

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.02.2019

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

CMA.No.294 of 2016

1.L.Parimala

2.L.Pavithra

3.L.Sowmya

[Appellant 3 is represented by mother
and next friend L.Parimala]

... Appellants

Vs.

Union of India
Owning Southern Railway,
rep.by General Manager,
Park Town, 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 23.07.2015 passed by the Railway Claims Tribunal, Chennai Beach, in OA (II-U) 163/2014.

For Appellants : Mr.T.Raja Mohan

For Respondent : Mr.C.V.Ramachandramurthy

J U D G M E N T

The claimant is the appellant before this Court. The claimant/husband was working as an Assistant Professor in the Arts and Crafts, Chennai and a resident of Arakkonam. He used to go to his job from Arakkonam by train. He left his home on 19.02.2014 stating that after completion of work he intended to go to Vanagaram near Tiruttani to his native place. Thereafter, the 1st petitioner/wife received an information that on 20.02.2014 that her husband fell down from the train between Arakkonam and Tiruttani railway station. The deceased died as a result of the railway accident and an FIR was filed in Crime No.51 of 2014 at Arakkonam Police Station based on the report given by Keymen S.Ravi and the post mortem was conducted on 20.02.2014 at 3.40 p.m., Doctor, who conducted post mortem had opined that the death has occurred prior to six hours. Therefore, it was concluded that the deceased would have died between 9 to 10 hours. She obtained the legal heirship certificate and filed the claim petition.

2. To prove the above facts she examined herself as AW.1 and marked Exs.A1 to A7 and she was cross-examined by Railways.

3. On the side of the respondent/railways none were examined as witness and no document was marked. The Tribunal has examined the case on two aspects. Whether the deceased was a bonafide passenger or not? and whether it was an untoward incident as defined under Section 123(c)(2) of the Railways Act, 1989. Finding flaws in the cross examination of the claimant that she was not sure whether her husband purchased a ticket or not, the Tribunal has found that the initial onus of bonafide passenger has not been proved. Further the Tribunal probed the case on the basis of the statement given by the claimant before Police as to the conduct of the deceased. It is found that the deceased left the house on 19.02.2014 and the claimant could not contact her husband till the information received by her from the Railway Police, Arakonam. Therefore, the Tribunal has got a suspicion as to when he left from Egmore on 19.02.2014, how could he purchase 2nd class ticket from Arakonam to Tiruttani. Therefore, it was found that there were numerous vital and serious contradictions in the facts as disclosed by applicant No.1 and from other materials placed on record, which remain totally un-explained and cloud surrounding thereon has not been cleared at all. On that ground the Tribunal held that the deceased was not a bonafide passenger and it was not an untoward incident and rejected the claim petition.

4. In our view it is nobody's evidence that the deceased travelled from Government College, Egmore, in the evening of 19.02.2014 to his native place straight away and that he did not travel in that train on 20.02.2014. The 1st appellant/claimant had clearly stated that her husband used to go to his office by train and left home on 19.02.2014 informing her that he is going to his native place near Tiruttani to meet his parents/relatives. During her cross examination appellant/claimant would clearly state that her husband, being a professor always purchase tickets and denied the suggestion that he travelled without ticket. The fact remains that the FIR registered by railway police on 20.02.2014 that prior to 11.15 hours, the deceased boarded one of the trains from Arakonam to proceed to the native place. The inquest and Post mortem were conducted on the same day viz., 20.02.2014. As stated supra the post mortem was conducted at 3.40 hours on 20.02.2014, the time of death as opined by the Doctor was six hours prior to post mortem, that means, that the death should have taken place between 9 and 10 hours on 20.02.2014. The Tribunal based on the statement of the claimant and other witness recorded by police raised suspicion on the manner in which death had happened and as probability of travel of the deceased from Arakonam to Tiruttani. There is no evidence on the side of the railways

rebutting the travel of the deceased on the appointed day. On the other hand evidence of the claimants proves the fact that a death occurred on 20.02.2014 between Arakonam and Tiruttani due to falling from a train. The Tribunal without any legal evidence, on wild imagination, have raised unwarranted suspicion taking reliance on the inadmissible evidence and had gone against the material admissible evidence before it. The order passed by the Tribunal is absolutely without any legal evidence. Therefore, it is not sustainable in the eyes of law.

