

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 08.03.2021
CORAM
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
C.M.A.No.2814 of 2015

1.C.Solaiappan
2.S.Velammal

.. Appellants/Appellants

vs.

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

.. Respondent/Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987, against the order dated 08.09.2015 passed by the Railway Claims Tribunal, Chennai Bench in O.A.(II-U).No.261 of 2014.

For Appellants : Mr.T.Raja Mohan

For Respondent :Mr.M.Vijay Anand

O R D E R

The order dated 08.09.2015 passed in O.A.(II-U).No.261 of 2014 is under challenge in the present Civil Miscellaneous Appeal.

2. The claimants are the appellants. The claim petition was filed on the ground that the deceased was working as an electrician and had been to Singapore on two occasions for job. On 06.03.2014, he left the house informing his father that he would go to Madurai in connection with his visa Application. He always used to travel by train purchasing second class ticket. The claimants came to know from the Police Authorities that while returning from Madurai, during night hours on 06.03.2014, when the train was proceeding between Nalli and Kovilpatti Railway Stations due to rush, speed and jerk of the train, he accidentally fell down and suffered grievous injuries and died at the place of occurrence. The F.I.R was lodged by the Village Administrative Officer of Illupaiurani Village and a case was registered at Tuticorin Railway Police Station in Crime No.10 of 2014 dated 07.03.2014. It was contended that the second class ticket purchased by the deceased for travel on 06.03.2014 from Madurai to Kovilpatti has been lost along with personal

belongings. Post-mortem was conducted at Tuticorin Government Hospital. The claim petition was filed. The inquest report also reveals that the untoward incident occurred and the report further states that there was no possibility of crossing the railway track as the Railway Bridge was available. The track was 25 feet above. Therefore, the deceased had fallen down from the running train and sustained fatal injuries and died. Post-mortem report states about the appearance found at the post-mortem and the same reads as under:

"Moderately nourished body of a male. Postmortem peeling of skin noted all over the body. Marbling noted all over the body. Black colored grease and oil materials seen all over the body. Head found crushed beyond its recognition. Comminuted fracture seen over the skull and face. Brain matter not found. Left arm severed in its middle. The rest of the left upper limb seen separately. Severed left upper limb matches with the left arm anatomically and by complexion indicating that they belong to same individual. Both legs almost severed in the middle. The underlying bones are fractured. The right hip almost severed. All the internal organs of pelvis exposed out. Right arm deformed and bone found fractured."

3. The nature of the injuries reveals that it was not relatable to trespass. Relying on the said report, the learned counsel appearing for the appellants also reiterated that considering the nature of injuries, the Tribunal ought to have arrived a conclusion that it is a case of fallen down from the running train. The post-mortem report was also not considered by the Tribunal.

4. The Divisional Railway Manager's report dated 18.03.2015 though relied on by the Railways, the said report states that "it is suspected that the deceased might have been killed by some train while trespassing". Contrarily, it is a suspicion which is raised and based on such suspicion, the report was submitted. Mere suspicion is insufficient to deny compensation to the victim. Railway must establish that it is a case of trespass and consequently, falling under the exclusion clause contemplated under Section 124 (A) of the Act. In the absence of any record to show that it is a case of trespass, suspicion alone cannot be a ground to deny compensation to the victims.

5. The Tribunal adjudicated the issues and considered the nature of untoward incident occurred with reference to Section 123 of the Railways Act. However, the Tribunal made a finding that the deceased was not possessing a valid travel ticket nor any such travel ticket was retrieved from the deceased. Therefore, he was not a bona fide passenger. This apart, the

Tribunal arrived at a conclusion that fallen down from the running train was also not established. Thus, the claim petition is liable to be dismissed.

6. The learned counsel for the respondent/Railways relying on the findings of the Tribunal made a submission that it is a case of trespass as the Divisional Railway Manager's report also not in support of the claimants. The travel ticket was not available with the deceased/passenger. In the absence of any travel ticket and when the untoward incident is unable to be established, the application for compensation was dismissed by the Tribunal and there is no infirmity as such.

7. The learned counsel for the respondent relied on the findings of the Tribunal that there was no conclusive evidence to prove that the deceased died on account of falling down from the running train. The Divisional Railway Manager report states that there was a suspicion. Thus, the Railway Tribunal declined to grant compensation and there is no infirmity as such.

