

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.764 of 2016

1.Shoba

2. Kiranraj (minor)

A-2 being minor rep.by mother &
natural guardian A-1.

Wife & minor son of deceased V.Shivakumar. ... Appellants

Vs.

Union of India Owning
Southern Western Railways rep.by
its General Manager,
Hubli.

... Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987 against the Judgment dated 15.02.2016 made in O.A.No.(II-U) 125 of 2015 on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellants

: Mr.M.Sivakumar

For Respondent

: Mr.U.Venkatesan

JUDGMENT

The claimants who lost their claim in O.A.No.125 of 2015 before the Railway Tribunal have approached this Court in the above appeal.

2. The brief facts are that on 17.02.2009, Shivakumar, the husband of the 1st appellant and father of the 2nd appellant, while travelling from Bangalore to Kanadikuppam village was standing near the entrance of the carriage, and due to heavy rush in the train, he fell down from the running train and was crushed to death. Contending that he was a bonafide traveller and that his death was occasioned due to an untoward incident during his journey, his heirs had laid a claim for compensation.

3. This was resisted by the Railways essentially on the ground that Shivakumar was not a bonafide traveller. The Tribunal had relied on two essential circumstances to arrive at its conclusion that Shivakumar was not a bonafide traveller:

- a) That no train ticket was recovered from the body ;
- b) That the body was cut into two halves and found lying between two rails of the same track, which is improbable position for a body to lie if only the victim had fallen from a running train.

4.1. The learned counsel for the appellants argued that whether the victim was a bonafide traveller at the relevant time should not be determined based solely on the fact if ticket was recovered from his body. At any rate the claimants/appellants were only informed about the accident and were not at the scene of accident to meticulously collect the ticket. That the police or the post-mortem doctor have not found the ticket was also not conclusive of the fact that the victim was not a bonafide traveller. And the Railway Protection Force's investigation and report is not contemporaneously undertaken and therefore what it states is only a hearsay. As to the second point, position of a body between the rails can never help recreating an accident. The learned counsel alleged that the impugned order of the Railway Tribunal is a product of what the Tribunal has believed as ideal and appeared to have been solely guided by its own logic.

4.2. The counsel for the Railways argued along the lines of the reasoning of the impugned order and justified it.

5. This Court finds merit in the submissions of the appellant's counsel. Whether a victim of an untoward accident is a bonafide traveler cannot be decided based on pure logic, unassociated with human experience. When an accident takes place, the victim does not know what was happening to him. The first impulse in all those who might have seen someone falling from a train would be to save one's life or rushing him to hospital. A humanistic visualization of an accident situation brings to mind instant chaos and commotion at the scene of accident, and human behaviour would defy all the rules which logic may suggest as an ideal behaviour. Those on the ground trying to save a life will not have the comfort of a court-room, nor the mindset of a logician to conduct themselves. They will behave the way human beings are expected to behave. Inventions of robots, the court takes judicial notice of, yet grounds are not yet established for the Court to decide issues affecting human lives with the mind of a machine. So far as in this case is concerned, the body is torn into two halves, and thrown part, and where can one reasonably find a ticket? Is this a reasonable and humane way to approach a decision on the issue?

6. This court records with a degree of disappointment that somewhere someone still believes that life of law is logic and not human experience. After a careful consideration and rival submissions, this Court holds that the Tribunal below appeared to have lost its focus in logic than what is necessary in holding that Shivakumar was not a bonafide traveller.

7. As to the second point, a body split into two parts, found between the rails, and the Tribunal enters a shocking finding that the cause of it could not have been an untoward incident. Has ever anyone succeeded in recreating the dynamics of an accident with the degree of accuracy and to the extent which may embarrass science? Hence, law finds comfort in applying the rule of preponderance of probability, viewing facts in issue and the evidence in their aid from the arm-chair of a reasonable man, and not a logical man, for forming its conclusion on fact. When dynamics of an accident cannot be explained, to rely on the position of a split body is hardly the kind of material which may preponderate a probability that victim might not have been a victim of untoward incident. And the cause of the fall and the position of the body do not have a close connect and the latter is incapable of deciding on the former, namely the cause of the fall.

8. This Court therefore, does not find any merit in this appeal. Accordingly, this Court allows this Civil Miscellaneous Appeal and set aside the order dated 15.02.2016 made in O.A.No. (II-U) 125 of 2015 on the file of the Railway Claims Tribunal, Chennai Bench.

9. At this juncture, the learned counsel for the appellants relied upon the decision of this Court in S.Kannadasan and Another vs. Union of India [(2017) 5 MLJ 543] and Smt.R.Nandini vs. The Union of India [C.M.A.No.1383 of 2016] wherein it has been held that the compensation shall be paid as on the date of passing of the order. It is brought to the notice of this Court that the Hon'ble Supreme Court in Union of India vs. Rina Devi [C.A.No.4945 of 2018 dated 09.05.2018] has referred to the above view of this Court, and has held that compensation shall be paid as on the date of the order and not on the date of accident from 01.01.2017. 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/-.

10. The appellants are entitled to receive this amount. The respondent is directed to deposit the entire amount of compensation along with interest @ 6% per annum from the date of petition till the date of deposit before the Tribunal, within a period of four weeks from the date of receipt of a copy of this

order. On such deposit being made, the 1st appellant, who is the wife of the deceased, would be entitled to Rs.5,00,000/- (Rupees Five Lakhs Only) and the Tribunal is directed to transfer the said sum directly to the account of the 1st appellant through RTGS within a period of four weeks thereafter. The 2nd appellant/minor is entitled to Rs.3,00,000/- (Rupees Three Lakhs Only) and the same shall be deposited in interest bearing Fixed Deposit, in any one of the nationalised banks, till he attains majority. The 1st appellant would be permitted to withdraw interest accruing on such deposit once in three months. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssn

To:

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

+lcc to Mr.C.Prabakaran, Advocate, S.R.No.37054.

+lcc to Mr.U.Venkatesan, Advocate, S.R.No. 36967.

KJI(CO)
BM 09/07/2018

C.M.A.No.764 of 2016

WEB COPY