

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.03.2019

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.M.A. No.1419 of 2017

1. S.Kanagavalli

2. S.Ranjini

(Minor rep.by mother and natural
Guardian S.Kanagavalli)

... Appellants/Petitioner

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
Railways Claims Tribunal Act, to set aside the Judgment dated
14.12.2015 and made in O.A.(II-U) 302/2014 on the file of the
Railway Tribunal, Chennai Bench.

For Appellants : Mr.M.Selvam

For Respondent : Mr.T.P.Savitha
Senior Standing Counsel for Railways

J U D G M E N T

The claimant is the appellant before this Court. The first
appellant is the wife and the second appellant is the daughter
of the deceased.

2. The case of the appellant is that her husband was
working as a mason and by using a season ticket he used to
travel from Patravakam to Avadi every day and return back at
9.00 p.m. at night. On 12.07.2014, he did not return home and
the 1st appellant/wife gave a police complaint on 14.07.2014 and
the police informed her that an unidentified body was lying in
Government Hospital, KMC, Chennai. On identification, the body
was sent to post mortem and the Doctors opined that the deceased

died due to Decapitation Injury and on the death of her husband, she filed a claim petition.

3. In order to support her claim the 1st appellant/claimant examined herself as AW.1 and marked Exs.A1 to A7. In reply, Railways denied the claim, but none were examined to substantiate their case. The Tribunal found that the claimants have not proved the journey by the deceased. Since the initial onus regarding travel and its bonafide was not discharged by the claimants, the claim was rejected.

4. Heard both sides. Perused the materials on record before this Court.

5. From the records, it is seen that on 12.07.2014 the body of the claimant's husband was found on the track between Pattravakam and Avadi stations. It was found by the keyman attached to Railway Station. The police registered FIR and the inquest was conducted. It was found that the body was lying East-West, head facing east and leg facing west, with severe injuries on neck, shoulder and fracture above the knees of right leg. The final report concluded that as a case of an untoward incident and the passenger had fallen down from a running train. The Divisional Railway Manager filed a report that since the post mortem informs that death occurred due to Decapitation, it should be a case of hit by train, while crossing the railway track. However, the evidence of the 1st claimant AW.1, clearly shows that the deceased was working as a mason and used to travel to Avadi every day holding season ticket. The case was referred to the railways to verify the details of the season ticket of the deceased. The railways filed a memo stating that it was not possible for them to take the details of the season ticket of the deceased. The fact that the deceased was a routine passenger holding season ticket was clear by the conduct of the claimant in filing the police complaint before the Korattur, Police Station. During cross examination also the 1st appellant/claimant would affirm that they are residing near Pattravakam railway station and that her husband was holding season ticket for his daily travel from Avadi to Pattravakam and the evidence was not discredited as she had clearly deposed before the Tribunal of the incident. In that event, the presumption should be drawn in favour of the claimant. As held by the Hon'ble Supreme Court, if two views are possible, the view which is beneficial to the claimants shall prevail. The claimants discharged the initial onus and it is for the Railways to disprove the claim, but there are no evidence on the side of Railways to show that the deceased crossed the track and met with an accident. It is pertinent to note that the incident took place on 12.07.2014 and during inquest injuries on the neck was found, but it was not recorded as a case of decapitation. The post mortem was conducted after 3 days. There are chances for

the body getting decayed head got separated due to decomposing. Only because the post mortem certificate opined it was a case of decapitation, respondent's take a stand of hit by train, other than this there are no materials but a sheer guess work. There is no evidence or report from station master or guard in support of the case. In the absence of any evidence it shall be presumed that the deceased was a bonafide passenger and suffered death in an untoward incident happened on 12.07.2014. The Tribunal without any legal evidence decided the case without considering the cogent evidence given by the claimant AW.1 and the inquest report, final report and other documents marked before it.

6. In view of the above discussion, this Court is of the considered view that the 1st claimant has proved her case. On the other hand, the respondent Railways has failed to discharge the onus on them.

7. In view of the same, the order passed by the Railway Claims Tribunal in O.A.(II-U) 302/2014 dated 25.10.2014 is set aside and the claim petition stands allowed. As per the order in Original Application No.302/2014 on 25.10.2014 the claimants are entitled to Rs.4,00,000/- for the death of her husband. The Railway is directed to deposit a sum of Rs.4,00,000/- along with interest from the date of filing the claim petition.

8. The learned counsel for the appellant submitted that the compensation amount has been increased from Rs.4,00,000/- to Rs.8,00,000/- with effect from 01.01.2017 and the claim has to be calculated as per the latest judgment of the Hon'ble Supreme Court 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."

9. Accordingly, we direct the Railways to deposit the appropriate amount as per the order of the Hon'ble Supreme Court extracted above within a period of 8 weeks from the date of receipt of a copy of this order. On such deposit, the claimants are entitled to withdraw the same on production of appropriate identity. No costs.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

bri

To

1.The Registrar,
Railway Claims Tribunal,
Chennai Bench.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.M.Selvam, Advocate, S.R.No.19920

+1cc to Mr.T.P.Savitha, Advocate, S.R.No.20081

RRS (11/07/2019)

C.M.A. No.1419 of 2017

WEB COPY