8. The statement of objects and reasons for the provision of award of compensation are to be considered by the Courts. As far as the welfare legislations are concerned, a pragmatic approach is to be adopted and liberal interpretation is to be followed. The facts and circumstances as well as the suspicion raised with reference to the untoward incident and the probabilities are to be considered in a balanced manner so as to arrive a conclusion whether it is a fit case for grant of compensation or not? Prudent assessment is required in the event of raising any suspicion regarding the facts related to an untoward incident. But mere suspicion alone cannot be a ground to reject the claim petition, more specifically, in the matter of award of compensation to the victims which is a welfare legislation. In other words, suspicion per se cannot be a ground for rejection. All other connecting factors, mitigating circumstances, probabilities are to be considered cogently to arrive a conclusion.

9. In the event of rejecting the claim application merely on the ground of suspicion, then there is a possibility that in many such cases of untoward incident, compensation cannot be granted at all. In most of the railway accident cases, the victims are the poor, illiterate and ignorant. One cannot expect that such claimants may not be in a position to establish the entire case with documents and evidence. In such circumstances, the Railway Authorities are also raising suspicion regarding the manner, in which, an untoward incident occurred. Thus, if an accident is established within the Railway premises, then all circumstantial evidence and factors are to be taken into consideration by the Courts to form an opinion that whether the

compensation can be granted or not? Therefore, the Courts are bound to consider the F.I.R, Inquest report, Divisional Railway Manager's report and all other connected records which are all relevant to form an opinion.

10. There is a possibility that passenger falling from the running train may not be noticed by any person and there are many possibilities of an untoward incident. Even in case of availability of witnesses, co-passengers may not come forward to depose before the Courts. All such practical difficulties and the prevailing situations are to be taken into consideration for extending the benefit of compensation to the victims.

11. In this regard, it is relevant to consider the provisions of the Railways Act. Section 147 of the Railways Act reads as follows:

10. It is submitted that Section 147 of the Railways Act which runs as follows:

147. Trespass and refusal to desist from trespass.-
(1) If any person enters upon or into any part of a railway without lawful authority, or having lawfully entered upon or into such part misuses such property or refuses to leave, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such punishment shall not be less than a fine of five hundred rupees.

(2) Any person referred to in sub-section (1) may be removed from the railway by any railway servant or by any other person whom such railway servant may call to his aid.

As per the above said section, it is very clear that if any person enters upon or into any part of the Railway without lawful authority, then only it amounts to trespass. If a person is having a valid ticket or authorization from the Railway and he enters the track or crossing the track then it does not amount to trespass. In the said section, it is very clear that "if any person crossing the track without any lawful authority, that means without ticket or without permission and if any untoward incident happens, then it is not an untoward incident and his family is not

entitled for compensation as per Section 124-A.
Section 124-A runs as follows:

124-A. Compensation on account of untoward incidents.- when in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger died or suffers injury due to-

- (a) suicide or attempted suicide by him;
- (b) self-inflicted injury;
- (c) his own criminal act;
- (d) any act committed by him in a state of intoxication or insanity;
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation.-For the purpose of this section, "passenger" includes-

- (i) a railway servant on duty; and
- (ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.

As per Section 124-A, the deceased family is not entitled for compensation if he commits suicide or attempted to commit suicide or any self-inflicted injury or his own criminal act or any act committed in a state of intoxication or in the nature case of death, then the family is not entitled to compensation if any death occurred during the course of travel.

Therefore, in this case the crossing of the track has not explained anywhere that it amounts to trespass. The trespass has been explained only in Section 147 and

if any passenger comes as per the definition of Section 147 of the Railways Act then if any incident happens, it does not amounts to an untoward incident.

