

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.742 of 2017

M.Saratha

... Appellant

Vs.

The Union of India Owning
Southern Railway,
rep. by its General Manager,
Chennai - 600 003.

... Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 23(1) of Railways Claims Tribunal Act, against the Judgemnet dated 14.07.2015 made in O.A.(II-U) 385/2013 on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellant : Mr.M.Selvam

For Respondent : M/s.A.Shrijayanthi

JUDGMENT

This Civil Miscellaneous appeal is filed by the appellants who is the claimant against the order dated 14.07.2015 and made in O.A.No.(II-U) 385 of 2013 by the Railway Claims Tribunal, Chennai Bench dismissing the claim petition filed by the appellant, who is the wife of the deceased Mookan.

2.The appellant herein has contended before the Tribunal that the deceased Mookan was a passenger in the EMU Train No.43503 from Chennai Central to Tiruttani, when the train entered the Villivakkam Railway Station Platform No.1 at down slow line due to overcrowding the deceased fell down from the running train at Villivakkam Railway Stations Platform No.1 down slow line, sustained greivous injury on the back of his head, fracture of both legs below knee and died at the place of the accident. According to the appellants, the deceased purchased ticket to travel in the train but the same was lost.

3.The respondent has disputed the version of the appellant and in its reply statement had stated that the deceased was not a bonafide passenger and that no eye witness has been examined by the inquest officer and denied any claim of compensation.

4.Before the Tribunal the appellant examined herself as AW1 and marked Exs.A1 to A5, the respondent did not have any witness but later they filed a petition to examine the Guard of EMU train. Since the guard of the EMU had retired by that time, they examined the Loco Pilot Mr.K.Rajendran as RW1 and marked one document. The Loco Pilot had alleged that the deceased had trespassed into the track and he was run over. The Tribunal believed the statement of Loco Pilot and dismissed the claim petition since it is not an untoward incident. Challenging the same the appellant has filed the present Civil Miscellaneous Appeal.

5.I heard Mr.M.Selvam, learned counsel for the appellant and M/s.A.Shrijayanthi, learned counsel for the respondent and perused the entire materials available on record and Judgments produced by either parties.

6.The learned counsel for the appellant submitted that the deceased had travelled by the EMU Train No.43503 on 12.06.2013 and due to overcrowding of the train he fell down from the train and died due to the injuries sustained therefrom. The Guard of the train EMU No.43503 reported the same to the Station Master and based on the complaint of the Station Master a case in Cr.No.360 of 2013 under Section 174 of Cr.P.C. was registered by the GRP Perambur, Chennai-11. The case was investigated by the GRP. The Inquest was also conducted, it was found in inquest that the deceased was travelling in the Train No.43503 and he had fallen from the running train and died of injuries sustained. The GRP after investigation has also filed its final report stating that the deceased died due to a fall from the train.

7.The respondent at the fag end of the proceedings appeared to have filed a petition to reopen and to let in the evidence of the guard of the train. The petition was allowed, however since the guard had retired by that time he could not be produced. The respondent again filed petition to examine the Loco Pilot of the said train. The Loco Pilot K.Rajendran was examined as RW1. The Loco pilot came up with a new case altogether that the deceased trespassed into the track and was run over. Such a stand was never taken by the respondent in their reply. Further when an untoward incident is reported it is the duty of the guard of the train to make a proper report the Station Master who in turn reports the same to the police. If a person jumps into the track

and gets himself killed there would have been eye witness and further the motorman ought to have reported the same to the guard and the guard to the Station Master. There is a serious lapse on the part of the respondents. Now should the court believe the statement of the Loco Pilot. To add suspicion to the statement of the Loco Pilot is his admission that there are some over writing in the rough journal. Such alternation could have been made subsequently also. There is no corroboration of the evidence of the Loco Pilot by the Guard or Station Master. Further the entire evidence of the Loco Pilot appears to have been doctored only for the purpose of the case and definitely an afterthought since there is no whisper of the same in the Reply statement. The FIR was based on the report of the Station Master which in turn is based on the report of the guard. No such case is made in the reply statement and therefore the statement made by Loco Pilot and the rough journal which is admittedly altered/tampered is not admissible. Therefore we conclude that the deceased died only due to a fall from the running train thus it is an untoward incident within the meaning of Section 123(c) (2) of the Railways Act.

