

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.2101 of 2017

1.P.Reeta
2.P.Dinesh, (Minor)
3.P.Jothika (Minor)
4.G.Mani
5.M.Chokkammal ... Appellants

Vs

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

Civil Miscellaneous Appeal filed under Section 23 of Railway
Claims Tribunal Act, against the Judgment dated 09.10.2015 and
made in O.A.(II-U) 6/2015 on the file of the Railway Claims
Tribunal, Chennai Bench.

For Appellants : Mr.M.Selvam

For Respondent : Mr.M.T.Arunan

O R D E R

सत्यमेव जयते

This Civil Miscellaneous Appeal is filed by the appellants who are the claimants against the order dated 9.10.2015 and made in O.A.No.(II-0)-6/2015 on the file of Railway Claims Tribunal, Chennai Bench, dismissing the claim petition filed by the appellants who are the legal heirs of the deceased Srinivasan.

2.The appellants herein have contended before the Tribunal that the deceased Paranthaman was a passenger in a Train from Avadi to Chennai and he had accidentally fell down from the train at LC gate 08 up slow line near Avadi Railway Station, sustained severe head injury on the back of the head, greivous injury to the right hip, both legs were smashed and he died at

the place of accident. According to the appellants the deceased purchased a valid ticket to travel and hence they are entitled to compensation.

3. Disputing the version of the appellants, the respondent filed counter that the deceased was not a bonafide passenger. The respondent disputed the ticket No.24956 dated 14.07.2014 found in possession of the deceased. It was contended by the respondent that the untoward incident happened at around 22.40 while the ticket was issued at 24 hours, hence the deceased could not have travelled by the said ticket.

4. At trial the 1st appellant examined herself as AW1 and marked Exhibits-A1 to A5 and on the side of the respondent G.Sampath examined as witness and marked Exhibits A6 and A7.

5. The Tribunal admitted the case of the respondent that the ticket found on the body of the deceased could not have been the valid ticket since the same was issued after the accident at 24 hours and thus dismissed the claim petition. Challenging the same, the appellants have filed the present Civil Miscellaneous Petition.

6. I heard Mr.M.Selvam, learned counsel for the appellants and Mr.T.Arunan, learned counsel for the respondent and perused the entire materials available on record and Judgments produced by either parties.

7. The learned counsel for the appellants has submitted that the body of the deceased was recovered by the GRP who had recovered the same on the complaint of the station master. The report of the accident has been conveyed to the GRP at about 22.40 hrs. Ever since the body of the deceased was in the custody of the GRP. All the recovery were made by the police. The travelling ticket No.24956 dated 14.7.2014 was also recovered by the GRP. If the respondent had any dispute regarding the ticket they have to prove that the police had played fraud. The ticket is genuine, only the time of issue of the ticket varies by about 1 hour. The respondent is also ruling out the possibility of error on their part. A ordinary traveler would never look into the ticket to note minute details such as time printed therein. The case of the respondent that somebody might have planted the ticket subsequently is a long shot and the burden of proof of such allegation is with them. The respondent has not proved how the deceased came into possession of the said ticket which was admittedly found in his pocket. Therefore the deceased was a traveler on a train between Avadi and Chennai and died due to a fall from the train and the accident was an untoward incident.

8.Per contra the counsel for the respondent submitted that the deceased was not travelling in the train at all and he died while crossing the train track and he was a trespasser. The ticket No.24956 was issued after the alleged untoward incident. The dispute in the train ticket cannot be assailed. The deceased is not a bonafide traveler in the train and therefore there is no necessity to interfere with the order of the Tribunal.

9.Now crucial question regarding the acceptance of the evidence of the Appellants that is the travelling ticket has been raised. The ticket No.24956 dated 14.7.2014 has been admittedly issued by the booking office, Avadi from III Window. The time of issue according to the respondent is between 23.00 hrs and 24.00 hrs. The ticket is admittedly a self printing ticket. The time found on the ticket is 24 hours. The respondent has not shown how the time is set in the printing machine and who changes them. They ought to have produced details of the issue of ticket hour by hour to prove the time of issue. The burden of proof of the validity of the ticket is with the respondent. It is pertinent to note that the deceased died at around 22.40 hrs. The GRP on receipt of the complaint from the Station Master had registered a case and seized of the dead body. The ticket in question was recovered from the body of the deceased. To imagine that someone on coming to know about the death of the deceased at around 22.40 hrs. rushed to the Avadi ticket booking counter window III and purchased a travelling ticket within one hour and planted the same on the body of the deceased so as to claim compensation is mind-boggling to say the least. The inquest was conducted on the very next day and the inquest report suggests that deceased died by falling from a running train. The injuries are also consistent with fall from a running train. Therefore, we find the idea of someone planting a ticket within one hour of the accident with a view to get compensation from railway tribunal unacceptable.

10.Regarding the time difference in the ticket, there is no denying that the deceased had a need to travel by train having visited his wife at Avadi. So the court can draw the presumption under Section 114 of Indian Evidence Act that the deceased would have travelled by train. If the deceased travelled by train then it naturally follows that he died due to a fall from the train. The deceased also had a valid travelling ticket which was found on the body of the deceased. Therefore the appellants are entitled to compensation for the death of the deceased in an untoward incident.

11.As per Section 123(c)(2) of the Railways Act, 1989 (hereinafter referred to as the Act), 'untoward incident' includes the accidental falling of any passenger from a train carrying passengers.

12. In this regard, it is useful to refer to Section 123(c) of the Act, which reads thus:

(i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987;

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(iv) the accidental falling of any passenger from a train carrying passengers.

