

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 16.04.2018
Delivered on 12.04.2019

C O R A M :

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.1488 of 2009

1. Smt. Lalithamma
2. Smt. P.Gayathri
3. P.ShivashankarAppellants

Vs

Union of India Owing Southern Railway,
rep.by General Manager,
Chennai - 600 003.Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987, against the order dated 05.02.2009 passed by the Railway Claims Tribunal, Chennai in O.A.No.28 of 2005 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., 06.07.2005 till the date of payment and the costs of the proceedings.

For Appellant : Mr. T. Rajamohan

For Respondent : Mr.C.V. Ramachandramurthy

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the order dated 05.02.2009 passed by the Railway Claims Tribunal, Chennai Bench in O.A.No.28 of 2005.

2.The appellants herein are the applicants in the aforesaid application. For the sake of convenience, the parties are referred to as per their rank in O.A.No.28 of 2005.

3.The brief facts of the claim petition are as follows;
The applicants are the wife and children of one

P.Parasuraman, who died due to train accident that had occurred on 08.11.2004. The said accident took place, on the return journey of the deceased, when he boarded Patna Yeswanthpur Express at Katpadi after taking a second class ticket bearing No.11306205 for travel from Katpadi Junction to Yeswanthpur Junction. The applicants came to know about the said accident through the Sub-Inspector of Police, Katpadi, who informed that the deceased boarded the train No.6596 (Patna- Yeswanthpur Express) and after boarding the train due to sudden jerk and pushing of the co-passengers, the deceased slipped and fell down between the platform and the train, due to which, he sustained grievous head injury and his right side hip and right leg also got crushed by the train wheels. Immediately, he was taken to Government General Hospital, Vellore for treatment. In spite of the treatment, he died. In this regard, a complaint was lodged by Dr.Mohan Raj of Government General Hospital, Vellore and the same was registered as Crime No.285/2004 dated 08.11.2004 by the Katpadi Railway Police. The applicants, being the legal heirs of the deceased, claimed a sum of Rs. 4,00,000/- as compensation.

4. The Union of India owing to Southern Railway in the written statement has denied the fact that the deceased died due to any untoward incident. It is further stated that the said deceased, while he was boarding in Train No.6596, Rajendranagar Terminus - Yeswanthpur Sangamitra Express on 08.11.2004, had fallen down from moving train at Katpadi Railway Station at about 13.05 hours due to the carelessness and negligence act, for which, they are not liable to pay compensation under Section 12 (A) of the Railways Act.

5.The Tribunal, after analysis of the entire pleadings and evidence, came to the conclusion that the applicants have not proved that the deceased P.Parasuraman died in an untoward incident on 08.11.2004, while boarding Train No.6596 Patna Yeswanthpur Express at Katpadi Railway station and accordingly, dismissed the application preferred by the applicants claiming the compensation of Rs.4,00,000/-. Aggrieved against the said order, the applicants have preferred this appeal.

6. In the present appeal, the appellants have raised the following grounds;

(i) the findings of the Tribunal that the deceased had accidentally fallen down from running train and died and that the incident falls within the definition of "untoward incident" under Section 123(c)(2) of the Railways Act ought to have allowed the claim application granting the statutory compensation to the appellants.

(ii) The finding of the Tribunal that the deceased was not a

bona fide passenger, is not sustainable. The burden of proof that the deceased was a bona fide passenger, is very much on the part of the respondent. In any event, the evidence of RW1 and RW2 are not reliable.

(iii) The applicants may not know the details of the ticket purchased by the deceased and it is the investigation officer, who has retrieved the ticket purchased by the deceased and handed over the same to the applicants and the same was marked as Ex.A8. Hence the denial of compensation amounts to denial of bona fide legislation.

(iv) The tribunal ought to have consider the evidence of RW1, who has admitted in his cross examination that the station master maintained the record about the timings of arrival of the train as well as the departure of the train.

(v) The Tribunal failed to note that as per the FIR, the time of occurrence is 13.25 hrs and the ticket purchased by the deceased was 13.17 hours, is a valid one.

Thus, according to the applicants, the order passed by the Tribunal has to be set aside.

