

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.11.2018

Delivered on : 29.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.518 of 2016

1.Swornamala
2.Sureyakumar
3.Ramasamy Pillai
4.Parameswari ... Appellants/Applicants
(A2 being minor rep. by mother &
natural guardian A-1)

Vs

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

Civil Miscellaneous Appeal filed under Section 23(1) of the
Railway Tribunal Act against the order dated 7.9.2015 made in
O.A. No.2 of 2015 on the file of the Railway Claims Tribunal,
Chennai Bench.

For Appellants : Ms.R.Sreevidhya

For Respondents: Ms.T.P.Savitha

JUDGMENT

This Civil Miscellaneous Appeal is filed by the appellants
against the order dated 7.9.2015 made in O.A.(II-U) 2 of 2015 by
the Railway Claims Tribunal, Chennai Bench, dismissing the claim
petition filed by the appellants, who are legal heirs of the
deceased R.Muthukumar.

2. The appellants, who are wife, minor son and parents of
deceased R.Muthukumar have filed the claim petition claiming
compensation of Rs.4,00,000/- alleging that the deceased was
holding journey ticket No.87578 for journey from Nagercoil Town

to Trivandrum dated 8.1.2014 and was waiting for arrival of the train to go to his head office at Amaravilai in Trivandrum District and was waiting at Nagercoil Town Station and moving on platform. At that time, all of a sudden a train hit back the deceased and was thrown away on the railway track from the platform and sustained grievous injuries and died on the spot.

3. Resisting the claim, the respondent filed reply stating that the incident will not come under the definition of "untoward incident" within the meaning of Section 123(c)(2) of the Railways Act, 1989 as according to DRM report, the train hit while he was walking on the platform near to the track and prayed for dismissal of the claim petition.

4. To prove the claim, the claimants have produced 7 documents and the first claimant was examined herself as AW-1 before the Tribunal.

5. Upon considering the oral and documentary evidence produced before it, the Tribunal dismissed the claim petition holding that the claim was not falling under Section 123(c)(2) of the Railways Act, 1989. Challenging the same, the appellants have preferred the present Civil Miscellaneous Appeal.

6. I heard Ms.R.Sreevidhya, learned counsel for the appellants and Mrs.T.P.Savitha, learned counsel for the respondent and perused the entire materials available on record.

7. Challenging the order of the Tribunal, the learned counsel for the appellants submitted that the Tribunal has misconstrued the investigation report filed by the Investigating Officer and it had failed to appreciate that the death of the deceased Muthukumar will not come under definition of "untoward incident" under Section 123(c) of the Railways Act, 1989. He would submit that though the Tribunal held that the deceased was a bona fide passenger, it had erred in dismissing the claim petition.

8. The learned counsel further submitted that the decision relied upon by the Tribunal in Sivakala v. Union of India, reported in 2014 (2) TAC 927 is totally different from the present case and the same cannot be relied upon. Without discussing the evidence in a proper perspective, the Tribunal dismissed the claim petition and the same is liable to be set aside.

9. Reiterating the findings of the Tribunal, the learned counsel for the respondent submitted that having found that the present case will not come under the definition of "untoward incident", the Tribunal has rightly dismissed the claim petition

and there is no need to interfere with the same.

10. I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

11. It is beyond any cavil that the deceased had purchased ticket bearing No.87578 to travel to Trivandrum. The said fact has been proved by way of marking the ticket as Ex.A7. Moreover, the particulars of Ex.A7 is recorded in Ex.A2-inquest report as well as in Ex.P4-final report. In such circumstances, it has to be held that the deceased was a bona fide passenger on the date of incident i.e., on 08.01.2014 and the Tribunal has also rightly held that the deceased was a bona fide passenger on the ominous day.

12. The case of the claimants is that the deceased Muthukumar was working as Manager in Muthoot Bank, Azhagiapandipuram Branch Office and on 08.1.2014 at 9.00 A.M., when the deceased started to go to his office, he told his wife that he was going to his office and then going to his head office at Amaravilai in Trivandrum District and come back. After attending his office at Azhagiapandipuram, the deceased arrived before 12.50 noon in Nagercoil Town Station and he got ticket from Nagercoil Town to Trivandrum and waiting for the arrival of the train to go to the head office at Amaravilai. While waiting at Nagercoil Town Station and moving on the platform with carefully and cautiously, all of a sudden a train was hit on the backside the deceased and thrown away on the railway track from the platform and thereby the deceased had sustained grievous injuries and died on the spot. Thus, according to the appellants, the incident will come under the definition of "untoward incident" within the meaning of Section 123(c)(2) of the Railways Act, 1989 and the Tribunal erred in dismissing the claim petition.