8.As per Section 123(c)(2) of the Railways Act, 1989 (hereinafter referred to as the Act), 'untoward incident' includes the accidental falling of any passenger from a train carrying passengers.

9.In this regard, it is useful to refer to Section 123(c) of the Act, which reads thus:

(i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987;

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(iv) the accidental falling of any passenger from a train carrying passengers.

10.In Union of India v. Prabhakaran Vijaya Kumar and others, reported in 2008 (4) MLJ 323 (SC), the Hon'ble Supreme Court, while interpreting expression accidental falling of a passenger from a train carrying passengers, which is an untoward incident under Section 123(c)(2) of the Act and the consequential payment of compensation under Section 124A for such untoward incident, has held that it is well settled that if the words used in a beneficial or welfare Statue are capable of two constructions, the one which is more in consonance with the object of the Act

and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given liberal and not literal or strict interpretation. In the said decision, the Apex Court in paragraphs 12 to 15 held as follows:

"It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide *Alembic Chemical Works Co. Ltd. Vs. The workmen* AIR 1961 SC 647 (Para 7), *Jeewanlal Ltd. Vs. Appellate Authority* AIR 1984 SC 1842 (Para 11), *Lalappa Lingappa and others Vs. Laxmi Vishnu Textile Mills Ltd.* AIR 1981 SC 852 (Para 13), *S.M.Nilajkar Vs. Telecom Distt. Manager* (2003) 4 SCC 27 (Para 12) etc."

11. In *Hindustan Level Ltd. Vs. Ashok Vishnu Kate and others* 1995 (6) SCC 326 this court observed:

"In this connection, we may usefully turn to the decision of this court in *Workmen Vs. American Express International Banking Corporation* wherein Chinnappa Reddy, J. in para 4 of the Report has made the following observations:

The principals of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn V. Simmonds*)."

12. In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surender Kumar Verma V. Central Govt. Industrial Tribunal -cum- Labour Court* we had occasion to say:

"Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare status must, of necessity, receive a broad interpretation. Where legislation is designed to give

relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions”.

13. Francis Bennion in his Statutory Interpretation Second Edn., has dealt with the Functional Construction Rule in Part XV of his book. The nature of purposive construction is dealt with in Part XX at P.659 thus:

“A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this code called a purposive - and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the code called a purposive and strained construction)”

14. At P.666 of the same book, the author has considered the topic of “Purposive Construction” in contrast with literal construction. The learned author has observed as under:

“Contrast with literal construction - Although the term ‘purposive construction’ is not new, its entry into fashion betokens a swing by the appellate courts away from literal construction. Lord Diplock said in 1975; “If one looks back to the actual decisions of the (House of Lords) on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions’. The matter was summed up by Lord Diplock in this way-

..I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains of one of construction, even where this involves reading into the Act words which are not expressly included in it.”

15. In our opinion, if we adopt a restrictive meaning to the expression ‘accidental falling of a passenger from a train carrying passengers’ in Section 123(c) of the Railways Act, we will be depriving a larger number of Railway Passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people, who travel by Railway Trains since everybody cannot afford travelling by air or in a private Car. By giving a restrictive and narrow meaning to the expression, we will be depriving a larger number of victims of

Train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression 'accidental falling of a Passenger from a Train carrying Passengers' includes accidents when a bonafide passenger i.e., a Passenger traveling with a valid ticket or pass is trying to enter into a Railway Train and falls down during the process. In other words, a purposive, and not literal interpretation should be given to the expression.

16.The Tribunal has not dealt on the other aspect of non availability of travelling ticket with the deceased. Admittedly no travelling ticket was found. However having found that the deceased travelled in the train the burden of proof is with the appellant. In this case the tribunal has not even considered the aspect.

17.It is apposite to mention that when it is an admitted fact that the deceased died in an untoward incident on the respective date while travelling in the train, the onus is on the Railways to prove that the deceased was not bonafide passenger, since the normal presumption is that a passenger in a train holds a valid ticket.

