

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2019

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

CMA.No.1308 of 2018

R.Sagayamary

... Appellant/Applicant

Vs.

The Union of India
Represented by the General Manager,
Southern Railway,
Chennai.

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987, praying that the order dated 04.12.2017 passed by the Railway Claims Tribunal Chennai Bench, in O.A.(II-U) 87/2017 be set aside granting an award for the statutory compensation of Rs.8,00,000/- (vide Gazette Notification with effect from 01.01.2017) together with interest at 12% p.a. from the date of filing of the claim application viz., 26.05.2017 till the date of payment and the costs of the proceedings.

For Appellant : Mr.T.Rajamohan

For Respondent : Mr.M.Vijay Anand

J U D G M E N T

The claimant is the appellant before this Court. The claimant filed a claim petition on the death of her son in an untoward incident while travelling in an electric train, before the Railway Claims Tribunal. The claimant and her son were residents of Pallavaram near Chennai and he was doing 2nd year B.Com in TMG College of Arts & Science, Manimangalam, Chennai. On the morning of 20.01.2017, the deceased informed the claimant that he was going to Marina Beach to participate in the agitation for Jallikattu along with his friend by train. Thereafter, at about 9 hours the claimant was informed by the Egmore Railway Police that the deceased holding a second class

ticket bearing No.40970471 for travel from Pallavaram to Tiruvanmiyur, fell down from the electric train due to heavy rush, speed, jerk and jolt of the train and suffered grievous injuries, which resulted in death. On the basis of First Information Report, Post Mortem, Death Certificate, inquest Report and Final Report filed by the Railway Protection Force, the appellant/claimant filed the above petition for compensation.

2. In order to prove her case, the claimant had examined herself as AW1 and marked Exs.A1 to A7 and she was cross-examined by the presenting officer. None were examined on the side of the respondent and no documents were marked.

3. The railways filed a reply statement denying the claim. That the accident register reveals that the deceased had fallen from the train at 12.15 hours and was taken by one Vasudevan to hospital at 12.45 hours. Time gap between purchase of ticket i.e., 10.30 hours and time of incident i.e., 12.15 hours, several EMU trains have passed through Pallavaram at 10.40, 10.50, 11.00, 11.10, 11.20, 11.30 and 11.40 hours respectively. In that case, the deceased would have travelled after lapse of validity of the ticket and that had he travelled during the validity time of the ticket, the body would have been noticed much earlier. Therefore, the claim petition must have been filed on imaginary grounds and fabricated records to show that the deceased was a bonafide passenger.

4. The Tribunal relied on the DRM's report, which is to the effect that the deceased has not accompanied anybody and that he has not informed his mother about his participation in Jallikattu. The DRM's report further provided details in seriatim and found that the incident had taken place as the deceased travelled in the extreme end of door way of train making fun with his friends and unfortunately one of OHE post hit against the head of the deceased and he had fallen from the train. Hence it was concluded that the incident had taken place due to the carelessness and negligence of the deceased.

5. Relying on the judgment reported in 2015 ACJ 2615 [Nathi Lal and another Vs. Union of India] Delhi High Court and also relying on the judgment passed in OA.No.0016/2002 by the Ranchi Bench of Railway Claims Tribunal, Suhawni Burah dated 10.05.2012, the Tribunal came to the conclusion that the accident had taken place out of negligence and self-inflicted injury and which will not fall under untoward incident and has rejected the claim.

6. Aggrieved over the same, the claimant is before this

Court. I have considered the rival submissions and the materials place before the Court.

7. Admittedly, the claimant has examined herself as AW.1 and marked Exs.A1 to A7. The First Information Report dated 20.01.2017 marked as Ex.A1 and the inquest report, Post mortem certificate, final report, death certificate were marked as Exs.A2 to A5 and the attested copy of the second class ordinary ticket bearing No.40970471 for travel from Pallavaram to Thiruvananthapuram dated 20.01.2017 as Ex.A7.

8. The claimant was extensively cross examined by the respondent. There is no suggestion as to the purchase of ticket, travel and time of death or whether the deceased was a bonafide passenger or not. Likewise, there is no cross examination with regard to the negligence on the part of the deceased and there is no evidence to impeach the credibility of the claimant's witness. On the side of the railways none were examined as witnesses and no body had spoken about DRM's report to substantiate the defence taken by the Railways.

9. Curiously, without any evidence or proof the Railway Claims Tribunal has concluded that the death has occurred owing to self inflicted injury and it was not an untoward incident. Whereas the investigation in this case from the stage of First Information Report to filing of Final Report, clearly shows that the death has occurred owing to an untoward incident and the deceased was a bonafide passenger. Even the DRM's Report suggests carelessness and negligence and not of self inflicted injury. When a statement is made in the report that the deceased was hit by OHE post, it shall be proved by reliable evidence. There is absolutely no evidence on the side of the respondent both oral and documentary. Even the DRM's report came to be filed much after filing the reply statement.

10. The Hon'ble Supreme Court in Surendar Kumar Verma Vs. CGIT has observed as under:-

"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. The Tribunal wrongly relied on the judgment which is not applicable to the case on hand and applied the irrelevant facts and rejected the claim by making etymological excursions. On a reading of entire materials it is seen that the claimant has proved that an untoward incident had happened on 20.01.2017, in

which the deceased as a bonafide passenger, holding a second class train ticket, fell down from the train and was taken to hospital, where he was declared dead. In such circumstances, the finding of the Tribunal that it was not an untoward incident, on extraneous materials which has no evidentiary value, is absolutely illegal, perverse and unsustainable. The finding that the deceased died of a self inflicted injury and the said incident will not fall under the definition of untoward incident is based on no legal evidence. The finding of the Tribunal is perverse and illegal. On the other hand, it is proved otherwise by claimants. In such an event, the claimant is entitled to compensation.

12. Accordingly, the Civil Miscellaneous Appeal is allowed. The order passed in OA.No.(II-U) 87/2017 dated 04.12.2017 by Railway Claims Tribunal is set aside and 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 claimant as per the notification in Gazette Notification with effect from 01.01.2017 of Railways Department. The appellant/claimant is entitled to receive the compensation along with interest at the rate of 9% per annum from the date of filing the claim application. 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

//True Copy//

Sub Assistant Registrar

bri

To

1. The Railway Claims Tribunal,
Chennai Bench.

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+3 cc's to Mr.T.Rajamohan, Advocate, Sr.No. 14672,18540

CMA.No.1308 of 2018

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CSL/09.05.2019