

***HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU**

+C.M.A.No.591 of 2007

% 24-01-2018

#Labanyavathi Panigrahi,
W/o late Simanchal Panigrahi,
Aged about 54 Yrs., Occ: house hold,
Municipal Colony, Premnagar,
Berhampur.

... Appellant/
Claimants

Vs.

\$ The Union of India,
Rep., by its General Manager,
Eastern Railways,
Calcutta.

... Respondents

! Counsel for the appellants: Sri Pottigari Sridhar Reddy

Counsel for the Respondents: Sri J.Ashok Kumar

< Gist:

> Head Note:

? Cases referred:

¹ 2016 (1) ALT 1

² 2011 ACJ 693

³ 2013 ACC 371

⁴ 2009 ACJ 2444

⁵ 2001 ACJ 721

⁶ 2007 (4) ALD 105

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CMA No. 591 of 2007

J U D G M E N T :

This appeal is filed against the order dated 26.04.2007 in OAA.No.43 of 2002 passed by the Railway Claims Tribunal, Secunderabad.

The appellants before this Court are the applicants before the Tribunal. They are the wife and children of one Simanchal Panigrahi, who is hereinafter referred to as the deceased. According to the application, on 09.12.2001, the deceased was traveling by train No.219 DMU Bhubaneswar-Palasa passenger and he accidentally fell down from the train at Jadupudi Railway Station in front of the Station Master's office. He died on the spot. Claiming compensation of Rs.4,00,000/-, the application was filed. The respondents denied the entire case set up by the applicants. On behalf of the applicants, AW.1-wife of the deceased was examined and Exs.A.1 to A.7 were marked. For the respondents, RW.1-a Junior Clerk was examined and Ex.R.1 and Ex.C.1 final report were marked. The Tribunal, after going into the matter, held as follows:

- (a) the applicants are the sole dependents of the deceased.
- (b) that the death occurred due to the fact that the deceased fell down from a moving train and that therefore, Section 124-A of the Railways Act, 1989 (for short 'the Act') is applicable.

(c) however, the claim was dismissed on the ground that the train ticket was not found with the deceased and that there is no proof to show that he is a *bona fide* passenger.

Therefore, on the sole ground that the deceased was not a *bona fide* passenger, the entire case was dismissed. This order is now assailed in the appeal.

Heard Sri Pottigari Sridhar Reddy, learned counsel for the appellants and Sri J.Ashok Kumar, learned counsel for the respondent.

The learned counsel for the appellants has strongly relied upon

(a) three judgments of a learned single Judge of this Court, which are passed in CMA.Nos.1047, 507 of 2009 and ***Shaik Mahboob Basha and others v. Union of India***¹. In all these three cases, the learned single Judge held that the mere fact that the railway ticket was not found upon the deceased or with the deceased is not a ground to hold that he is not a *bona fide* passenger. The learned single Judge, on the basis of other High Court judgments, held that it can be presumed that a person traveling in a train possessed a valid journey ticket and is a *bona fide* passenger.

(b) a judgment of another single Judge of this Court reported in ***Parisa Anjali and others v. Union of India***², wherein it was held that it is the intention of the person, who was traveling in the train that it is important. The single Judge

¹ 2016 (1) ALT 1

² 2011 ACJ 693

held that there can be an instance where a person boards the train in a hurry, which is before its starting and has no time to purchase a ticket and held that such a person although technically does not possess a ticket is still a *bona fide* passenger.

(c) a Division Bench judgment of the Kerala High Court in ***Union of India v. Parameswaran Pillai and Another***³, wherein the Division Bench held that due to the common course of human conduct, there is a presumption that the passenger was traveling with a valid ticket. In paragraph 8, this Division Bench relied upon earlier judgments including the judgment of the Hon'ble Supreme Court in ***Tahazhathe Purayil Sarabi and Others V. Union of India (UOI) and Another***⁴ and came to a conclusion that there is a presumption that a passenger has purchased a ticket and is a *bona fide* passenger. This presumption can be rebutted by the Railways by introducing evidence.

This Court is of the opinion that the reasoning adopted by the learned single Judge's of this Court in the decisions cited earlier and of the Division Bench of the Kerala High Court are correct. There is a presumption in favour of a passenger that he is a *bona fide* passenger and the Railways have a duty to rebut this presumption. In the present case, there is no evidence to rebut the presumption. There is no cross-examination of AW.1 to the effect that the deceased was

³ 2013 ACC 371

⁴ 2009 ACJ 2444

not a *bona fide* passenger. There is no dispute about the fact that the deceased was traveling on a train and that he fell down in Jadupudi station itself. RW.1 the witness examined for the Railways clearly states that “I have actually seen the deceased falling from the moving train”.

In addition, Ex.A.1-F.I.R clearly states that one male person aged about 30 years fell down from 219 DMU Bhubaneswar-Palasa passenger and was run over. The death certificate-Ex.A.4 clearly states that the deceased fell from the train 219 DMU Bhubaneswar-Palasa passenger. Ex.A.6-the case diary also states that the deceased fell down from a running train and that he died instantaneously. Even Ex.R.1, which is marked by the respondent states that one male person aged about 30 years fell down from the train and was run over and killed. Therefore, the overwhelming evidence in this case is that the deceased was traveling in 219 DMU Bhubaneswar-Palasa passenger and that he accidentally fell down and died. A perusal of the evidence shows that the Railways did not discharge the burden of rebutting the presumption that the deceased was a *bona fide* passenger. Therefore, this Court holds that the deceased was a *bona fide* passenger and the mere fact that ticket was not found on his body or near his body is not a ground to hold that he was not a *bona fide* passenger. This Court agrees with the submissions of the counsel for the appellants that the order of the lower Court on this issue is wrong.