18.In similar circumstances, in a decision in the Union of India, owning Southern Railway by its General Manager, Chennai v. G.Jayalakshmi and others, reported in 2012 (3) CTC 741, this court held as follows:

"This court in similar circumstances in the case of S.Poonkodi and others v. The Union of India, Southern Railway, CDJ 2007 MHC 3784, observed as herender:

Moreover, if the deceased had travelled as Ticketless Traveller, one would normally expect the Railway Authorities to have detected such Ticketless travelling. When a person dies in an accident by falling down from train, it is not possible for the Legal Representatives to produce the Ticket or valid authority to travel in the Train. Depending upon the facts and circumstances of a given case, the Tribunal/the appellate court infer about the deceased being a bonafide passenger. In the present case, facts and circumstances prima facie indicate that the deceased was a bonafide passenger, who lost his life in the railway accident."

19.It is no doubt true that the position of law as provided in Section 106 of the Indian Evidence Act is that if a fact is within the special knowledge of a person, the burden of proving such fact is on that person and as provided in illustration (b) of that Section, if a person is charged with traveling on a railway without a ticket, the burden or proving that he had a

ticket is upon him. But such principle is not applicable to a case of dead person, who was proved to have died in the course of railway travel and whose body was taken in custody of the Railway Police. In such a situation, it is the duty of the Railway Authority to adduce evidence that the deceased was without a valid ticket and if such evidence is given, the onus shifts upon the claimants to prove that the deceased was a bonafide passenger having a valid ticket.

20. In the Union of India Owing Southern Railway by its General Manager, Chennai v. G. Jayalakshmi and others, supra, the issue that came up for consideration is, the deceased lost ticket during accident and the contention of the Railways that the incident happened due to negligence on the part of the deceased and claimant has failed to prove that the deceased was travelling with valid ticket. Holding that normal presumption is, passenger in train holds valid ticket and burden is on Railways to prove that the deceased is not a bonafide passenger and also accidental falling of passengers from train carrying passengers would come within the purview of untoward incident and that the claimants are entitled to claim compensation, in paragraph 17, the learned Single Judge of this court held as under:

"..In this case, as no person on behalf of the Railways has given any such evidence nor as any person come forward to disclose as to what articles were found with the victim, I am of the considered view that the initial burden of providing the said fact had not been discharged. In such circumstances, in the absence of any evidence of the Railway Authorities asserting absence of valid ticket, I am of the opinion that there is no just reason to discard the evidence of the claimants. Therefore, the Tribunal is perfectly justified in rejecting the contention of the appellant that the deceased was not a bonafide passenger. The Tribunal is perfectly justified in holding that the deceased died on account of the accidental falling from the train and therefore, I do not find any warrant for interference with the said findings."

21. Similar is the view taken by another learned Single Judge of this court in A. Thanikachalam and others v. Union of India, Owing Southern Railway, rep. by its General Manager, Chennai, supra, wherein, it has been held as under:

"..In such circumstances, in the absence of any Evidence of the Railway authorities absence of valid Ticket, I am of the opinion that there is no just reason to discard the evidence of the claimants."

22. In the light of the above, since the issue squarely falls

with the definition of untoward accident under section 123-C(2) of the Railways Act, 1989 and that the appellants/claimants in each case are entitled to the compensation as provided in the schedule to the Railway Accidents and Untoward Incidents (compensation) Rules, 1990, the impugned orders dated 10.9.2008 and 29.4.2008 passed in O.A.Nos.51 & 121 of 2006 by the Railway Claims Tribunal are set aside and both the Civil Miscellaneous Appeals are allowed.

23. When it is an admitted fact that the deceased died in an untoward incident on the fateful day while travelling in the train, the onus is strictly on the Railways to prove that the deceased was not a bonafide passenger, since the normal presumption is that a passenger in a train holds a valid ticket. Moreover, if the deceased had travelled as a ticketless traveler, one would normally expect the Railway Authorities to have detected such ticketless travelling.

24. When a person dies in an accident by falling down from train, it is not possible for the legal heirs to produce the ticket or valid authority to travel in the train. Depending upon the facts and circumstances of a given case, the Tribunal and/or the Appellate Court infers about the deceased being a bonafide passenger. In the present case, facts and circumstances prima facie indicate that the deceased was a bonafide passenger, who lost his life in the railway accident.

25. At the risk of repetition it is reiterated that the Hon'ble Apex Court as well as this court had time and again held that the burden of proving that the victim is not a bonafide passenger lies on the Railways and that non-production of railway ticket is not fatal to the case of the claimants. Therefore, the Tribunal could not have dismissed the petition on that ground.

