

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.1206 OF 2018

1.R.Munusamy

2. Saradha Munusamy
(Mother of the deceased) ... Appellants/Applicants

Vs.

The Union of India owning
Southern Railway
rep. By General Manager,
Chennai - 600003. Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal under Section 23 of the Railway Claims Tribunal Act 54 of 1987 praying to set aside the order dated 21.02.2018 passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U) 93/2017 granting an award for the statutory compensation of Rs.8,00,000/- (as per Gazette Notification with effect from 01.01.2017 with interest at 12% p.a. from the date of filing of the claim application viz., 20.06.2017 till the date of payment and the costs of the proceedings.

For appellant : Mr.T.Raja Mohan
For respondent : Mr.M.T.Arunan

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant seeking to set aside the order dated 21.02.2018 passed by the Railway Claims Tribunal, Chennai Bench in O.A. (II-U) 93/2017 and to pass an order granting statutory compensation of Rs.8,00,000/- (as per Gazette Notification with effect from 01.01.2017 with interest at 12% p.a. from the date of filing of the claim application viz., 20.06.2017 till the date of payment and the costs of the proceedings.

2. This appeal is filed by the parents of the deceased, who died in an untoward incident that had taken place on 29.06.2016, between Urapakkam and Chromepet.

3. According to the appellants, their son one M.Gokularaman was travelling between Urapakkam and Chromepet in the train. During his travel, he accidentally fell down from the train and was taken to Government Hospital, Chromepet and died responding to any treatment. On his death, his parents have preferred a claim application before the Railway Claims Tribunal. The Railway Claims Tribunal, based on the contradictions in the statement of witnesses held that the deceased was not a bonafide passenger and rejected the claim. Aggrieved over the same, the appellants have preferred the appeal.

4. From the perusal of the materials, it is clear that there was an accident on 29.06.2016. It is seen that the First Information Report was filed by the Railway Police, Tambaram, based on the information given by the Station Master, Tambaram. The Station Master, Tambaram in his communication dated 29.06.2016, has informed the police that one male person has fallen down near the Home signal between Tambaram and Perungalathur. On such complaint, the Police registered a First Information Report and found that the deceased has fallen down from the train due to over crowd in Train No.40514, suffered head injuries. The First Information Report filed by police also shows that the deceased had accidentally fallen down from the train and died without responding to the treatment. The same was with the final report.

5. When the matter was tried before the Railway Claims Tribunal, the co-workers and the co-passengers of the deceased deposed as witnesses A.W.1 and A.W.2 that they have traveled along with the deceased and that the deceased had taken the ticket from Urapakkam to Chromepet. Both of them would depose that one passenger shouted that a person fell down from the train. Suspecting the person might be their friend, both of them ran back to the scene of occurrence. There are certain contradictions as to the travel to Chromepet Government Hospital, where the deceased was taken to. The Railway Claims Tribunal having found contradictions in the statement made by the witnesses A.W.1 and A.W.2 has held that it is not probable that the deceased had purchased ticket and it was lost. Since nothing was recovered from the body of the deceased, the statement of A.W.1 and A.W.2 cannot be believed and that the deceased has held to be not a bonafide passenger and rejected the claim.

6. The learned counsel appearing on behalf of the Railways would vehemently contend that the witness A.W.1 and A.W.2. being closely related, their statement cannot be believed. If at all, the statement of A.W.2 is to be believed, he should have marked the ticket purchased by him for his travel as evidence. When he cannot furnish the ticket for travel, it should be presumed that he was also a ticket-less traveller along with the passenger. The Tribunal

has arrived at a conclusion, that the passenger was not a bonafide passenger. In the instant case the facts and circumstances clearly show that the deceased had fallen down from the train. The only issue is to see is as to whether the deceased was a bonafide passenger or not ?

7. It is well settled that in any Railway accident, whenever the person falls down from the train, there are high possibilities of tickets being lost. Only because of that the ticket is not recovered, it cannot be presumed that the passenger is not a bonafide passenger. On the other hand, when there are two possible conclusions, the one in favour of the claimant will prevail. But, in the instant case, there is clear evidence on the side of the appellant that two co-passengers have clearly deposed that the deceased had purchased tickets from Urapakkam and Chromepet.

8. The evidence of these witness was not contradicted. It is everybody's case that the incident was an untoward incident as witnessed by the Station Master. The claimants witnesses would cogently state that the deceased had purchased the ticket. The said evidence, during cross examination was not contradicted and no attempt to elicit the fact from the witnesses. Not even suggestions to establish the fact. Much focus was given to the events which had taken place after the incident and not with regard to purchase of tickets except for formal questions. The Tribunal also had taken the contradiction with regard to the post accident event and considered that those witnesses were not at all present at the time of accident. It is not the case of the Railways and no evidence adduced in that direction. Hence finding of the Tribunal is based on irrelevant facts.

9. In a recent judgment, the Hon'ble Supreme Court reported in 2018 AIR (SC) 2362 Union of India Vs. Rina Devi has held that the onus of the claimants stands discharge on filing of an affidavit in the following lines:

"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 show or the attending circumstances."

In the instant case, I am of the considered opinion that the claimants have discharged their burden.