On the other hand, the Tribunal has held that the crossing of track will come either under Section A or under Section B or under Section C of the proviso to Section 124-A. On the other hand, Section 124-A(a) is very clear that if anybody commits suicide or attempted to commit suicide, then it is an offence which will clearly comes under the category of IPC. In order to commit suicide or attempted to commit suicide, there will be a mensrea, then only it will come under the aforesaid provision. When there is no mensrea (intention), the said proviso will not applicable. Likewise, self-inflicted injury also will come only if there is an intention to commit an offence for himself. The third proviso also the own criminal acts also will come under the aforesaid intention. When there is no intention at all, if any act has been done by the deceased, then it is to be construed only as an untoward incident and not otherwise. Moreover, as per the provisions of the Railways Act also, if a trespasser is entering into the any part of railway without any authority, then it amounts to trespass.

11. It is also further stated by the Tribunal stating that the deceased can cross the track only through the over bridge and he is not entitled to cross the track to reach the other side of the platform. On the other hand, it is also accepted that the over bridge will be a more height and the persons if more than 60 years or a heart patient, it is not at all possible for them to climb the overbridge. Moreover all the railway employees also to reach the other platform only by crossing the track and not by climbing the over bridge. It is further submitted that for crossing the track to reach the other platform is only with an intention to catch the train in the other platform and not come under the provision to Section 124A. The crossing of track for such person, there is no mensrea either to commit suicide or to get self-inflicted injury or his own criminal act. The intention of the said person is only to reach the other platform in order to catch the train which is coming in that platform.

There is one more provision of this Act is Section 156. Section 156 of the Railways Act runs as follows:

156. Travelling on roof, step or engine of a train.-If any passenger or any other person, after being warned by a railway servant to desist, persists in travelling on the roof, step or footboard of any carriage or on an engine, or in any other part of a train not intended for the use of passengers, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both and may be removed from the railway by any railway servant.

As per the aforesaid section, if anybody travelling on the roof of the train, or steps or engine of the train, then his action is of own criminal act. The section is very clear if anybody is doing such an act, then he must be warned by the Railway servant to desist, persist in travelling on the roof, steps or footboard of any carriage or on an engine, or in any other part of a train not intended for the use of passengers. Therefore here also it is very clear the person who doing such an act, first he should be warned and inspite of the said warning, if he commits the same mistake, then it will be come under the proviso to Section 124-A of own criminal Act. Therefore, mere crossing of the track in view of his age and not noticing the train which is coming on the opposite side is only a negligence and not come under any provisions of Section 124-A.

It is also settled law that negligence is not a ground to deny the compensation for any untoward incident is happened. If anybody crossing the track with intention to commit suicide and if he was hit and run over by the train, then that incident is not an untoward incident.

12. There is no evidence to establish the trespass in the present case. The Divisional Railway Manager report states that it is a case of suspicion and a conclusion was arrived that it is a case where there is a suspicion. Mere suspicion could not be a ground to deny compensation to the victims. Therefore, this Court is bound to consider the concept of social justice as well as social protection to be extended to such victims which is an obligation on the part of a civilized nation. When the family is in distress due to the death of breadwinner of the family, then all mitigating circumstances are to be taken note of and the suspicion raised by the Railways alone cannot be a ground for the purpose of rejection of claim petition.

13. As considered, the exclusion clauses under Section 124-A of the Railways Act are relatable to the criminal acts. Thus, the scope of the Proviso to Section 124-A cannot be expanded so as to include a criminal trespass which is a punishable offence under Section 147 of the Act. Proviso to Section 124-A of the Railways Act reveals that (a) suicide or attempted suicide by him; (b) self-inflicted injury; (c) his own criminal act; (d) any act committed by him in a state of intoxication or insanity; (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

14. Thus, an intention/mens rea is to be established for invoking the exclusion clauses under proviso to Section 124-A of the Act. Injuries, if any, caused due to the negligence or carelessness per se cannot be construed as self-inflicted injuries. Sometimes passenger sustains injuries on account of poor and non-maintenance of Railway coaches and this is because of some carelessness, but without any intention. In such circumstances, it cannot be a self-inflicted injury. Thus, the Railway is bound to establish that the injuries committed are intentional and falling within the criminal act as contemplated in the exclusion clauses.

15. Exclusion clauses are carefully and meaningfully worded in order to deprive the victims from availing the benefit of compensation only in the case of criminal act where an intention is to be established. Therefore, all injuries even by mistake, negligence, carelessness cannot be construed as self-inflicted injury.