5. It is well settled law of evidence that the initial onus shall be discharged by the applicant. The Hon'ble Supreme Court reported in 2018 AIR (SC) 2362, [Union of India Vs. Rina Devi] has observed that the initial onus gets discharged by filing an affidavit and proving the same. In the instant case, the 1st appellant/claimant has clearly stated that her husband left on 19.02.2014 by train stating that he was going to Tiruttani by train and this statement was proved by letting in oral evidence and marking documents vide Exs.A1 to A7 and Ex.A1 - FIR, which was registered by Railway Police, Arakonam and which states that the incident had taken place on 20.02.2014 prior to 11.00 hours. The inquest report and final report also substantiate the same. The death certificate informs the date of death as 20.02.2014. When these documents are marked and which are supported by oral evidence it shall be construed to be proved by the claimants unless there is evidence to the contrary. The initial onus that the deceased was a bonafide passenger and travelled by train has been discharged by the claimants. Once the initial onus is discharged by the claimants, it is for the Railways to establish that the deceased has not travelled in the train and he was not a bonafide passenger. Obviously it is very difficult to prove the negative. The railway at the most can say that the ticket was not found in the body. Many a times the ticket may fly away during fall due to gushing air, in view of the speed of the train. In those cases one should give the benefit of doubt in favour of the claimant and presume that the passenger had taken the ticket and he was a bonafide passenger as Railway Act is a beneficial legislation. Insofar as the untoward incident is concerned the onus is on the Railways to prove by suitable evidence and attending circumstances that the death had not taken place due to accidental fall. The death would have taken place anywhere and not occurred while travelling in the train and falling there from. It can be due to negligence of the victim, while crossing the track also. Therefore, we need to examine the documents in proper perspective. In that view of the matter, the FIR, inquest report and the death certificate clearly go to show that the accident has happened due to the fall of the deceased from the train and there is no report or correct material available to show that the death has occurred due hit and run over by train while crossing the railway track. As stated supra, the Tribunal ventured to rely on inadmissible

documents without any evidence and came to the conclusion that the deceased was not a bonafide passenger and that an incident was not an untoward incident. From the foregoing discussions we have no hesitation to set aside the judgment of the Tribunal as perverse and passed on wild imagination. The order of the Tribunal in OA (II-U) 163/2014 dated 23.07.2015 is set aside.

6. The date of accident is on 19.02.2014 and the compensation on that date for fatal accident was Rs.4,00,000/- [Rupees Four lakhs only]. The Ministry of Railways, by notification dated 01.01.2017 has enhanced the compensation from Four lakhs to Eight lakhs. The claimants are entitled to compensation along with interest. However, in the similar circumstances, the Hon'ble Supreme Court has laid down a procedure for calculating the compensation amount.

7. 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."

8. The Railway is directed to deposit the appropriate sum in terms of the above mentioned order of the Hon'ble Supreme Court within a period of 8 weeks from the date of receipt of a copy of the order. On such deposit the applicant is entitled to withdraw the same on production of appropriate proof of identity.

9. The Civil Miscellaneous Appeal is disposed of with the above direction. No costs.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

bri

To

1.The Railway Claims Tribunal,
Chennai Bench.

2.The Record Keeper,
V.R. Section,
High Court, Madras-104.

+1cc to Mr.C.V.Ramachandra Murthy, Advocate, S.R.No.18616

+2ccs to Mr.T.Rajamohan, Advocate, S.R.No.18539

CMA.No.294 of 2016

NRL (CO)

RRS (01/07/2019)

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