

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.294 of 2011  
and M.P.No.1 of 2011

The Union of India Owning  
Southern Railways,  
Rep. by its General Manager,  
Chennai.

... Appellant/Respondent

Vs.

1. Rathinammal  
2. S.Krishnamoorthy  
3. S.Kannan

... Respondents/Applicants

Prayer : Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987 against the order dated 04.01.2011 in O.A.No.2010 00080 passed by the Railway Claims Tribunal, Chennai Bench.

For Appellants : Dr.S.R.Sundaram

For Respondents : Mr.T.Rajamohan

J U D G M E N T

Aggrieved over the award passed by the Railway Claims Tribunal, Chennai Bench, in O.A.No.2010 00080 of 2010, dated 04.01.2011, the Railway has preferred this Civil Miscellaneous Appeal.

2. According to the Railway, the deceased was not a bona fide passenger and there was no probability for the untoward incident alleged to have taken place. The Tribunal failed to see that the police report is on extraneous consideration and the Tribunal ought not to have accepted the documents marked by the claimants. No eye witnesses were examined to prove that the deceased was travelling by train and the decision of the Tribunal came to be passed on presumption and surmises, only because the onus lies on the Railways to prove the case, the Tribunal has mechanically awarded compensation. The order passed by the Tribunal is erroneous and based on conjectures and surmises. The accident has not been proved, yet, the award was granted to the claimants.

3. According to the applicants, the deceased left the house at Nagalapuram informing that he was proceeding to Chennai to see his younger son, the 3<sup>rd</sup> applicant. He always used to travel by train from Dindigul to Chennai. On 18.07.2009 at early hours, he had an accidental fall near Tamaraipadi and on information to the Station Master at Tamaraipadi, he was sent to Government Hospital, Dindigul and thereafter, shifted to Government Rajaji Hospital, Madurai, where he died on 20.07.2009. Since the deceased did not reach Chennai, the applicants searched him everywhere and lodged an FIR on 27.07.2009 with Podi Rural Police Station in FIR No.259 of 2009 as man missing case. A publication was given on 28.07.2009, pursuant to which the reporter of the Tamil Daily "Dina Thanthi", informed the applicants about the death of an unidentified body near Dindigul. On approaching Dindigul Railway Police, they could identify the deceased from the photograph taken by them. On the death, they made this claim petition for compensation.

4. The appellant/Railway denied the case of accidental fall, stating that they are not liable to pay compensation. To prove the case, the claimants have examined the 2<sup>nd</sup> applicant as A.W.1 and marked Exs.A1 to A10. On the side of the respondent, the Station Master was examined as R.W.1. On analysing the oral and documentary evidence, the Tribunal has come to a conclusion that the death was considered as caused due to the accidental fall and therefore, it is an untoward incident and awarded the compensation of Rs.4,00,000/- and apportioned the same, in the ratio of 2:1:1, for wife and sons of the deceased.

5. As stated above, the Railway has filed the appeal on general grounds, that the accident in question is not an untoward incident and the respondents are not in a position to prove the negative. Only the preponderance of probability has been taken to support the case of the claimants and the order passed by the Tribunal is based on conjectures and surmises, in violation of various judicial pronouncements, and, as such, the impugned order is liable to be set aside.

6. Heard the contentions made by the learned counsel appearing for both the parties.

7. The applicants have let in clear evidence that the deceased had left his house for meeting his younger son at Chennai. It is not denied that the mode of transportation from the Dindigul to Chennai is available through Railway as well as through bus. Since the person did not reach Chennai nor return back to his house, it is natural that a police complaint was lodged. The Railway Protection Force has identified the body of the deceased with the help of photograph provided by the applicants. Ex.A1 is the postmortem certificate, Ex.A2 is the death certificate, Ex.A8 is record of the Dindigul Hospital, Ex.A9 is the Accident Register Extract of Madurai Rajaji Hospital and Ex.A10 is the Statement of the Police.