7. Heard both sides and perused the documents available on records.

8. On perusal of records, it is seen that before the Tribunal, the first applicant/wife of the deceased was examined as A.W.1 and eight documents were marked through her as Ex.A1 to Ex.A8. On the side of the respondents, two witnesses were examined as RW1 and RW2 and one document was marked as Ex.R1. - rough journal copy.

9. On perusal of the order of the tribunal, it is seen that the tribunal has observed that the death was due to an untoward incident and negated the claim of the appellant holding that the deceased was not a bonafide passenger. The finding of the tribunal is that the ticket was issued after the time of the incident.

10. It is the argument of the appellant that the ticket was purchased at 13.17 hrs by the deceased and the incident had occurred at 13.25 hrs. It is also argued that the ticket was handed over to the appellants after completion of post-mortem and the purchase of the ticket by the deceased was also referred in the Final Report - Ex.A6. It is also argued by the appellant that RW1 and RW2 have deposed that the scheduled time of arrival of train at Katpadi Station is 12.15 hrs and the schedule departure is at 12.17 hrs.

11. It is also argued by the appellant that the entries with regard to timings in the Ex.R1- Rough Journal shows that on 08.11.2004 the train arrived at 13.00 hrs and departed at 13.05 hrs and also there is detention for 19 minutes. If the detention is added, the train should have left at 13.24 hrs , but in the rough journal, it is mentioned the departure time as 13.05 hrs, hence, the said entry is wrong. It is the firm arguments of the appellant that after purchasing of ticket at 13.17 hrs, the deceased died by falling from the train which occurred at 13.25 hrs. The Final Report also reflected the time of the accident as 13.25 hrs.

12. The Final Report - Ex.A6 says that on 08.11.2004 in the afternoon at 13.25 hrs, when the train No. 6596 (Patna-Yaswantpur Express) came to Katpadi railway station and when the train started, the deceased with a ticket attempted to board, he slipped and fell down, hit by the said train and suffered multiple injuries. He immediately taken to Vellore Government Hospital and inspite of treatment given, he died in AE Ward. It is concluded in the Final Report by the Sub Inspector of Police has stated that it is a train accidental death.

13. It is the argument of the appellant in support of the Final Report that the train started in the Katpadi railway station in Platform No. 1 at about 13.25 hrs and the deceased with the ticket attempted to board the train and fell down and sustained injuries. Hence, the death of the deceased was not due to an untoward incident.

14. In the reply statement filed by the respondent, it is stated that on 08.11.2004 while the deceased was boarding in train number 6596 had fallen down from moving train at Katpadi railway station at about 13.05 hrs and also stated that the said train after passing some distance, was stopped immediately on the platform due to ICC Pulling. On reaching the spot, it was noticed that one male person aged about 54 years was lying in between the gap of platform and the train. It is also stated that the deceased ought to have known the danger involved in entraining in the moving train. Due to his own carelessness and negligence the said accident had occurred, hence the respondents are not liable. It is also stated that since the said incident cannot be described as an untoward incident as defined in Section 123 (C) (2) of the Railways Act 1989, the respondent is not liable to pay compensation under Section 124 A of the Railways Act. Hence it is the main argument of the respondent that the train arrived at Katpadi Railway Station 13.00 hrs and after allowing the schedule halt time of 05 minutes, the train started at 13.05 hrs, hence the ticket produced as proof for the journey is to misguide the tribunal for compensation.

15. On the side of the respondent one M. Sarabeswaran, Station Master - RW1 was examined, who has deposed before the tribunal that Train No. 6596 Rajendra Nagar Terminus - Yashwanthpur Sankamithra Express arrived on platform No. 1 at 13 hrs and started at 13.05 hrs. when the train was moving out, he heard shouting noise of the passengers and public in the platform and train was stopped due to the ICC pulling. He rushed to the spot and found a male aged about 54 years was found lying between the platform and train with injuries. But in the cross examination, he deposed that the arrival time mentioned at 13.00 hrs was on the basis of his memory and he maintains the record about the timings of arrival and departure of train for maximum period of two years and he also stated that the said record was not available.

