

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1109 of 2016

1.Anandha Jothi
2.D.Naveenatha Krishnan
3.D.Gayathri
4.C.Kaliyammal
(A-2 and A-3 minors rep. Mother and
Natural Guardian A-1)
...Appellants

Vs.

The Union of India Owning
Southern Railway
rep. by General Manager,
Chennai-600003.

.... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987, praying to set aside the order dated 18.11.2015 passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U) 274 of 2014.

For Appellants : Mr.T.Rajamohan

For respondent : Mr.M.Vijay Anand
Additional Standing Counsel

J U D G M E N T

This appeal is filed by the appellants seeking to set aside the order dated 18.11.2015 passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U) 274 of 2014 dismissing the claim application claiming compensation of Rs.4,00,000/-.

2. Aggrieved over the dismissal of the claim petition filed by the appellants before the Railways Claims Tribunal in O.A. (II-U) 274 of 2014 dated 18.11.2015, the present appeal has been preferred.

3. According to the claimants, the husband of the first appellant travelled in an electric train between Wimco Nagar and Kathivakkam Railway stations and fell down from the train and suffered death. She was informed by the police about the incident and based on that incident, she filed this case before the Railway Claims Tribunal.

4. She examined herself as A.W.1 and marked Exs.A1 to A7. On the side of the respondent, no documents were marked and none were examined as witnesses.

5. The Tribunal, on going through the records, has come to the conclusion that the claimants have not made out a case for compensation through credible evidence to establish that the deceased was a bonafide passenger while he was travelling in train. It further considered that the applicants have failed to discharge the initial onus to prove that the death of the victim was on account of accidental fall during a train journey as a bonafide passenger and came to the conclusion that the appellants are not entitled for compensation.

6. Heard both sides.

7. I have perused the records available before this Court. Ex.A2 is the message given by the Station Master regarding accident. Ex.A3 - inquest report suggested that the deceased would have travelled between Wimco Nagar Railway Station and Kathivakkam Railway Station at Km 11/22-24 Down line and fell down from the electrical train going towards Ennore road at about 9 hrs. The final report, dated 30.07.2013, also opined that the deceased fell down from the train and suffered death. The death certificate issued by the Corporation also substantiate the same. The first claimant giving evidence as A.W.1, in her evidence has stated that her husband has taken second class ticket and travelled by electric motor train on 11.07.2013 from Wimco Nagar to Kathivakkam.

8. The suggestion made by the respondent Railways during cross examination that the victim travelled without ticket and that he fell down from the train due to negligence and careless sitting on the door way, for which, the Railways is not liable to pay compensation was denied by the witness. From the reading of the suggestion, it clearly goes to show that the Railways was of the opinion that the victim had travelled in the train, but was not a bonafide passenger as he did not possess any ticket and that he fell down from the running train due to his carelessness by sitting on the door way. In that event, it can be presumed that the death was caused due to accidental falling from the train. There is no evidence on the side of the Railways or from any eye witness that the deceased had travelled

carelessly sitting on the door way. In the absence of any evidence, it should be construed that the deceased suffered death due to an untoward incident.

9. The Hon'ble Supreme Court in UNION OF INDIA VS. RINA DEVI [2018 AIR (SC) 2362] has held that mere absence of ticket with such injured or deceased will not negative the claim that he was a bonafide passenger. Initial burden will be on the claimants which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances.

10. It is well settled by the Hon'ble Supreme Court that if the ticket could not be traced out, it shall not be construed that the passenger is not a bonafide passenger. It is held that when there are two different views possible, the view beneficial to the claimant will prevail.

11. Now, in the instant case, the key man who first saw the body has suggested that the death could have caused either due to falling from train or run over by the train. But the respondent has failed to examine the key man, much less, any witness to substantiate their statement. A suggestion was put to A.W.1, during her cross examination that the deceased fell down from the train due to negligence and careless sitting in the door way which was denied by her. Further she has categorically deposed that the victim had taken a second class journey ticket for his travel. The initial onus as such stands discharged. The presumption, therefore, should be that the deceased travelled in the train as a bonafide passenger and suffered an untoward incident.

12. Under such circumstances, relying on the statement of A.W.1, this Court is of the considered view that the order passed by the Railway Claims Tribunal is without any legal evidence. Therefore, the finding rendered in the order passed by the Tribunal is set aside and the claim petition is allowed.

13. The claim, on the date of filing the claim petition was Rs.4,00,000/- for death as per the notification issued by the Railways. From 01.01.2017, it has been amended as Rs.8,00,000/- for the case of death.

14. The Hon'ble Supreme Court judgment reported in Civil Appeal Nos.1265-1266 of 2019 [Union of India Vs. Radha Yadav], wherein it is held as under:-

" The issue raised in the matter does not really require any elaboration as in our view, the judgment of this Court in the case of Rina Devi is

very clear. What this Court has laid down is that the amount of compensation payable on the date of accident with reasonable rate of interest shall first be calculated. If the amount so calculated is less than the amount prescribed as on the date of the award, the claimant would be entitled to higher of these two amounts. Therefore, if the liability had arisen before the amendment was brought in, the basic figure would be as per the Schedule as was in existence before the amendment and on such basic figure reasonable rate of interest would be calculated. If there be any difference between the amount so calculated and the amount prescribed in the Schedule as on the date of the award, the higher of two figures would be the measure of compensation. For instance, in case of a death in an accident which occurred before amendment, the basic figure would be Rs.4,00,000/-. If, after applying reasonable rate of interest, the final figure were to be less than Rs.8,00,000/-, which was brought in by way of amendment, the claimant would be entitled to Rs.8,00,000/-. If, however, the amount of original compensation with rate of interest were to exceed the sum of Rs.8,00,000/- the compensation would be in terms of figure in excess of Rs.8,00,000/-. The idea is to afford the benefit of the amendment, to the extent possible. Thus, according to us, the matter is crystal clear. The issue does not need any further clarification or elaboration."

15. The respondent / Railways is directed to deposit the appropriate amount as per the judgment of Hon'ble Supreme Court within a period of eight weeks from the date of the receipt of a copy of this order. On such deposit, the claimants are entitled to withdraw the same on production of appropriate identification. The Civil Miscellaneous Appeal is allowed.

16. The share of the minor shall be deposited in any one of the Nationalised Banks and the guardian / mother is entitled to withdraw accrued interest once in three months, till he attains majority.

Sd/-

Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

bkn

To

The General Manager,
Union of India,
Southern Railway,
Chennai-600003.

+2cc to Mr.T.Rajamohan, Advocate SR.No.20438

+1cc to Mr.M.Vijay Anand, Advocate SR.No.20826

C.M.A.NO.1109 OF 2016

SV(CO)
GMY(19/07/2019)



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