

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 31.01.2019

CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1514 of 2017

1.D.Sankar

2.S.Mallika

...Appellants/Applicants

Vs

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

...Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 23(1) of
Railway Claims Tribunal Act, against the Judgment dated
08.12.2015 and made in O.A.(II-U) 294/2014 on the file of the
Railway Tribunal, Chennai Bench.

For Appellants : Mr.M.Selvam

For Respondent : Mrs.T.P.Savitha

O R D E R

The claimants are the parents of the deceased S.Suresh. The deceased was travelling on a EMU Local train from Ambattur to Chennai on 8.6.2014. While the train was travelling at Villivakkam and Perambur Loco Works Railway Stations at KM 08/12-13 nearby upslow line at about 21.20 hours the deceased fell down from the train and sustained greivous injury and died at the place of accident. The deceased was in possession of a valid journey ticket. Since he died of an untoward incident they claim compensation.

2.The respondent would contend that the deceased was a foot board traveler and he was handing outside the train and hit by the OHE Post and fallen down from the running train and died. They have contended that it was gross and criminal negligence on the part of the deceased and railway cannot be held responsible.

3.The 2nd appellant has examined herself as AW1 and marked A1 to A7. She had stated that her son was unmarried and that he was working as a coolie. One of the co-passenger of the deceased Sarankumar was examined as AW2. He has stated that he along with

the deceased got a travelling ticket to Chennai and boarded the train to Chennai to Ambattur. The train was overcrowded, so much so that they could not be accommodated in the same compartment. He had not seen the deceased fall from the train but heard people shout that someone had fallen from the train.

4.The Tribunal had relied on the enquiry report of RPF who had filed a report based on the report of duty RPF. He had stated that while he was on duty a VLK/Yard/'F' Point at about 20.00 hrs he saw four persons crying and running from Loco works station towards Villivakkam between down fast line and up slow line. On enquiry he was told by one of the persons that the deceased was travelling along with them in same ticket No.554286239 and he was hit by OHE Post and fallen from the running train and died. The Tribunal had dismissed the application on the strength of the said evidence.

5.The issue is whether the deceased died due to his negligence. The deceased had a valid travelling ticket and travelled along with 3 other passengers. The train was admittedly overcrowded and according to AW2 it was so crowded they cannot find accommodation in the same compartment. During the travel the deceased fell down. The respondent would contend that the deceased died only because of his negligence and hence it is not an untoward incident.

6.The first thing that comes to this courts view is that there are no eye witnesses to the accident. Nobody appears to have seen how the deceased fell from the train. Even the RPF constable on duty only heard from some of the persons that the deceased was hit by OHE Post. The respondent has not made any attempt to produce any eye witness account or any other witness to suggest that the deceased hit against the OHE Post. The entire conclusion appear to stem from hearsay report of the on duty RPF constable. The tribunal ought not have placed reliance on the same. Therefore the finding that it appears to be a case where everyone has suggested and made a statement that the deceased was hit by OHE Post is erroneous. The injuries sustained by the deceased could have been caused by a fall from the train rather than being hit by a OHE Post.

7.The trains specially Local EMUs are always crowded. Specially during peak hours they are overcrowded. The accident happened during peak hour. It is evident from the evidence of AW2 that the train was over crowded and they could not find accommodation in the same compartment eventhough they were travelling on the same ticket. It is a daily scene on the Local trains. The matter is made worse by non availability of doors. Without door incidents like this are bound to happen. The chances of a person being pushed down or losing hold due to overcrowding is very high. The Railways cannot squarely put the

blame on the deceased. May be the Railways should try to reduce overcrowding or atleast put proper doors to avoid such accidents. The deceased was a traveler with valid travelling ticket and due to overcrowding he has fallen down from the train and died due to the same and the same is untoward incident as per Sec.123 of the Act. Since the same is a welfare legislation the entire incident should be seen from the perspective of the appellant. The apex court had in many occasion taken a lenient view taking into consideration that the act is a welfare legislation. Therefore the appellants are entitled to receive compensation as claim.

8.As far as the quantum of compensation is concerned, by placing reliance upon the Amended Rules of Railway Accidents and Untoward Incidents (compensation) Rules, 1990, the learned counsel for the appellants submitted that now quantum has been enhanced from Rs.4.00 lakhs to Rs.8.00 and prayed for awarding of Rs.8.00 lakhs in favour of the appellants.

9.It is pertinent to mention that earlier, the Rule permits Rs.4.00 lakhs as compensation. In *Rathi Menon v. Union of India*, reported in (2001) 3 SCC 714, the Hon'ble Supreme Court has considered the question whether the compensation to be applied would be as per Rules applicable on the date of the order or as per the Rules in force at the time of accident or the untoward incident. Reversing the view taken by the Kerala High Court in *M.F.A.Nos.1292 and 1293 of 1998*, dated 12.8.1999 that the liability to pay compensation arises as soon as accident happens and not when the quantum is determined, the Hon'ble Supreme Court held that liability is to pay compensation 'as may be prescribed', which means as on the date of the order of the Tribunal.

