

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.NO.2774 OF 2011

AND

M.P.NO.1 OF 2011

The Union of India owning
Southern Railways,
Rep. by its General Manager,
Chennai - 600 003.

... Appellant

vs

1.D.Gunalan
2.G.Uma
3.R.Senthilkumar

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987, to call for the entire records leading to passing of the final order in O.A.(II-U) No.21/2011 dated 13.07.2011 on the file of the Railway Claims Tribunal, Chennai Bench and set aside the same.

For Appellant : Mr.C.V.Ramachandra Murthy

For R1 & R2 : M/s.N.Parimalam for
Mr.T.Rajamohan

For R3 : No appearance

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the Union of India owning Southern Railways represented by its General Manager, Chennai.

2.The appellant is aggrieved by the impugned order/award dated 13.07.2011 passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U).No.21 of 2011.

3.The 1st and 2nd respondents herein had filed a claim petition under Section 16 of the Railway Claims Tribunal Act, 1987 r/w Section 123(C)(2), 124-A & 125 of the Railways Act, 1989 claiming a compensation of Rs.4,00,000/- together with

interest at 12% per annum from the date of accident till the date of payment.

4.The case of the 1st and 2nd respondents before the Claims Tribunal was that their daughter late G.Gayathri wife of Senthilkumar aged about 22 years accidentally fell down from the EMU train on 13.02.2010 while vomiting. It appears that the deceased sat near the door of the train while the train was moving, due to jerk and jolt of the train, accidentally had fallen down from the running train when the train was crossing a bridge over the backwater near Ennore. After the train crossed the bridge, the parents realised that their daughter was missing. Thereafter, the 1st and 2nd respondents reached the accident site and found out that their daughter had died.

5.The Railway claims Tribunal, Chennai has awarded a sum of Rs.4,00,000/- together with interest at 9% per annum from the date of the order till the date of actual payment to the 1st and 2nd respondents after concluding that the deceased late G.Gayathri died due to the accidental death due to fall from a running train. Before the Railway Claims Tribunal, the 1st and 2nd respondents/claimants filed ten exhibits which were marked as Ex.A1 to A10 while the appellant Railways filed two Exhibits which were not marked. They are DRM report dated 01.06.2011 and Message from Station Master/AIPP on 13.02.2010.

6.The appellant has disputed the awarding of compensation on the ground that the deceased late G.Gayathri had committed suicide. Therefore, it is submitted that the Railway Claims Tribunal ought not to have awarded the aforesaid compensation to the respondents.

7.Heard the learned counsel for the appellant and the 2nd and 3rd respondents.

8.The facts arrived by the Railway Claims Tribunal that the deceased G.Gayathiri died due to the accident is a finding of fact and cannot be disturbed in an appellate proceedings. The present Civil Miscellaneous Appeal therefore lacks merits. Since the death is on account of accident due to fall a the running train, I am of the view, the order passed by the Railway Claims Tribunal, Chennai cannot be disturbed.

9.As per the order of the Hon'ble Supreme Court in Union of India vs Rina Devi, (2019) 3 SCC 572, the burden of proof is on

the railways to prove that the death or injury was on account of situations contemplated under the Act. The paragraphs 26 and 29 of the order read as under:-

Re: (iii) Burden of proof when body found on railway premises – Definition of passenger

26. Conflict of decisions has been pointed out on the subject. As noticed from the statutory provision, compensation is payable for death or injury of a "passenger". In Raj Kumari [Raj Kumari v. Union of India, 1992 SCC OnLine MP 96 : 1993 ACJ 846] referring to the scheme of the Railways Act, 1890, it was observed that since travelling without ticket was punishable, the burden was on the Railway Administration to prove that passenger was not a bona fide passenger. The Railway Administration has special knowledge whether ticket was issued or not. The 1989 Act also has similar provisions being Sections 55 and 137. This view has led to an inference that any person dead or injured found on the railway premises has to be presumed to be a bona fide passenger so as to maintain a claim for compensation. However, the Delhi High Court in Gurcharan Singh [Gurcharan Singh v. Union of India, 2014 SCC OnLine Del 101 : 2015 ACJ 171] held that initial onus to prove death or injury to a bona fide passenger is always on the claimant. However, such onus can shift on the Railways if an affidavit of relevant facts is filed by the claimant. A negative onus cannot be placed on the Railways. Onus to prove that the deceased or injured was a bona fide passenger can be discharged even in absence of a ticket if relevant facts are shown that ticket was purchased but it was lost. The Delhi High Court observed as follows: (Gurcharan Singh case [Gurcharan Singh v. Union of India, 2014 SCC OnLine Del 101 : 2015 ACJ 171] , SCC OnLine Del para 4)

"4. ... (ii) In my opinion, the contention of the learned counsel for the appellant claimants is totally misconceived. The initial onus in my opinion always lies with the appellant claimants to show that there is a death due to untoward incident of a bona fide passenger. Of course, by filing of the affidavit and depending on the facts of

a particular case that initial onus can be a light onus which can shift on the Railways, however, it is not the law that even the initial onus of proof which has to be discharged is always on the Railways and not on the claimants. I cannot agree to this proposition of law that the Railways have the onus to prove that a deceased was not a bona fide passenger because no such negative onus is placed upon the Railways either under the Railways Act or the Railway Claims Tribunal Act and the Rules or as per any judgment of the Supreme Court. No doubt, in the facts of the particular case, onus can be easily discharged such as in a case where the deceased may have died at a place where he could not have otherwise been unless he was travelling in the train and in such circumstances depending on the facts of a particular case it may not be necessary to prove the factum of the deceased having a ticket because ticket as per the type of incident of death can easily be lost in an accident. I at this stage take note of a judgment of a learned Single Judge of this Court in Pyar Singh v. Union of India [Pyar Singh v. Union of India, (2007) 8 AD Del 262] which holds that it is the claimant upon whom the initial onus lies to prove his case. I agree to this view and I am bound by this judgment and not by the ratio of the case of Leelamma [Union of India v. Leelamma, 2009 SCC OnLine Ker 903 : (2009) 1 KLT 914] ."

29. We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant 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. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.

10.The above passage squarely applies to the facts of the present case. Therefore, the present Civil Miscellaneous Appeal is liable to be dismissed and is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jen

To

1. The Railway Claims Tribunal,
Chennai Bench.
2. The Section Officer,
V.R. Section, Madras High Court.

+2cc to Mr.T.Rajamohan, Advocate, S.R.No.95220

+1cc to Mr.C.V.Ramachandra Murthy, Advocate, S.R.No.94817

C.M.A.No.2774 of 2011
and
M.P.No.1 of 2011

PPA (CO)
CS/13/01/2020



WEB COPY