16. The other witness RW2- who is the train guard was also examined on the side of the respondent, he had deposed the same facts as stated by the RW1. In the cross examination, he has stated that the timings regarding arrival and departure will be immediately entered by them in the register. Timings are noted by him based on his personal wrist watch. Further he has stated that he has recorded the fact that the train stopped for 19 minutes at the platform after the incident. He has also stated that he does not know anything about the possession of the ticket by the injured person. The railway timing chart was filed by the respondent and the same was marked as Ex. R1. On a perusal of the said chart it is seen that the arrival time is noted as 13.00 hrs and in the next column, it is mentioned as 13.05hrs, but some correction are made in the said entries.

17. It is argued by the appellant that based on the statement of the railway authorities, it is very much clear that on the 08.11.2004 train arrived late and detained for 19 minutes and hence it should have been started only by 13.21 hrs. As per Exhibit A6, the incident occurred only at 13.25 hrs. In view of the above, the time mentioned in the ticket as 13.17 hrs, which was recovered from the pocket of the deceased is very much proper. It is also argued that with regard to maintenance of records relating to the time schedule they have state d that the records will be maintained for maximum two years, but no relevant documents were filed by the respondents. It is also to be noted that RW1 in his deposition also stated that he is not an eye witness to the accident. The learned counsel for the appellant further argued that the witnesses on the side of the respondents have stated the timings of the occurrence only from their memory, but not on records, which cannot be relied upon.

18. It is also seen from the chart that the train started at 13.25 hrs from the Katpadi railway station and reached the next station by 13.31 hrs. Hence it is very much proved from the

evidence and documents that the incident had occurred between 13.17 hrs and 13.25 hrs and therefore the time mentioned in the ticket recovered from the deceased as 13.17 hrs could not be considered as produced for the purpose of claiming compensation. It is further argued by the appellant that, since the respondent's main contention is that the alleged ticket was produced only for the purpose of claiming compensation, it is for the respondent to prove that for which train the said ticket was issued and the person who involved in the accident with the ticket mentioning the time as 13.17 hrs, since their own witnesses admit that their depositions with regard to the incident are only on memory, not on the basis of records.

19. It is also argued by the appellant that the arrival time as per the final report is at 13.25 hrs which reads as follows;

" 08.11.2011 ம் தேதி மதியம் சுமார் 13.25 மணிக்கு வண்டி எண் 6596 (பாட்ணா எ வந்தப் பர்) வண்டி காட்பாடி இரயில் நிலையத்தில் நின்று பறப்பட்ட சமயம் வண்டியில் ஏறியவர் வை வண்டிக்கும் நடைமேடைக்கும் இடையில் விழுந்து நெற்றியில் வலது பக்கம் காயம் ஏற்பட்டும் இடுப்பில் வலது பக்கம் காயம் ஏற்பட்டும் இடது கை தோள்பட்டையில் சிராய்ப்பு காயம் ஏற்பட்டும் வலது கால் பாதம் துண்டிக்கப்பட்டு இடது கால் பாதத்தில் காயம் ஏற்பட்டும் உயிருடன் இருந்தவரை அரசு பொது மருத்துவமனை, ரூ.நு, றயசன அடமிட் செய்து சிகிச்சை பலனளிக்காமல் இறந்துவிட்டாத,"

20. As per the final report, the train started at 13.25 hrs, so when the timings recorded for the departure of the train in the Katpadi Railway station as 13.25 hrs has been very much proved by the document as well as evidence on the side of the respondents. As per the entries made in the chart, the arrival time of said train at the next station at 13.31 hrs is very much tallying with the evidence placed by the respondents as well as documents which clearly states that the train started by 13.25 hrs. It is also clearly revealed from the final report the deceased while boarding the train with a ticket, slipped and fallen from the said train. In view of the above, it is for the respondent to prove the fact of timings mentioned in the ticket with proper documents, but the witnesses examined on the side of respondents, who are the employees of authority have deposed that they have no relevant documents to prove the timings and what they deposed are only on their memory.