13. On the other hand, it is the say of the respondent that due to negligence of the deceased the incident was happened and therefore, the incident as narrated by the appellants will not come under the definition of "untoward incident" within the meaning of Section 123(c)(2) of the Railways Act, 1989 and therefore, the Tribunal was right in dismissing the claim petition.

14. Section 123 of the Railways Act, 1989 reads thus:

"Section 123(c) "Untoward incident" means.-

- (1)(i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987;

- (ii) the making of a violent attack or the commission of robbery or dacoity; or
 - (iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or
- (2) the accidental falling of any passenger from a train carrying passengers."

15. It is true that definition of the word "untoward incident" in Section 123(c) of the Act is exhaustive. It can only be construed having regard to the further consideration that the Scheme of the Act appears to be that the Legislature has mulcted the Railway with the liability to pay compensation without reference to there being any need to prove wrongful act, neglect or default on the part of the Railway administration. The liability imposed on the Railways can, therefore, be held to be not a tortuous liability as understood in law.

16. It is also true that the provision should receive a liberal construction, but we cannot carry the matter to the point where if the facts as established would show that the incident cannot be brought under "untoward incident". If there is accidental falling of any passenger from a train carrying passengers, it would be an "untoward incident".

17. In the present case, admittedly, the deceased was not fallen from the train carrying passengers. According to the appellants, while moving on the platform, all of a sudden, a train hit on the backside of the deceased and was thrown away on the track from the platform and deceased died on the spot.

18. According to the respondent, when the deceased was walking carelessly by the edge of the platform talking over the cell phone, he was hit by a train proceeding from Trivandrum to Nagercoil. Therefore, the incident cannot be brought under "untoward incident".

19. In a decision in Union of India v. Prabhakaran Vijaya Kumar and others, reported in 2008 (4) MLJ 323 (SC), the Hon'ble Supreme Court, while interpreting expression accidental falling of a passenger from a train carrying passengers, which is an "untoward incident" under Section 123(c)(2) of the Act and the consequential payment of compensation under Section 124-A for such "untoward incident" has held that it is well settled that if the words used in a beneficial or welfare Statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom

the Act was made should be preferred. In other words, beneficial or welfare Statutes should be given liberal and not literal or strict interpretation. In the said decision, the Apex Court in paragraphs 12 to 15 held as follows:

"12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide *Alembic Chemical Works Co. Ltd. vs. The Workmen* AIR 1961 SC 647 (para 7), *Jeewanlal Ltd. vs. Appellate Authority* AIR 1984 SC 1842 (para 11), *Lalappa Lingappa and others vs. Laxmi Vishnu Textile Mills Ltd.* AIR 1981 SC 852 (para 13), *S. M. Nilajkar vs. Telecom Distt. Manager* (2003) 4 SCC 27(para 12) etc.

13. In *Hindustan Lever Ltd. vs. Ashok Vishnu Kate and others* 1995(6) SCC 326 this Court observed:

"In this connection, we may usefully turn to the decision of this Court in *Workmen vs. American Express International Banking Corporation* wherein *Chinnappa Reddy, J.* in para 4 of the Report has made the following observations:

The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds*).

In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surender Kumar Verma v. Central Govt. Industrial Tribunal-cum- Labour Court* we had occasion to say:

"Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions."

Francis Bennion in his Statutory Interpretation Second Edn., has dealt with the Functional Construction Rule in Part XV of his book. The nature of purposive construction is dealt with in Part XX at p. 659 thus:

"A purposive construction of an enactment is one which gives effect to the legislative purpose by-
(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or
(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive and strained construction)."

At p. 661 of the same book, the author has considered the topic of "Purposive Construction" in contrast with literal construction. The learned author has observed as under:

"Contrast with literal construction - Although the term 'purposive construction' is not new, its entry into fashion betokens a swing by the appellate courts away from literal construction. Lord Diplock said in 1975: 'If one looks back to the actual decisions of the [House of Lords] on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions'. The matter was summed up by Lord Diplock in this way -

...I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it.

14. In our opinion, if we adopt a restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in Section 123(c) of the Railways Act, we will be depriving a large number of Railway Passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people, who travel by Railway Trains since everybody cannot afford travelling by air or in a private Car. By giving a restrictive and narrow meaning to the expression, we will be depriving a large number of victims of Train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression 'accidental falling of a Passenger from a Train carrying Passengers' includes accidents when a bona fide Passenger i.e., a Passenger travelling with a valid ticket or pass is trying to enter into a Railway Train and falls down during the process. In other words, a purposive, and not literal interpretation should be given to the expression."

