

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2283 of 2012

S.Selvi

.. Appellant/Applicant

vs

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

... Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act against the judgment dated 11.05.2012 passed by the Railway Claims Tribunal, Chennai Bench in O.A. No.54 of 2012.

For appellant : Mr.S.Umapathy

For respondent : Mr.M.T.Arunan,
Standing Counsel

JUDGMENT

The claimant, appellant herein has come to this Court with this appeal challenging the correctness of the impugned judgment dated 11.05.2012 passed by the Railway Claims Tribunal, Chennai Bench in O.A. No.54 of 2012.

2.Learned counsel appearing for the appellant would submit that the appellant is the mother of the deceased Praveen Kumar, who died in the train accident that took place on 22.07.2011 in the morning at 08.00 hours. After the deceased left the house to go to his work spot on the said date, the appellant was informed by the police that the deceased, who had travelled in some EMU train from Arambakkam to Guindy Railway Station, due to heavy crowd and sudden jolt of the train, fallen down from the running train and sustained grievous injuries and died on the spot. When the appellant, being the step mother of the deceased, filed her claim petition alleging that the deceased was holding Season Ticket No.655151167 from Arambakkam to Guindy valid from

09.07.2011 to 08.08.2011 with I.D. Card No.569517545, the Railway Claims Tribunal, Chennai Bench by judgment dated 11.05.2012 in O.A. (II-U) 54 of 2012 holding that the appellant, who is the second wife of the father of the deceased, came into picture only after a lapse of long period and the facts that the mother of the deceased died at the time of giving birth and after that the father of the deceased married the appellant were incorrect, has dismissed the Original Application filed by the appellant. Aggrieved by the same, the appellant is before this Court.

3.Learned counsel appearing for the appellant drew the attention of this Court to the proof affidavit filed by the appellant before the learned Railway Tribunal wherein the appellant has stated that the original mother of the deceased, namely, Lakshmi died at the time of giving birth to the deceased and that the father of the deceased, married the appellant to take care and raise the deceased, but at the age of 10 years, the father had also died due to cancer disease and thereafter, the appellant had raised the deceased by giving him proper education and that she is the only legal heir and dependent of the deceased, who had died as a bachelor. In support of his submission, the learned counsel for the appellant has produced the household card dated 29.07.2006 containing the name of N.Sekar (husband of the appellant) as head of household, Selvi as wife and Umesh Kumar, Praveen Kumar and Sathish Kumar as sons and the joint photograph of the deceased Praveen Kumar, appellant Selvi, Sathish Kumar and another son. But the learned Railway Tribunal, having found that the deceased, who is a bonafide passenger, accidentally had fallen from the 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 not to have dismissed the claim application holding that the appellant being a step mother, is not a dependent of the deceased. When the step mother has absolute right for claiming compensation and it is well settled law that parent includes step mother, the learned Railway Tribunal failed to note that the dependency has to be decided only as on the date of the death and not subsequently. As the step mother married the father of the deceased, the learned Tribunal, without considering the case of the appellant, has merely dismissed the application filed by her holding that she was only a step mother. Taking support from the order dated 20.04.2009 in W.P. No.23263 of 2008 in the case of S.V.L.S.Ranga Rao vs. The Secretary to the Government and another reported in 2009 (2) CTC 800, learned counsel appearing for the appellant would submit that when the step mother is one of the Class I heirs as per Hindu Succession Act, 1956 and she is a family member on par

with the mother, the said legal position cannot be disputed by the respondent, therefore, learned counsel for the appellant pleaded for allowing the appeal.