10. In Hindustan lever Ltd Vs. Ashok Vishnu Kate and others cited in 1995(6) SCC 326, this Court observed as under:

"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. Simonds*). 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."

11. In the similar circumstances, this Court while deciding an appeal in C.M.A.No.548 of 2016 on 30.01.2018 referred the judgments of Hon'ble Supreme Court and held in favour of the claimants, cited in 2016 (6) CTC 82 [A.Thanikachalam and others v. The Union of India, owning Southern Railway, Rep. By its General Manager, Chennai] wherein, this Court, in paragraph Nos.13 to 16 held as follows:

"13. It is no doubt true that the parents of the deceased-Jagan, laid the claim before the Railway Claims Tribunal on the ground that the deceased-jagan, while travelling in a EMU train between Chengalpattu and Singaperumal Koil Stations on 10.04.2006, was hit by an electric post, as a result, he sustained injuries on the back side of his head and died on the spot after falling down. Upon consideration of the evidence let in by the parties both oral and documentary, more particularly, Ex.A2-Inquest report and Ex.A3-final report, the Tribunal categorically held that the deceased on 10.04.2006 prior to 9.15 AM while travelling by EMU train between Chengalpattu and Singaperumal Koil Railway

Stations at KM/B-56/16 was accidentally hit by electric post, sustained grievous injuries and died at the spot and that the police have concluded the case as accidental death and accordingly closed their case. The Tribunal also held that the respondent have not adduced any evidence to establish that the incident would not come under Section 123(c)(2) of the Railways Act, 1989 and the respondent is not liable under Section 124A of the said Act. Moreover, the Tribunal went on to hold that the applicants, the appellants herein have proved that the deceased died in a untoward incident on 10.04.2006 while travelling by the train. After holding so, the Tribunal has clearly erred in dismissing the claim petition on the ground that the deceased was not a bonafide passenger. When the inquest report filed by the Chengalpattu Railway Police Station in Crime No.79 of 2006 under Section 174 Cr.P.C., dated 10.04.2006 itself clearly revealed that the deceased-Jagan, while travelling in a EMU train had dashed against a post, sustained grievous head injuries and died on the spot and that there were no other reasons for his death, since he had fallen down from the UP train, the burden lies upon the Railways to prove that the deceased was not a bona fide passenger. Similarly, in the case of the deceased Ekambaram is concerned, when the claim petition was filed by the wife and minor children of the deceased on the ground that the deceased while travelling in a train plying between Beach and Tambaram had fallen down in between Chetpet and Nungambakkam railway stations on 28.05.2002 and died due to the injury to the chest and abdomen, the respondent resisted the said claim also on the ground that the deceased was not a bonafide passenger, when the inquest report shows that the incident had actually taken place on the said date. Moreover, the Tribunal also discarded the evidence of one R.Murugan, an eye-witness, who was examined as A.W.2, on the ground that his statement was contradictory to the materials available on record. In my view, the Tribunal miserably failed to consider the judgments of the various High Courts, holding that the benefit of doubt that the deceased could have been a bonafide passenger should be given, while dealing with a beneficial piece of legislation. In this context, it is relevant to refer to the judgment of the Hon'ble Apex Court in the case of Union of India v. Prabhakaran Vijaya Kumar and others, (2008) 4 MLJ 323 (SC), wherein the

Apex Court, while interpreting the expression accidental falling of a passenger from a train carrying passengers which is an untoward incident under Section 123(c)(2) of the Railways Act and the consequential payment of compensation under Section 124A 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 a liberal and not literal or strict interpretation. In the said judgment, the Apex Court has further held as follows:

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 bonafide 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."

12. In the instant case the respondents have not let in any evidence that the deceased was not a bonafide passenger. Under such circumstances, this Court is inclined to set aside the findings of the Railway Claims Tribunal and allow the appeal.

13. Accordingly, the Civil Miscellaneous Appeal is allowed. The order passed in OA.No.(II-U) 93/2017 dated 21.02.2018 by Railway Claims Tribunal is set aside. As per the Notification of the Ministry of Railways (Railway Board) dated 22.12.2016 in G.S.R.1165 (E), wherein, Part-I of the Schedule under Rule 3 of the Rules prescribes Rs.8,00,000/-

as compensation for death and accordingly, the claimants are entitled to a sum of Rs.8,00,000/-. The Notification has come into force with effect from 01.01.2017. Therefore, a direction is issued to the respondent railways to pay a sum of Rs.8,00,000/- [Rupees Eight Lakhs only] as compensation to the claimants with effect from 01.01.2017 along with interest @ 9% P.A. from the date of filing of the claim petition till the date of deposit. The respondent/railway is directed to deposit a sum of Rs.8,00,000/- [Rupees Eight Lakhs only] with interest, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the same on production of appropriate identity. No costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

bkn

To

1. The General Manager
Government of India
Southern Railway
Chennai.
2. The Railway Claims Tribunal, Chennai Bench

+1 cc to Mr.M.T.Arunan, Advocate Sr.No.13368

+1 cc to Mr. T.Rajamohan, Advocate Sr.No.13872

सत्यमेव जयते

C.M.S.A.NO.1206 OF 2018

MP (24/05/2019)

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