20. On a perusal of the order of the Tribunal, it is seen that the Tribunal mainly relying upon the decision of the Kerala High Court in Sivakala v. Union of India, supra, held as under:

"6.5. To claim compensation, the claimants have to satisfy two main ingredients viz., "the accidental falling of any passenger from a train carrying passengers and he must have purchased a valid ticket for travelling by a train carrying passengers under Section 123(c)(2) and explanation to Section 124-A of the Railways Act, 1989 in paragraph 5.8, the Tribunal came to the conclusion that though in the case on hand, there was an accidental falling, in the absence of proof of bona fide travel with ticket, it cannot be termed as an "untoward incident" for claiming compensation.

6.6. In the present case, though bona fide of the victim is proved, accidental fall resulting in death of the victim is not established. Thus, we, hold that this is not a fit case for claiming compensation under Section 123(c)(2) and both the issues are answered in the negative against the applicants."

21. The legal position with respect to the "untoward incident" inside the railway station is well settled. Section

124-A of the Railways Act is based on the principle of no fault liability and the compensation cannot be denied to the appellants on the ground that the deceased was negligent and it is wholly irrelevant as to who was at fault. Section 123(c) of the Railways Act defines "untoward incident" to include the accidental falling of any passenger from a train carrying passengers.

22. The word 'passenger' has been defined under Section 2 (29) of the Railways Act, 1989 as a person travelling with a valid pass or ticket.

23. The Explanation to Section 124-A clarifies that the word 'passenger' includes a railway servant on duty; and a person who has purchased a valid ticket for travelling by a train or a valid platform ticket and becomes a victim of an untoward incident. As such, there are three categories of persons who are defined as passengers: - (i) a person with a valid ticket to travel; (ii) a person who holds a railway pass to travel and (iii) a person who holds a platform ticket. In each of the categories, so long as a person is in railway premises or a train, he is taken as a passenger. His or her presence in the railway premises or a train is taken as authorized. However, it does not amount to becomes a victim of an "untoward incident".

24. On a reading of the definition as aforesaid, still the word "untoward incident" would mean only that there must be an accidental falling of the passenger as aforesaid from a train carrying passengers.

25. In the present case, the admitted case of the appellants is that the deceased passenger while moving on the platform, all of a sudden, he was hit by train and the deceased was thrown away on the railway track, thereby he sustained fatal injuries and died on the spot.

26. As per Ex.A2-inquest report, the incident occurred when the deceased was walking by the edge of the platform talking over cell phone and he was hit by a train proceeding from Trivandrum to Nagercoil. Therefore, it is clear that the death of the deceased was not on account of any fall from train either while boarding or alighting or in the course of travelling, but due to his negligence.

27. It is true that Section 123(c) of the Railways Act, 1989 should receive liberal construction, but we cannot carry the matter to the point where if the facts as established would show that the incident cannot be brought under "untoward incident", still we must somehow strain ourselves to bring the matter within the scope of "untoward incident".

28. In an identical situation, in Sivakala v. Union of India, supra, a Division Bench of Kerala High Court held as under:

" 10. In this case, even the admitted case of the appellants themselves was that the deceased passenger was standing on the platform. He wanted to board the train going towards Trivandrum. It is the case of the appellants themselves that the ill-fated passenger was completely caught off guard by the sudden arrival of Madras Mail coming from the south and from the south because of the wind it generated he fell to the track and was run over. There are two factual issues which must immediately catch our attention. The Madras Mail was not scheduled to stop at the station. Secondly, the ill-fated passenger was not scheduled to board to Madras Mail. This is not a case where a passenger was trying to board a train and he falls by way of an accidental fall from the train. The law requires the accidental falling of the passenger from a train carrying passengers. We find, in the facts of this case, even accepting all that has been said by the appellants, that we cannot bring the case of the ill-fated passenger as one where he fell from the train. He fell, according to the appellants, on account of the wind, when he was standing on the platform and when the train which was not scheduled to stop at the platform, passed-by.

11. We have our reservations about accepting the very case of the appellants that the accident took place as alleged by them. But, we are merely assuming that the death occurred as alleged by them. We have no reluctance in pronouncing that even if it be so, it will not fall within the four corners of the word "untoward incident" as defined in Section 123 of the Act."