4.Learned Standing Counsel appearing for the respondent would submit that the alleged incident was one other than fall from a train and therefore, the respondent is not liable to pay compensation under Section 124-A of the Railways Act, 1989. Moreover, the appellant, allegedly in the capacity of being the step mother of the deceased Praveen Kumar, was not entitled to get compensation from the respondent Railway, as the expression 'mother' clearly means only the natural mother, who has given birth to the child and not the one who is the wife of one's father by another marriage. Therefore, the learned Tribunal, considering the said aspect and as per Section 123(b) of the Railways Act, 1989 holding that the mandatory provision of the Act cannot be brushed aside and that the appellant does not fall into the category of dependent, has dismissed the Original Application filed by the appellant as the step mother does not find a place in the category of dependents. Taking support from the judgment dated 26.04.1996 in the case of Kirtikant D.Vadodaria vs. State of Gujarat and another reported in CDJ 1996 SC 2185, learned counsel appearing for the respondent would submit that the another woman, who is taken as a wife by the father of the child, cannot be given the status of a mother to the child born from another woman as there is no blood relation between the two. Therefore, the appellant claimant, being the step mother, is not entitled to get compensation for the death of the deceased and as such, he prays for dismissal of the appeal.

5.A perusal of the household card dated 29.07.2006 produced by the learned counsel appearing for the appellant would show the photographs and the details of the family members of the appellant, namely, the date of birth of the deceased, the appellant and the father of the deceased are clearly indicating that the deceased was born on 15.04.1990. A perusal of the death certificate of the father of the deceased, namely, Nasampalem Sekar, would show that he died on 06.04.2007.

6.However, Section 123(b) of the Railways Act, 1989 defines the term 'dependent'. It is necessary to extract the same as under:

(b) "Dependant" means any of the following relatives of the deceased passenger, namely:-

(i) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his

parent;

(ii) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a pre-deceased son, if dependant wholly or partly on the deceased passenger;

(iii) a minor child of a pre-deceased daughter, if wholly dependant on the deceased passenger;

(iv) the paternal grandparent wholly dependant on the deceased passenger;

7. Now in the present case, admittedly, the father of the deceased Praveenkumar married the appellant Selvi, after the death of his first wife, who is the mother of the deceased. The legal heir ship certificate Ex.A8 issued by the Tahsildar Tada clearly shows that the appellant is the step mother of the deceased S.Praveenkumar. In the affidavit filed by her, she deposed that the original mother of the deceased died at the time of giving birth of the deceased and the father of the deceased married the appellant to take care of the deceased son and at the age of 10 years of the deceased, the father also died, therefore, the appellant has become dependent as a step mother.

8. Now turning to the interpretation resorted to by the Railway Tribunal on Section 123 of the Railways Act, that mother does not include step mother, the proof affidavit filed by the appellant before the Tribunal would show that the original mother of the deceased, namely, Lakshmi died at the time of giving birth to the deceased and that the father of the deceased, married the appellant to take care and raise the deceased, but at the age of 10 years of the deceased, the father had also died due to cancer disease and thereafter, the appellant had raised the deceased by giving him proper education and that she is the only legal heir and dependent of the deceased, who had died as a bachelor.

9. The above facts and documents clearly show that the appellant Selvi as a Step mother, has taken care of the deceased, therefore, the question now needs to be decided is whether the step mother can be construed as dependant of the deceased as per Section 123(b) of the Railways Act.

10. For the simple reason that the word step mother fails to find a place in the cadre of dependants, the step mother cannot be held as not a dependant. Admittedly, after the death of the deceased son, the parents, who are depending upon their income, have become orphan and deprived of their support. Therefore, the appellant, admittedly, being the step mother, shall be construed as a dependent of the deceased, as the word parent also includes

step mother.

11. Accordingly, the findings given by the Tribunal are set aside and the appeal is therefore allowed. The respondent is directed to deposit a sum of Rs.8,00,000/- along with interest at the rate of 9% per annum from the date of petition till the date of realisation within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the entire compensation amount. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vga

To

1. General Manager,
Southern Railways,
Chennai-3.
2. The Proceeding Officer,
Railways Claims Tribunal,
Chennai Bench.
3. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to M/s.T.Rajamohan, Advocate SR.67838
+1cc to M/s.M.T.Arunan, Advocate SR.67721

EV (CO)
CB (13/12/2019)

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