10.The Hon'ble Supreme Court in a recent decision in *Union of India v. Rina Devi*, reported in 2018 (7) SCALE 274 has considered the issue whether the quantum of compensation should be as per the prescribed rate of compensation as on the date of application/incident or on the date of order awarding compensation. In paragraph 15.1 the Hon'ble Supreme Court held as thus:

"15.1. In *Rathi Menon (supra)*, this court considered the question whether the compensation to be applied would be as per Rules applicable on the date of the order or as per the Rules in force at the time of accident or the untoward incident. Reversing the view taken by the Kerala High Court that the liability to pay compensation arises as soon as accident happens and not when the quantum is determined, this court held that liability is to pay compensation 'as may be prescribed' which means as on the date of the order of the Tribunal. This court observed that if

interpretation placed by the Kerala High Court was to be accepted and the claimant was to get compensation in terms of the market value which prevailed on the date of the accident, the money value of the compensation will be reduced value on account of lapse of time. The revision of rate by the Central Government may itself show that the money value has come down. The Tribunal must apply the rate applicable as per the rules at the time of making of the order for payment of compensation."

11. Thus, with the amendment of Rule 4 of the 1990 Rules with effect from January 1, 2017, the amount of compensation payable in case of death of a passenger as a result of untoward incident has been enhanced from Rs.4.00 lakhs to Rs.8.00 lakhs. There is no quarrel over the amendment of Rule 4 of the 1990 Rules by the respondent enhancing the compensation from Rs.4.00 lakhs to Rs.8.00 lakhs.

12. For the reasons aforesaid, this Civil Miscellaneous Appeal is allowed and set aside the impugned order of the Tribunal and allows the Claim Application in O.A.(II-U) 294 of 2014 by holding that the appellants are entitled to compensation of a sum of Rs.8,00,000/- with interest at the rate of 7.5% per annum from the respondent Railways from the date of lodging of the claim application before the Tribunal till the date of payment. The compensation awarded by this court together with interest shall be paid by the respondent by issuing an account payee cheque in favour of the appellants. Such cheque shall be deposited in the office of the Registrar General of this court within a period of twelve weeks from the date of receipt of a copy of this order, whereupon the appellants shall be entitled to collect the same from the Registrar General in equal share upon proving their identity and in accordance with law. The appellants are directed to pay the deficit court fee and Registry is directed to draft the decree only after payment of the deficit court fee by the appellants. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1. The General Manager,
Southern Railway,
Chennai - 600 003.

2.The Presiding Officer,
Railway Claims Tribunal,
Chennai Bench.

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

Copy To:

The Sub Assistant Registrar,
Accounts Section, High Court,
Madras - 104.

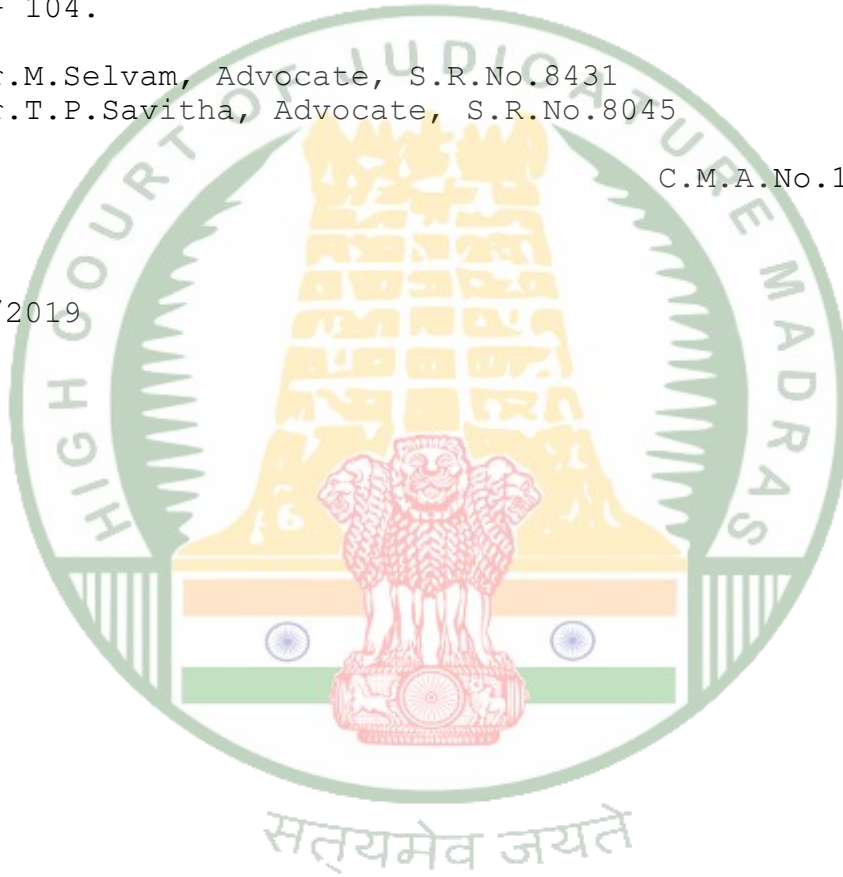
+1cc to Mr.M.Selvam, Advocate, S.R.No.8431

+1cc to Mr.T.P.Savitha, Advocate, S.R.No.8045

C.M.A.No.1514 of 2017

VGII(CO)

rrs 28/02/2019



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