16. As far as the case on hand is concerned, the inquest report itself suggests that there is no possibility for crossing the track in that particular locality, where the untoward incident occurred. The Divisional Railway Manager report reveals that there is a suspicion and further states that the untoward incident might have been occurred due to trespass. Thus, the Railway Authorities themselves are not clear about the manner in which the 'untoward incident' occurred. When the Railway Authorities themselves are not clear about the manner regarding the accident, the benefit of doubt, undoubtedly, must go in favour of the claimants and not in favour of the Railways.

17. In Railway Transport System, lakhs and lakhs of people are traveling day in and day out. Sometimes, the minimum requirements are not provided in Railway coaches. Toilets are not cleaned. Sometimes, adequate water facilities are not available. Coaches are not cleaned to an expected level. Cockroaches and rats are found in running train and even in Express Trains. There are chances that the passengers may get

affected by infection on account of free movement of cockroaches, rats and insects etc. Such complaints were frequently made by the passengers in Express Trains also. Doors are kept opened in running trains. Though the Policemen and the Railway Employees are deployed in running train, they are not performing their duties as required and they are not showing any responsibility and accountability towards the passengers traveling in trains. Even in EMU trains in Metro cities, the boarding entry is wider and large number of passengers are boarding in and getting down in a crowded manner. Unreserved passengers are traveling in the reserved coaches on many occasions. There are many inconveniences even for the rightful passengers. All such irregularities and illegalities are not effectively controlled by the Railway Protection Force and by the Railway Officials. Under these circumstances, if the negligence or carelessness is attributed only against the passengers, neglecting the contributory negligence on the part of the Railways, then the very purpose and object of the award of compensation is defeated. Therefore, this Court is of the considered opinion that all mitigating factors and circumstances are to be taken into account, while considering the cases for grant of compensation.

18. As far as the travel tickets are concerned, the Apex Court in unambiguous terms held that if the untoward incident is established and the travel ticket was not retrieved, then the burden of proof is shifted on the Railways to establish that the deceased/injured was not a bona fide passenger. Thus, the onus lies on the Railways certainly not on the claimants. If the Railways are able to establish that the deceased/injured is not a bona fide passenger, then alone, the proviso clause can be applied for the purpose of rejecting the compensation and not in other cases where the travel ticket was not retrieved nor produced by the claimants. In the absence of any travel ticket and when the untoward incident is established and the investigation report reveals that the untoward incident happened because of certain circumstances, then the victims are entitled for compensation. In all such circumstances, the principle of liberal interpretation is to be adopted by the Courts and it is for the Railway Authorities to protect the passengers equally and to provide a conducive atmosphere for the passenger to travel in the train safely and secured manner.

19. The Divisional Railway Manager's report also clearly states that it is suspected that the deceased might have been killed by some train while trespassing. Thus, based on mere suspicion, the benefit of compensation cannot be denied at all.

20. In the present case, the Railways could not able to establish that it is a case of trespass. This being the facts

and circumstances, the order dated 08.09.2015 passed in O.A.(II-U).No.261 of 2014 is set aside and the Civil Miscellaneous Appeal in C.M.A.No.2814 of 2015 stands allowed.

21. It is brought to the notice of this Court that the first appellant/Mr.C.Solaiappan died on 04.11.2019 and the second appellant is the wife of the first appellant/Late.Solaiappan. Thus, the second appellant is the legal heir of the first appellant. Accordingly, the second appellant/S.Velammal is entitled for a total compensation of Rs.8,00,000/- (Rupees Eight Lakhs Only) along with interest at the rate of 6% per annum from the date of passing of the award. The respondent/Railway is directed to deposit the award amount with accrued interest before the Railway Claims Tribunal, Chennai Bench within a period of 12 weeks from the date of receipt of a copy of this order. On such deposit, the second appellant is permitted to withdraw the award amount by filing an appropriate application and the payments are to be made through RTGS. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssb

To

1. Railway Claims Tribunal, Chennai Bench.
2. The General Manager,
Union of India,
Owning Southern Railway,
Chennai-600 003.

+1cc to Mr.M.Vijay Anand, Advocate, S.R.No.14794.

+2cc to Mr.T.Rja Mohan, Advocate, S.R.No.14725.

AAB(CO)
CSR 09.04.2021

C.M.A.No.2814 of 2015