26. In the case on hand, as stated supra, as no person on behalf of the Railways has given any such evidence nor has any person come forward to disclose as to what articles were found with the victim, I am of the considered view that the initial burden of proving the said fact had not been discharged by the Railways. In such circumstances, in the absence of any evidence of the Railway Authorities asserting absence of valid ticket, I am of the opinion that there is no just reason to discard the evidence of the appellant, who is a widow and lost her husband. In the light of the above, since the issue squarely falls within the definition of untoward accident under Section 123(c) (2) of the Act, the claimants are entitled to the compensation as provided in the Schedule to the Railway Accidents and Untoward incidents (compensation) Rules, 1990.

27.As far as the quantum of compensation is concerned, by placing reliance upon the Amended Rules of Railway Accidents and Untoward Incidents (compensation) Rules, 1990, the learned counsel for the appellants submitted that now quantum has been enhanced from Rs.4.00 lakhs to Rs.8.00 and prayed for awarding of Rs.8.00 lakhs in favour of the appellants.

28.It is pertinent to mention that earlier, the Rule permits Rs.4.00 lakhs as compensation. In *Rathi Menon v. Union of India*, reported in (2001) 3 SCC 714, the Hon'ble Supreme Court has considered the question whether the compensation to be applied would be as per Rules applicable on the date of the order or as per the Rules in force at the time of accident or the untoward incident. Reversing the view taken by the Kerala High Court in M.F.A.Nos.1292 and 1293 of 1998, dated 12.8.1999 that the liability to pay compensation arises as soon as accident happens and not when the quantum is determined, the Hon'ble Supreme Court held that liability is to pay compensation 'as may be prescribed', which means as on the date of the order of the Tribunal.

29.The Hon'ble Supreme Court in a recent decision in *Union of India v. Rina Devi*, reported in 2018(7) SCALE 274 has considered the issue whether the quantum of compensation should be as per the prescribed rate of compensation as on the date of application/incident or on the date of order awarding compensation. In paragraph 15.1 the Hon'ble Supreme Court held as thus:

"15.1. In *Rathi Menon (supra)*, this court considered the question whether the compensation to be applied would be as per Rules applicable on the date of the order or as per the Rules in force at the time of accident or the untoward incident. Reversing the view taken by the Kerala High Court that the liability to pay compensation arises as soon as accident happens and not when the quantum is determined, this court held that liability is to pay compensation 'as may be prescribed' which means as on the date of the order of the Tribunal. This court observed that if interpretation placed by the Kerala High Court was to be accepted and the claimant was to get compensation in terms of the market value which prevailed on the date of the accident, the money value of the compensation will be reduced value on account of lapse of time. The revision of rate by the Central Government may itself show that the money value has come down. The Tribunal must apply the rate applicable as per the rules at the time of making of the order for payment of compensation.

30.Thus, with the amendment of Rule 4 of the 1990 Rules with effect from January 1,2017, the amount of compensation payable in case of death of a passenger as a result of untoward incident has been enhanced from Rs.4.00 lakhs to Rs.8.00 lakhs. There is no quarrel over the amendment of Rule 4 of the 1990 Rules by the respondent enhancing the compensation from Rs.4.00 lakhs to Rs.8.00 lakhs.

31.For the reasons aforesaid, this court set aside the impugned order of the Tribunal and allows the Claim Application in O.A. (II-U) 385 of 2013 by holding that the appellants are entitled to compensation of a sum of Rs.8,00,000/- with interest at the rate of 7.5% per annum from the respondent Railways from the date of lodging of the Claim application before the Tribunal till the date of payment. The compensation awarded by this court together with interest shall be paid by the respondent by issuing an account payee cheque in favour of the appellants. Such cheque shall be deposited in the office of the Registrar General of this court within a period of twelve weeks from the date of receipt of a copy of this order, whereupon the appellants shall be entitled to collect the same from the Registrar General in equal share upon proving their identity and in accordance with law. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs
To

The Railway Claims Tribunal, Chennai Bench.

Copy To :

1. The Registrar General,
High Court of Madras.
2. The Section Officer,
V.R.Section, High Court of Madras.
3. The Section Officer,
Accounts Section, High Court of Madras.

+1 cc to Mr.M.Selvam, Advocate SR.No.81469

C.M.A.No.742 of 2017

SPD(CO)
CSL/05.02.2019