was spotted.

8. This Court perused Ext.A2 inquest report and Ext.A3 post mortem certificate. Admittedly, the body of Vinod was found near the rails with both his legs traumatically amputated and

multiple injuries were found all over his body. The doctor, who has conducted autopsy has not found any injuries of such nature which could have given some suspicion to this Court as to the cause of death of the victim other than one due caused due to a train running over him. Based on this evidence, this Court has to necessarily come to the conclusion that the victim died by a train running over him.

9. As to the second part that because the deceased Vinod was not a bonafide traveller, hence he could not have travelled in the train, and hence he might not have died due to any untoward incident is concerned, this Court finds adequate reasons to differ from the opinion of the Railway Tribunal. As rightly contended by the learned counsel for the appellant, law cannot stay in vacuum, unconnected from the ordinary human experiences. The Railway Tribunal appeared to have reconstructed the entire occurrences after ignoring the realities of human experience.

10. Here is a body, which no one knows since when it is lying there in an open place, with legs amputated, and the victim meeting his ultimate end in manner that would shock the sensitivity of an ordinary man, is held not to possess a ticket when his body was examined. The Railway Tribunal ought to have asked itself a question if it was humanly possible to recover a ticket from a body lying in an open place in the manner described? It should have considered whether the conclusion that it had arrived at was consistent with natural course of events? Should it not have weighed the possibility of number of unknown persons who might have touched the body? Its course of reasoning is distanced far away from human experience. In a situation such as, this Court is inclined to grant the benefit to the victim.

11. Secondly, if it is looked from another angle, if the train had ran over the victim of an incident when he attempted to cross the track, the driver of the train would have spotted him crossing the track. When this possibility is excluded even by the counsel for the Railways, the first option is given credence. This Court therefore, concludes that the deceased Vinod was a bonafide traveller and given the nature of injury found on the body of the victim, it could have been caused only in an untoward incident.

12. This Court therefore, do not find any merit in the reasoning of the Railway Tribunal for denying the compensation to the appellant in justifying and accordingly, this Court allows this Civil Miscellaneous Appeal and set aside the Order dated 17.04.2015 made in O.A.No.(II-U) 334 of 2013 on the file of the Railway Claims Tribunal, Chennai Bench. As per the notification of Ministry of Railways, dated 22.12.2016, in G.S.R.No.1165(E),

compensation payable under Section 129 of the Railways Act, 1989 is enhanced from Rs.4,00,000/- to Rs.8,00,000/-. The appellant is entitled to receive this amount.

13. The respondent is directed to deposit Rs.8,00,000/- along with interest @ 4% per annum from the date of petition till 31.12.2016 and interest @ 6% per annum from 01.01.2017 till the date of deposit before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant, who is the mother of the deceased, would be entitled to Rs.8,00,000/- (Rupees Eight Lakhs Only) and the Tribunal is directed to transfer the said sum directly to the account of the appellant through RTGS within a period of eight weeks thereafter. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To:

1. The Railway Claims Tribunal,
Chennai Bench.
2. The General Manager,
Union of India,
Southern Railway,
Chennai.
3. The Section Officer
V.R.Section,
High Court,
Madras. (2 COPIES)

+2cc to Mr.T.RAJAMOHAN, Advocate, S.R.No.38994

+1cc to Mr.C.V.RAMACHANDRAMURTHY, Advocate, S.R.No.39496

C.M.A.No.1701 of 2015

KK(CO)

TR(25/07/2018)