

IN THE HIGH Court OF JUDICATURE AT MADRAS
DATED: 20.12.2018

CORAM
THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.561 of 2014
and
M.P.No.1 of 2014

The Union of India Owning
Southern Railway,
Park Town,
Madras-600 003.
Rep by its The General Manager

...Appellant

Vs.

V.Pandiyammal

...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act, to call for the entire records and set aside the final order of the Railway Claims Tribunal, Madras Bench dated 14.11.2013 in O.A.(II-U)156 of 2013.

For Appellant :Mr.C.V.Ramachandra Moorthy

For Respondent :Mr.T.Rajamohan

J U D G M E N T

The Civil Miscellaneous Petition has been filed against the final order passed by the Railway Claims Tribunal, Madras Bench dated 14.11.2013 under Section 23 of the Railway Claims Tribunal Act,1987 (Act 54 of 1987) in O.A.No.(II-U)156 of 2013 raising various grounds.

2.The Railway Tribunal has passed an award allowing the claim made by the applicant and directed the Southern Railway to pay a sum of Rs.4,00,000/- together with interest to be paid to the respondents at 6% per annum from 16.05.2013 till the date of the order and thereafter 9% per annum till the actual payment.

3.The case of the appellant/Railway is that the Tribunal has come to a wrong conclusion that the deceased was a bonafide passenger and the Tribunal has not accepted the ground taken by the appellant that the deceased was a trespasser, while he was staying in the platform for more than two hours, since the

validity of the platform ticket has expired, which is only valid for two hours from the time of purchase. The learned member Technical Railway Claims Tribunal has awarded the compensation on mere presumption and assumption and when there is no witnesses to the said incident and the claim of the deceased brother that he came to the station to see the deceased in Chennai was not convincing and the Divisional Railway Manager, after the due investigation, had submitted the mandatory Report that the cause of death is due to self inflicted injury due to carelessness, awarding the compensation is not justifiable and the award has been passed only on compassion, by totally bypassing the specific provisions contained in the Indian Railways Act. Without examining any eye witness, the compensation awarded by the investigating officer was apparently serious error committed by the Tribunal and hence prayed to set aside the order of the tribunal.

4.It could be seen that the claimant/respondent, who is the widowed mother of the deceased, has claiming compensation of Rs.4,00,000/-. The case of the claimant was that on 29.05.2012, the deceased person had purchased platform ticket and helped his brother to board a train to Chennai and after keeping the luggage in the compartment, while getting down or alighting from the train, he, due to sudden movement of the train, had accidentally slipped and fallen down between the train and the platform and crushed to death. The deceased was holding a platform ticket, which was seized by the inquest officer and she prayed that her son has accidentally fell down, due to which she is entitled for compensation.

5.The Divisional Railway Manager in his report has admitted that the deceased was holding a platform ticket and they would further content that the platform ticket holder is not permitted to enter into compartment as per the existing Railway Rules and the cause of death was only due to self-inflicted injury due to the carelessness of the deceased and the railway is not entitled to pay the compensation.

6.The Tribunal has framed the issued whether the said untoward incident occurred to the deceased who had a platform ticket while alighting from train on 29.05.2012 at Tirupur Railway Station and died at spot comes under Section 123(c)(2) of the Railways Act, 1989, and the same has been decided by the Tribunal.

7.From the award, it could be seen that the claimant was examined as A.W.1 and she has also marked the following documents in her favour viz., FIR, inquest report, post mortem report, death certificate, final report, certified copy of platform ticket, LHC and A.W.2 was also examined. On the respondent side, report of Divisional Railway Manager, Salem

division dated 20.06.2013 was marked, but, no person was examined as witness.

8.The tribunal has rightly come to the conclusion that the deceased came to the railway station to see his brother in the morning on 29.05.2012 for his journey to Chennai, and the said witness was not aware that his brother fell down and only after reaching his destination, he learnt through his mother the said incident and it is not in dispute that the deceased was holding a platform ticket and he is a valid person to enter into the railway station and while alighting from the train, he has fallen down and died. The respondent's contention is that the platform ticket holder is not entitled to enter into the compartment and the said ticket was issued at 01.34 hours on 29.05.2012 and as the alleged incident had occurred around 05.30 hours, the platform ticket was valid only for two hours from the time of issue and hence the deceased was not a valid holder of platform ticket at the time of the incident. Section 124-A of Railways Act talks only about valid platform ticket and no time limit is mentioned in the said explanation. The learned counsel also argued that since the deceased had over stayed in the platform, he could have been penalized by the ticket checking staff at the premise and no such incident has taken place in the platform.