8. The Tribunal has considered the sequences from the accident till date of death and upon consideration from where the body was found based on inquest report, Ex.A7, has come to a conclusion that the deceased was a passenger of the train and he suffered death due to the untoward incident. There are no strong grounds to disbelieve the nature of accident and the preponderance of probability clearly would go to show that the deceased had died due to the untoward incident while traveling in the train. Therefore, the finding of the Tribunal is based on sound reasons.

9. It is also mandatory to send a report to the Railway Claims Tribunal within one month. It is mandatory under Rule 16 of the Railway Claims Tribunal Act, 1987, that DRM's report shall be filed along with reply statement. But, in this case, it was not marked, but filed on 27.09.2010. There are lapses in sending this report. The evidence of the respondent, R.W.1, Station Master also shows that the male aged about 60 years has suffered an accident and was found alive near railway track. Therefore, there is every reason to believe that the accident had taken place due to the accidental fall and it has to be construed as an untoward incident.

10. The next issue raised by the appellant is that the person is not a bona fide passenger. Based on the oral and documentary evidence, it is well established that the deceased travelled by train. The tickets could not be retrieved from the spot and the inquest report also does not reveal any recovery of the same. As held by various judgments the benefit of doubt shall be given in favour of the deceased, in the absence of contra-evidence. The deceased shall be presumed as a bona fide passenger. Therefore, this Court does not find any contradictory points or reasons to interfere with the award of the Tribunal.

11. In the result, the award passed by the Tribunal is confirmed, and this Civil Miscellaneous Appeal is dismissed.

12. The Tribunal has awarded a sum of Rs.4,00,000/-, but the appellant/Railway has not deposited the money. The appellant has obtained a stay of operation of the award of the Tribunal. The learned counsel for the respondents/claimants would submit that the Notification of the Ministry of Railways (Railway Board) dated 22.12.2016 in G.S.R.1165 (E), wherein, Part I of the Schedule under Rule 3 of the Rules prescribed Rs.8,00,000/- as compensation for death.

13. In a judgment rendered by the Hon'ble Supreme Court in the case of Rathi Menon Vs. Union of India reported in 2001 ACJ 721, it has been held that the collocation of the words "as may be prescribed" in Section 124-A of the Act is to be understood as to mean 'as may be prescribed from time to time'. The Hon'ble Supreme Court has observed that 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. Therefore, liability to pay compensation is on the Railway to the extent as may be prescribed and it would denote that the disbursement of the compensation shall be at the rate prevailing on the date of final adjudication.

14. 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 that the claimants were entitled to get the compensation, which is prevailing on the date of final adjudication.

15. The learned counsel for the respondents would submit that the matter is finally adjudicated on this day, in view of stay granted by this Court and due to non-deposit of the award amount in Court. As per the Notification the amount of compensation as of today is Rs.8,00,000/- for the case of death and therefore, the claimants are entitled to get the sum of Rs.8,00,000/- with interest.

16. Considering the judgment of the Hon'ble Supreme Court and the other judgment cited supra, this Court modifies the award amount from a sum of Rs.4,00,000/- to a sum of Rs.8,00,000/- as per the Notification of the Ministry of Railways (Railway Board) dated 22.12.2016 in G.S.R.1165 (E).



17. The Railway is directed to deposit the sum of Rs.8,00,000/- (Rupees Eight lakh only) with interest at 6% per annum from the date of application till the date of deposit, within a period of four (4) months from the date of receipt of a copy of this order. On such deposit, the respondents are entitled to withdraw the same.

18. With the above observations and directions, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Railway Claims Tribunal, Chennai Bench.

2. The General Manager, Union of India,  
Owing Southern Railway, Chennai - 600 003.

+2cc to Mr.T.RAJAMOHAN, Advocate, S.R.No. 1187

+1cc to Mr.S.R.SUNDARAM, Advocate, S.R.No. 1027

C.M.A.No.294 of 2011  
and M.P.No.1 of 2011

SJ(CO)  
TR(08/02/2018)

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