(emphasis supplied)

29. The aforesaid decision of the Kerala High Court would squarely apply to the case on hand. As rightly held by the Tribunal, to claim compensation, the claimants have to satisfy two main ingredients viz., (i) the accidental falling of any passenger from a train carrying passengers; and (ii) he must have purchased a valid ticket for travelling by a train carrying passengers under Section 123(c)(2) and Explanation to Section 124-A of Railways Act, 1989.

30. In the present case, the deceased was having a valid

ticket for travelling on the fateful day, however, there was no accidental falling of the deceased from a train carrying passengers. In fact, the deceased himself invited the incident by walking on the edge of the platform talking over cell phone. Being an educated, the deceased would have avoided in talking over cell phone on the edge of the platform. Though no independent witness was examined by the respondent to prove that while walking on the edge of the platform talking over cell phone, the train hit on the backside of the deceased, the appellants themselves stated in their claim petition that at the time of incident, the deceased was moving on the platform, which would clearly establish that the deceased was not standing away on the edge of the platform. Thus, as rightly held by the Tribunal, this is not a fit case for claiming compensation under Section 123(c) (2) of the Railways Act, 1989.

31. After perusing the impugned order of the Tribunal, vis-a-vis the submissions of the learned counsel, I am satisfied with the same, as correct, and are according to law and do not suffer from any factual infirmity, inconsistency, or legal infirmity, so as to warrant the Appellate Court to interfere therewith, on any question of fact or finding or law. I am satisfied with the findings recorded by the Tribunal as correct and sustainable both on fact and law. No valid grounds have been made out to interfere with the order of the Tribunal.

32. In the result, the Civil Miscellaneous Appeal is dismissed, leaving the parties to bear their own costs.

Sd/-
Assistant Registrar

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सत्यमेव जयते
Sub Assistant Registrar

To

1.The Railway Claims Tribunal,
Chennai Bench.

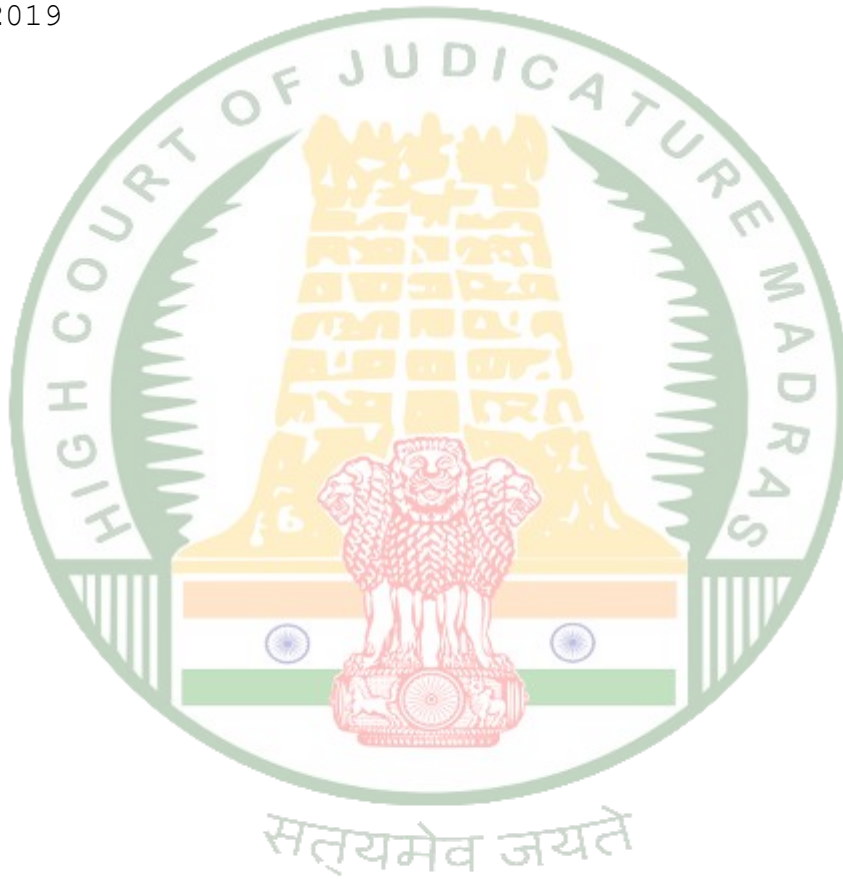
2. The General Manager,
Union of India Owning
Southern Railway
Chennai-600 003.

3.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Ms.T.P.Savitha, Advocate sr.no.6902
+1cc to Ms.R.Sreevidhya, Advocate sr.no.8293

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