9.The train in which the brother of the deceased travelled was not identified and even AW-2 in the cross-examination has deposed that he was not aware of the name and number of the train. According to him, he had boarded the train at about 05.25 a.m. It is a common practice, that the persons going for a long distance come and stay in the platform in the night and there are many trains pass through Tiruppur during the wee hours and the brother of the deceased had travelled in the train around 05.30 a.m. The Tribunal has also taken into consideration the possibility of the expected train coming late and accordingly the same cannot be ruled out and the brother of the deceased getting into the train at around 5.30 hours eventhough he entered into the railway station at around 1.30 hours. The arguments put forth by the Railway was negatived by the Tribunal stating that untoward incident has taken place and the deceased has to be taken as a bonafide passenger as per the rules. It is a common knowledge and it happens that when a person, who are new to travelling, in train, the other persons can help him in settling down and they buy a platform ticket. Accordingly the deceased also has come to the station and left his brother in a Chennai train. The Tribunal has a presumption that the train, in which the deceased met with his fate, had only a stoppage for a few minutes. Hence under Section 124-A of the Railways Act, 1989 which clearly stipulates that 'passenger' includes a person who has purchased a valid platform ticket on any date and becomes a victim of an untoward incident, the rule quoted by the learned

counsel becomes redundant.

10.As per the report of the inquest officer in their investigation report, it is clear that while the deceased was detraining from the coach, the train had started to move and the deceased had fallen down from the said train and died at the spot, hence, the contention of the Railway that the deceased sustained self inflicted injury, cannot be accepted. When the act of the deceased cannot be termed as a self-inflicted injury and carelessness cannot be attributed on the part of the deceased and Section 124 lays down the theory of strict liability or no fault liability in case of Railway accidents and if a case comes within the purview of Section 124-A, it is wholly irrelevant as to who was at fault. The Tribunal has rightly held in favour of the claimant by holding that there was an untoward incident as defined under Section 123(c) (2) of the Railways Act, 1989.

11.It could be also seen from the findings that as per Compensation Rules, the prescribed rate of compensation for death is a sum of Rs.4,00,000/-. Hence the Tribunal has rightly awarded Rs.4,00,000/- to the claimant with pendent lite interest at 6% per annum from 16.05.2013 i.e., date of filing of application till the date of the order of the Tribunal and thereafter at 9% per annum till the date of actual payment.

12.In number of cases the Supreme Court has held that even a person has boarded the train and in the absence of valid ticket his claim has to be considered. In this case, the deceased was holding a valid platform ticket and as such, he has to be treated as a bonafide passenger and not otherwise. Regarding contention that there is a self inflicted injury by the deceased has to be proved by the Railway Department and in the absence of any contra evidence produced, the deceased has to be treated only as a bonafide passenger who has accidentally fallen down. The concept of self-inflicted injury has been defined as where attempt of getting into or getting down a moving train resulting in an accident was a case of 'self inflicted injury', so as not to entitle any compensation or no such concept could not apply under the scheme of law which casts strict liability to pay compensation by the Railway under Sections 124 and 124-A. The definition of passenger says that even a person found dead near the railway track, has to be presumed to be a bonafide passenger for maintaining a claim of compensation in the absence of recovery of ticket from his body. The concept of 'self inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree of doing so, which would amount to invoking the principle of contributory negligence, which cannot be done in the case of liability based on 'no fault theory'. Accordingly death or injury in the course of boarding or de-boarding a train will be

an 'untoward incident' entitling a victim to the compensation and will not fall under the proviso to Section 124-A merely on the plea of negligence of the victim as a contributing factor.

13. The learned counsel for the respondent/applicant has produced a Railway Board Gazette Notification dated 22.12.2016, wherein there is an amendment to the Railway Accidents and untoward incidents (compensation) Rules, 1990 and the learned counsel submitted that as per Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 2016, the amount of compensation has been enhanced from Rs.4,00,000/- to Rs.8,00,000/-, with effect from 01.01.2017 and by virtue of the judgment passed by the Supreme Court in Civil Appeal No.4945 of 2018 dated 09.05.2018, the quantum of compensation is payable with interest at 9% per annum from the date of filing of claim.

