

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2019

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CMA NO.121 OF 2018

1.N.Jeeva
2.Suganya Devi
3.Sathish Kumar

... Appellants

VS.

The Union of India Owning
Southern Railway
Rep. by its General Manager
Chennai - 600 003.

... Respondent

PRAYER:

Civil Miscellaneous Appeal filed under Section 23(1) of Railway Claims Tribunal Act, 1987, praying to set aside the judgment passed in O.A.(II U) 220 of 2014 by the Railway Claims Tribunal, Chennai Bench, dated 30.07.2015.

For Appellants : Ms.Selvi Rajesh

For Respondent : Ms.A.Srijayanthi

J U D G M E N T

Aggrieved over the order dated 30.07.2015 passed in OA (II-U) No.220/2014 by the Railway Claims Tribunal, Chennai Bench, the claimants are before this Court.

2.The claimants are the legal representatives of the deceased Navaneetha Krishnan.

3.The facts as stated by the parties are as under:

(i) On 03.06.2013 at about 06.45 am, the deceased got money from his wife and informed her that he was going to his relative's house at Madurai by train seeking financial help for his son's education. He went to Paramakudi Railway Station and after procuring the ticket, he travelled in Train No.56724 (Rameswaram - Madurai Passenger) from Paramakudi to Madurai.

While travelling between Paramakudi and Soodiyur Railway Stations at KM 578/100-200 due to over crowd, jolt and jerk of the Train, he fell down from the running train, sustained grievous injuries and died at the spot. The journey ticket was lost at the time of accident.

(ii) The respondent denied the averments and stated that the deceased was not a bonafide passenger and the incident had taken place due to his own negligence and carelessness. Hence, they are not liable to pay any compensation.

(iii) The first appellant / wife of the deceased examined herself as A.W.1 and marked the inquest and final report as Exs.A5 and A6. Her request to produce another eye witness was not allowed by the Railway Claims Tribunal and the appellants' side evidence was closed.

(iv) On the side of the respondent, DRM report dated 07.07.2015 was marked and the evidence was closed.

(v) The Tribunal after finding that the DRM report concluded that it is a case of run over by train due to negligence and carelessness and that the first appellant in her statement recorded by the Police in vernacular language informed the Police that her husband was hit by train and found dead. Further it is found that the incident had taken place within one kilometer; that no valid ticket was produced to prove that the deceased performed his journey and for the above said findings, dismissed the claim petition. Aggrieved over the same, the appellants are before this Court.

4. Heard the submissions made on either side and perused the materials available on record.

5. It is the contention of the appellants that the first appellant filed an affidavit narrating the incident cogently and also let in evidence as A.W.1 and marked documents. Whereas, on the other side, there is no evidence to disprove the case of the appellants. The Tribunal, grossly erred in dismissing the claim petition.

6. Per contra, learned counsel for the respondent would contend that the Tribunal has rightly found that the appellants have failed to establish the performance of journey of the deceased and that their own statements proved that he was hit by train and that they are not entitled to any compensation.

7. A perusal of the claim petition and evidence of A.W.1, it is noted that she had clearly explained the narration

of events. The deceased said to have got money from A.W.1 to procure ticket for his travel from Paramakudi to Madurai. A clear statement was made that he procured ticket for his travel which was witnessed by one Jayaraman and he travelled by Rameswaram-Madurai Passenger (Train No.56724). The victim unexpectedly fell down from the running train between Paramakudi and Soodiyur Railway Stations, due to over crowd, jolt and jerk of the train. On a perusal of the FIR registered on the same day, it is recorded that the deceased unexpectedly fell down from a running train and suffered death. The inquest report marked as Ex.A4 and the final report as Ex.A6, clearly reveal that the deceased procured a valid railway ticket and travelled in Train No.56724 Rameswaram - Madurai Passenger and due to over crowd, unexpectedly fell down from the running train. The final report also reveals the same.

8. The reply statement filed by the respondent denied the report submitted by the Investigation Officer, purchase of train ticket and the incident. It is not a case of the respondent that the deceased was hit and run over by the train, rather would define the case as one of self inflicted injuries exempted under Section 124-A of the Railways Act, 1989.