21. Therefore, the finding of the tribunal that the deceased was not a bonafide passenger in view of the fact that when the ticket indicates the time at 13.17 hrs goes to show that the incident occurred close to 13.05 hrs is not a reasonable one. When the evidence of the respondents as well as the final report Ex.A6 clearly states the fact that the train was started at 13.25 hrs, the said ticket should have been

issued at the said time and the deceased would have rushed to the train. It could be very well observe from the final report as well as in the First Information Report that the train started from the Katpadi Junction at 13.25 hrs and the deceased with a ticket rushed for the train, slipped and fallen and sustained injuries was very much proved. In view of the above, the issue no.1 of the order of the tribunal is clarified accordingly.

22. From the entire incident, it is very much proved that the deceased was a bonafide passenger in view of the final report as well as the evidence of the respondents and the timings of the said journal have spoken that the train started at 13.25 hrs. Therefore the other evidence of the respondent that the train started at 13.05 hrs cannot be considered as a fair admission. Even in the inquest report, it has been stated in Col. 4 that "08.11.2004 at about 13.15 hrs in KKD RS PX-I Train No. 6596 at the time of boarding at Katpadi in order to proceed to Bangalore was seen alive". It is also the statement of the witness in the inquest report that when the deceased was getting into the Train No.6596 (Patna -.Yeswantpur Express) had sustained injury.

23. In view of the above, the arguments advanced by the respondent that the deceased was not a bonafide passenger and the ticket Ex.A8 was issued after the incident is not proved. None of the witness or documents proved the fact that the accident had occurred at 13.05hrs. It is also observed that the original ticket was handed over to the appellant after post-mortem and the purchase of the ticket by the deceased was also spoken by the witness in the inquest report. It is also relevant to note that the Inquest Report and Final Report are the statutory documents and no contra evidence by the respondents. The Railways Act contemplates statutory manner of investigation of untoward incident and filing of a report by the Divisional Railway Manager, but, here no such report was filed by the respondent to prove the bonafide of the deceased. In view of the facts, this Court concludes that the deceased is a bonafide passenger and he is entitled to the statutory benefit as claim.

24. In view of the above said evidence and documents, the departure of the train at 13.25 hrs was very much proved, hence it is clear that the deceased was a bonafide passenger, who met with an untoward incident while boarding the train.

AK

12.04.2019

This matter has been cited under the caption for being mentioned on 18.07.2019 pursuant to the order of this Court

dated 12.04.2019, and upon hearing the counsels on either side this court made the following order:

"25.In the result, the order passed by the Railway Claims Tribunal, Chennai Bench in O.A.No.38 of 2005 dated 05.02.2009 is set aside. The Civil Miscellaneous Appeal is allowed. The appellants are entitled for the compensation of Rs.4,00,000/- (Rupees Fourt Lakhs only) with interest at 9% from the date of accident i.e. 08.11.2004. Therefore, out of Rs.4,00,000/-, the 1st Appellant Smt.Lalithamma is entitled for Rs.2,00,000/- (Rupees Two Lakhs only), the 2nd Appellant Smt.P.Gayathri is entitled for Rs.1,00,000/- (Rupees One Lakh only) and the 3rd Appellant P.Shivashankar is entitled for Rs.1,00,000/- (Rupees One Lakh only) with interest at 9% from 08.11.2004 till the date of deposit".

26.The Respondent is hereby directed to deposit the amount within a period of four weeks before the Railway Tribunal from the date of receipt of a copy of this order. Thereafter, the Appellants are permitted to withdraw the same immediately once such deposit is made".*

Sd/-

Assistant Registrar (CS-VI)

Dated : 12/04/2019

***Corrected as per order dated 18.07.2019 in CMA No.1488/09**

Sd/-

Assistant Registrar (CS-VI)

Dated : 30/07/2019

//True copy//

Sub Assistant Registrar

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To

The General Manager,
Owning Southern Railway,
Chennai - 600 003.

**To be substituted to the order already
despatced on 15.07.2019**

+1cc to Mr.T. Rajamohan, Advocate SR.No.36167

***+1cc to Mr.Ramachandramurthy, Advocate SR.No.61069**

C.M.A.No.1488 of 2009

RV (CO)

GMV (25/06/2019)

GMV (31/07/2019)