14. The learned counsel for the respondent/claimant has produced a judgment of the Hon'ble Supreme Court in Civil Appeal No.4945 of 2018 reported in AIR 2018 Supreme Court 2362 (Union of India ..vs.. Rina Devi), wherein the Hon'ble Apex Court has held that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases and in the absence of any specific statutory provision, interest can be awarded from the date of accident itself, when the liability of the Railways arises upto the date of payment.

15. On perusal of the Railway Gazette Notification dated 22.12.2016, it could be seen that there is an amendment to the sub-rule (2) in Rule 3 of Railway Accidents and Untoward Incidents (Compensation) Rules and the same reads as follows:-

- " (i) in sub-rule (2), for the words "rupees four lakhs", the words "eight lakhs" shall be substituted;
- (ii) in the second proviso to sub-rule (3), for the words "rupees eighty thousand", the words "rupees one lakh sixty thousand" shall be substituted."

The said amendment came into force only from 01.01.2017, i.e., prospective effect alone is given and no retrospective effect is given to the said amendment. Hence, the said amendment is not applicable to the present case, since in this case, the accident occurred prior to the amendment came into force i.e., on 29.05.2012.

16. In view of the above circumstances, this Court is of the opinion that the Railway Tribunal has correctly considered the case put forth before it and decided the same. The compensation of Rs.4,00,000/- (Rupees Four Lakhs Only) with interest, as awarded by the Railway Claims Tribunal is hereby confirmed. Accordingly, the Civil Miscellaneous appeal is

dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

vji/nsd

To

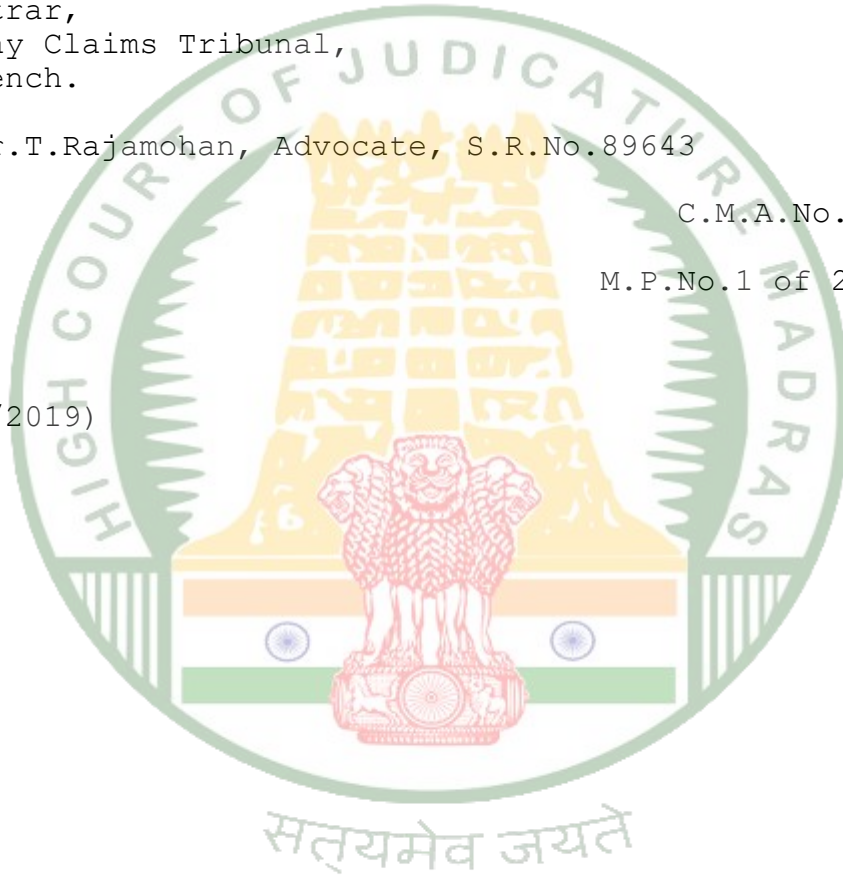
The Registrar,
The Railway Claims Tribunal,
Chennai Bench.

+1cc to Mr.T.Rajamohan, Advocate, S.R.No.89643

C.M.A.No.561 of 2014
and
M.P.No.1 of 2014.12.2018

PPA (CO)

RRS (22/04/2019)



WEB COPY