The next question that arises for consideration as a corollary to this finding is about the quantum of compensation payable since the liability of the Railways is absolute.

The learned counsel for the appellants argued that as per the decision reported in ***Rathi Menon v. Union of India***⁵, the deceased was entitled to compensation of Rs.8,00,000/- as per the notification dated 22.12.2016 issued by the Ministry of Railways.

An analysis of the facts in ***Rathi Menon's*** case (5 supra) shows that the applicant was injured on 03.09.1996. She filed two claim petitions on 27.06.1997 before the Railway Claims Tribunal. The Railway Claims Tribunal awarded a sum of Rs.6,00,000/- as damages in both the cases due to the ceiling imposed. In the interregnum period, on 01.11.1997, the Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 1990 (for short 'the Rules') were amended. The ceiling limit was raised from Rs.2,00,000/- to Rs.4,00,000/-. At this point of time, the appeal filed by the Railways was pending before the Division Bench of High Court of Kerala. The Kerala High Court reduced the compensation awarded by the Tribunal holding that the applicant was only entitled to compensation under the Rules in force at the time of the accident.

⁵ 2001 ACJ 721

The Hon'ble Supreme Court, after an analysis of the facts and the amendment, came to a conclusion that:

- (a) the compensation for injuries is not fixed by the Railway Claims Tribunal Act, but was left to be determined by the Government from time to time by means of the Rules.
- (b) that the Parliament left it to the Government to fix the amount of compensation payable and
- (c) the clear language of Section 124 of the Act is to pay the compensation to such accidents as may be prescribed.

The Hon'ble Supreme Court ultimately held that the compensation should be awarded as per the Rules prevalent on the date of the order. Paragraphs 26 to 29 of the judgment clearly discuss the reasons and the rationale that was adopted by the Hon'ble Supreme Court for awarding the compensation as per the current Rules in force. The Hon'ble Supreme Court ultimately came to the following conclusion in paragraph 30: "we are of the definite opinion that the Claims Tribunal must consider what the Rules prescribed at the time of making the order for payment of the compensation."

This Court finds considerable force in the submissions made by the learned counsel on this aspect in line with the order of the Hon'ble Supreme Court in the case of **Rathi Menon's** (5 supra). In paragraph 29 of the said judgment, the Supreme Court discussed a hypothetical example of a wrongful dismissal of a claim by the Tribunal and an appeal filed in the High Court, which ultimately is allowed. The

Hon'ble Supreme Court clearly states that it would be a pity if the High Court awards the amount in terms of the figures indicated in the Rules on the date of the accident while allowing an appeal after a few years. This hypothetical example considered by the Supreme Court is a reality in this case. The appeal was dismissed by the impugned order dated 26.04.2007, but till date, the applicants have not seen the colour of money which they have claimed for the death of the breadwinner of the family.

For all these reasons including the authoritative pronouncement of the Hon'ble Supreme Court of India, which is the law throughout this country, this Court holds that the claimants are entitled to compensation as per the current Rules in force. This Court is also supported in this view by a Division Bench decision in ***G.Rajababu v. Government of Andhra Pradesh and others***⁶, wherein it was held in para 35 as follows:

“The decision of the Supreme Court, enunciating a principle of law, is applicable to all cases irrespective of the stage of its pendency. The law laid down by the Supreme Court must be held to be the law from the inception, unless the Supreme Court itself indicates that its decision will operate prospectively.”

As per the notification issued by the Ministry of Railways, which was published in the Gazette of India, new Rules were promulgated on 22.12.2016 and have come into

⁶ 2007 (4) ALD 105

force on 01.01.2017. The amount of compensation payable is now fixed at Rs.8,00,000/- in case of death as per the new Rules. During the course of hearing, the learned counsel wanted these Rules to be applied to the case on hand. On 14.11.2017, the learned counsel initially argued the matter. On 16.11.2017, the learned counsel for the appellant placed the judgment of **Rathi Menon's** case (5 supra) and the notification of the Gazette of India before this Court. This Court directed that a memo detailing the compensation payable as per the current schedule should be served on the counsel for the Railways, so that their views can be ascertained on the point of law and also on the facts.

On 21.11.2017, the learned counsel for the appellant filed a memo stating that Rs.8,00,000/- is payable. She also stated that the learned counsel for the respondent Railways was not present to receive the memo. The matter was posted to 21.11.2017 to hear the learned counsel for the respondent. As the matter did not reach, it was posted to 30.11.2017 to hear the respondent's counsel. From there, it was posted to 05.12.2017. On that day also, there is no representation for the counsel for the respondent. Therefore, the matter was adjourned to 08.12.2017. Ultimately, on this day, as there was no representation for the counsel for the respondent, the matter was reserved for orders.

In these circumstances, relying on the presumption under section 81 of the Indian Evidence Act that the contents

of the Gazette of India are genuine and correct, the same is taken on record.

After considering all the facts and circumstances, the compensation payable is fixed at Rs.8,00,000/-, in line with the judgment of the Hon'ble Supreme Court of India in **Rathi Menon's** case (5 supra) and the latest guidelines. The said compensation of Rs.8,00,000/- is directed to be paid by the Railway Administration to the appellants within three months from the date of this order along with interest at the rate of 12% per annum from 26.04.2007 (the date of impugned order passed by the Railway Claims Tribunal) till the date of actual payment to the claimants.

The order of the Railway Claims Tribunal is set aside and the appeal is allowed and compensation as mentioned above is granted. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 24.01.2018
KLP
Note: L.r.copy be marked.