9. The Railway Claims Tribunal focussed its attention on the statement made before the Police by the first appellant in vernacular language. The Tribunal has taken the word *mogl;L* , *we;jhh*; as hit by train. The Tribunal also consciously recorded that the english translation was not in consonance with the vernacular statement made. Curiously, such statement was not marked as an exhibit, but from an annexure found in the DRM report. Neither the Presenting Officer nor the Author of the document were examined as witnesses to speak about the document. In the absence of any evidence, on the particular aspect, and without providing an opportunity to cross examine the witnesses, in the manner known to law, the Tribunal ought not to have ventured to rely on the said statement, which was not marked as an exhibit before it.

10. Secondly, the information given to the Police cannot be a conclusive proof, unless that was investigated and a final report was filed. Strangely, in the instant case, the final report categorically states that the deceased unexpectedly fell down from a running train due to over crowd, jolt and jerk. But the Tribunal erroneously taken the word அடிபட்டு இறந்தார் in a different context and rejected the claim petition.

11. It is pertinent to note that the word அடிபட்டு இறந்தார் in vernacular language would give different meanings. It will not give a literal meaning that he was hit by a train and died.

It can be applied to a person, who had suffered injuries due to falling from the train also. The FIR which was registered on the very same day was recorded at 12.00 hours. The son of the deceased has categorically stated that his father, who went to Madurai for securing some money for his education, unexpectedly fell down from the running train and he identified the dead body is his father. His statement was substantiated by the inquest report witnessed by five persons before the Police and the final report submitted by the Investigation Officer. To controvert the statement of the Investigation Officer, the Railways had not taken any steps to summon him or anyone else as a witness. But curiously, the Claims Tribunal had relied on an inadmissible piece of document and rejected the claim. Such a finding given by the Tribunal is ex-facie illegal, perverse and not sustainable in the eyes of law.

12. On the issue of bonafide passenger, the Hon'ble Supreme Court in UNION OF INDIA VS. RINA DEVI [2018 AIR (SC) 2362] has held that mere absence of ticket with such injured or deceased will not negative the claim that he was a bonafide passenger. Initial burden will be on the claimants 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.

13. In the instant case, the said statement was abundantly proved by way of an affidavit filed by the first appellant by letting in evidence as A.W.1. In such circumstances, it shall be construed that the first appellant had discharged the initial onus of proving that the deceased had travelled by train by procuring a ticket for journey. Further, she would also state that the Tribunal closed the appellants' side evidence, without permitting them to produce the eye witness one Jayaraman, who witnessed the travel of the deceased by train. None of the above statements were contradicted during cross examination or disproved. Nor Railways have let in evidence to prove the stand taken by them. In the absence of any evidence, the Tribunal ought to have presumed that the victim had taken ticket for his travel on the fateful day and should have given the benefit to the claimants. Hence, the finding that the victim was not a bonafide passenger is also liable to be set aside.

14. As discussed above, the Railways have failed to let in evidence through the Author of the document to establish their case. The conduct of the Railway Claims Tribunal appears to be stepping into the shoes of the respondent / Railways. It is also relevant to note that the DRM report as produced before the Court does not contain any such statement of witnesses recorded by Police to prove the case. However, the Tribunal has

ventured to fish out materials only for the purpose of dismissing the claim petition. Hence, the order passed on extraneous reasons shall be quashed as perverse and illegal.

15. In my considered opinion, the appellants have categorically proved that the deceased had travelled by train by procuring ticket. On the other hand, there is no evidence on the side of the Railways to disprove the same. In such circumstances, the appellants should have been given the benefit provided under the beneficial legislation rather than finding the reasons to reject it.

16. Accordingly, the order dated 30.07.2015 passed by the Railway Claims Tribunal in O.A.(II-U) 220 of 2014 is set aside.

17. Since the claim was dismissed, the Railways did not pay any compensation. 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. However, the date of accident was 03.06.2013. On that date, the compensation was Rs.4,00,000/-.

18. In a similar circumstances, the Hon'ble Supreme Court in UNION OF INDIA VS. RADHA YADAV [CIVIL APPEAL NOS.1265-1266 OF 2019] has 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."

19. Therefore, the respondent / Railway is directed to deposit the appropriate sum within a period of eight weeks from the date of receipt of a copy of the order. On such deposit being made, the claimants are entitled to withdraw the same on production of proper identification.

20. In fine, the Civil Miscellaneous Appeal is disposed of with the above observations and directions. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

BKN/TK

To

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

Copy To

The Section Officer,
VR Section, High Court, Madras-104.

+1cc to Mr.P.Rajesh, Advocate, S.R.No.19623

+1cc to Ms.A.Srijayanthi, Advocate, S.R.No.20392

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KS (CO)
CS/16/09/2019