13. In *Union of India v. Prabhakaran Vijaya Kumar and others*, reported in 2008 (4) MLJ 323 (SC), the Hon'ble Supreme Court, while interpreting expression accidental falling of a passenger from a train carrying passengers, which is an untoward incident under Section 123(c) (2) of the 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 liberal and not literal or strict interpretation. In the said decision, the Hon'ble Apex Court in paragraphs 12 to 15 held as follows:

"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 states should be given a liberal and not literal or strict interpretation vide *Alembic Chemical Works Co. Ltd. Vs. The workmen* AIR 1961 SC 647 (Para 7), *Jeewanlal Ltd. Vs. Appellate Authority* AIR 1984 SC 1842 (Para 11), *Lalappa Lingappa and others Vs. Laxmi Vishnu Textile Mills Ltd.* AIR 1981 SC 852 (Para 13), *S.M. Nilajkar Vs. Telecom Distt. Manager* (2003) 4 SCC 27 (Para 12) etc."

14. In *Hindustan Level Ltd. Vs. Ashok Vishnu Kate and others* 1995 (6) SCC 326 this court observed:

"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 principals 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. Simmonds*)."

15. 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 status 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".

16. Francis Bennion in his *Statutory Interpretation* Second Edn., has dealt with the Functional Construction Rule in Part XV of his book. The nature of purposive construction is dealt with in Part XX at P.659 thus:

"A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this code called a purposive - and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the code called a purposive and strained construction)"

17. At P.6661 of the same book, the author has considered the topic of "Purposive Construction" in contrast with literal construction. The learned author has observed as under:

"Contrast with literal construction - Although the term 'purposive construction' is not new, its entry into fashion betokens a swing by the appellate courts

away from literal construction. Lord Diplock said in 1975; "If one looks back to the actual decisions of the (House of Lords) on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions'. The matter was summed up by Lord Diplock in this way-

..I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains of one of construction, even where this involves reading into the Act words which are not expressly included in it."

18. 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 larger 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 larger 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 traveling 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.

19. The finding of the tribunal that since the ticket was issued between 23 & 24 hrs. the claim is not bonafide, is not acceptable for the foregoing reason. There would have been a lapse in the registration of FIR or any malfunction in the self printing machine. The tribunal has focused its energy on a single aspect forgetting the larger issue. The claimants are common grieving people and not master mind criminals. In any case it is for the respondent to prove that the ticket was not purchased by the deceased and if someone has tampered with evidence it for the respondent to show and prove that someone has tampered with evidence. In the absence of any such evidence we find it unacceptable to turn down the claim of the appellants. It is a welfare legislation and it necessary to compensate the death of the deceased.

20. 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."

21. 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.

22. 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) 6 of 2015 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. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

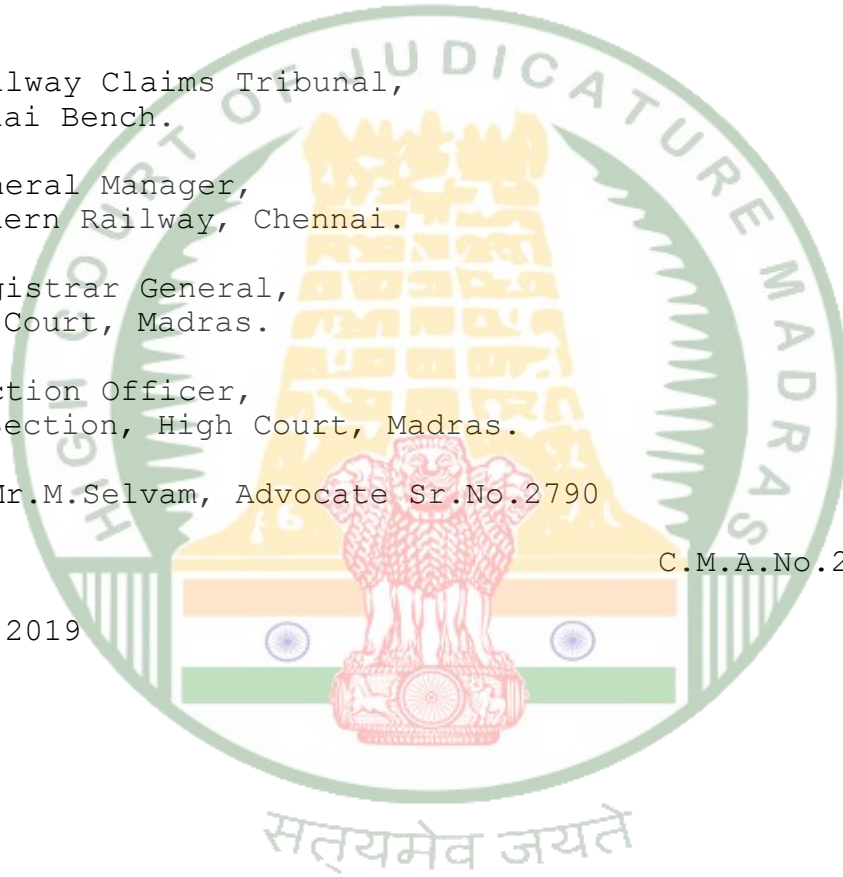
vs

To

1. The Railway Claims Tribunal,
Chennai Bench.
 2. The General Manager,
Southern Railway, Chennai.
 3. The Registrar General,
High Court, Madras.
 4. The Section Officer,
V.R.Section, High Court, Madras.
- +1 cc to Mr.M.Selvam, Advocate Sr.No.2790

C.M.A.No.2101 of 2017

SS(CO)
CSL/09.04.2019



WEB COPY