

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.03.2018

CORAM :

THE HON'BLE MR. JUSTICE N.KIRUBAKARAN

C.M.A.No. 60 of 2017

in

O.A.(II-U) 287 of 2014

1.Smt.Selvanayagi
2.Smt.Chellammal
3.Ramasamy
4.Smt.Anjalai
5.Smt.Kavitha

...Appellants

Vs.

The Union of India owning
Southern Railway
Rep by its General Manager
Chennai - 600 003.

...Respondent

Payer: Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987, the order dated 19.08.2015 passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U) 287/2014 be set aside granting an award for the statutory compensation of Rs.4,00,000/- with interest at 12% p.a. from the date of filing of the claim application viz., 15.10.2014 till the date of payment and the costs of the proceedings.

For Appellants : T.Raja Mohan

For Respondent : Mrs.T.P.Savitha

O R D E R

The appeal is filed by the legal heirs of Mrs.Pappal, Wife of Late Karuppan, who travelled from Pennadam to Mathur Railway station by Villupuram-Madurai Passenger Train, bearing No.56705, on 23.10.2013 and died by accidental fall from the train at Matthur Railway Station. Therefore, the legal heirs of the deceased have filed the present claim petition. The said claim petition was dismissed, stating that the appellants have not proved that the deceased was a bonafide passenger having a travel ticket and therefore, she was not a bonafide passenger and the accident in which she died is not an untoward incident as per Section 124-A of the Railways Act.

2.Heard Mr.T.Raja Mohan, learned counsel appearing for the appellants and Mrs.Savitha, learned counsel appearing for the respondent.

3.It is submitted by both the parties that the said Pappal travelled by Villupuram-Madurai Passenger train from Pennadam to

Mathur Railway Station and she died at Matthur Railway Station by accidentally falling from the train as evident from the final report filed by the Railway Police, dated 20.03.2014. Further, it is fortified by the report of the Inspector of the Railways dated 29.12.2014.

4. When the final report filed by the railway police dated 20.03.2014, shows that the death is due to accidental fall from the train, it should be deemed to be or called as an untoward incident, as defined under Section 124-A of the Railways Act. Therefore, the above finding, being contrary, is set aside. With regard to the holding of valid ticket by the deceased, it is observed by the Tribunal that the deceased was not holding any valid ticket and even when the body was searched, no ticket was found and therefore, held that the deceased cannot be treated as a bonafide passenger.

5. The approach of the Tribunal is against the settled position of law. The burden of proof is entirely on the Railways as held by this court in the case of D.Rajathi and others Vs. Union of India reported in (2001) 1 T.L.N.J. 146, which is being followed up to date by this court in C.M.A.No.548 of 2016 dated 30.01.2018, in the case of P.Santhi and 3 others Vs. Union of India.

6. Further, a Division Bench of High Court of Madhya Pradesh in Rajakumari and another Vs. Union of India reported in 1993 ACJ 846; a Division Bench of Andhra Pradesh High Court in the case of Union of India Vs. Babu Rao Koddekar and another reported in 2003 ACJ 1286 and a Division Bench of Kerala High Court in the case of Muhammed Kunju and others Vs. Union of India reported in 2005 ACJ 1356, categorically held that the burden of proof that the deceased was a ticketless traveller is always on the Railway's Administration. In view of the above judgments and in view of the evidence adduced on behalf of the appellants, which has not been rebutted by any rebuttal evidence of the respondent, the deceased has necessarily to be termed as bonafide passenger.

7. Even though the railway claimed that the passenger died due to her own negligent act, the Hon'ble Supreme Court in the case of Jammila and others Vs. Union of India reported in AIR 2010 Supreme Court 3705, held that negligence of passenger does not have effect on liability of the railways and the claimants are entitled to compensation with interest.

8. Therefore this court holds that

(1) Railway failed to prove that the deceased was not a bonafide passenger especially when the railway themselves admitted, she travelled and she died due to her own

negligence as evident from the final report and Inspector's report.

(2) Since the railway admitted that she died by accidental falling down from the train as proved by Inquest Report and Final Report, it is an accidental death due to untoward incident as defined under Section 124-A of the Railways Act.

9. Therefore, the civil miscellaneous appeal is allowed. The appellants are daughters and sons of the deceased and though the death occurred on 23.10.2013 and the order was passed dismissing the claim application on 19.08.2015, the matter is decided today, on 21.03.2018 by which time, Railways Act has been amended increasing the compensation amount from Rs.4,00,000/- to Rs.8,00,000/-. The Hon'ble Supreme Court in the case of Rathi Menon Vs. Union of India reported in 2001 ACJ 721 stated that the victim, who is injured, is entitled to for compensation as per the law, when the case is decided. Since the determination of the compensation amount is made today i.e., 21.03.2018, as per the G.O. dated 26.05.2014 issued by the Railways, the appellants are entitled to Rs.8,00,000/- along with interest at 6% per annum from the date of filing of the petition. The appellants are sons and daughters of the deceased. Therefore, they are entitled to equal share in the compensation amount. The Railway is directed to deposit the entire amount, within 12 weeks from the date of receipt of a copy of this order. On such deposit, the respective share on the compensation amount shall be transferred through RTGS to the respective accounts of the appellants within a period of one week, thereafter. No costs.

mayaya

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

To
The General Manager
Southern Railways
Chennai - 600 003.

+2cc to Mr.T.Rajamohan, Advocate Sr.No.21838
+1cc to Mrs.T.P.Savitha, Advocate SR.No.21537

TM(COO
sm:9.7.2018

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