

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 11.02.2021
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
C.M.A.No.1192 of 2017

1.Mrs.J.Rajeswari
2.J.Santhoshkumar
3.J.Gowthaman

.. Appellants/Appellants

Vs.

The Union of India owning,
South Central Railway,
Rep.by its General Manager,
Chennai - 600 003.

.. Respondent/Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 23 of Railway Claims Tribunal Act, 1987 praying to set aside the dismissal order dated 01.10.2015 in OA (II-U) No.250 of 2014 order passed by the Railway Claims Tribunal, Chennai Bench and pleased to grant award for a sum of Rs.4,00,000/- with interest.

For Appellants : Mr.R.Sekaran

For Respondent : Mrs.T.P.Savitha

J U D G M E N T

The Award dated 01.10.2015 passed in O.A.(II -U) No. 250/2014 is under challenge in the present Civil Miscellaneous Appeal.

2.The Claimants are the Appellants. The Claimants are legal heirs of the deceased Mr.Jayaraman. The deceased was a retired Head Constable from Railway Protection Force was holding a valid traveling pass issued by the Railways. The deceased was a resident of Erode. On 30.04.2014 at 13.00 hours, the deceased informed his wife that he was going to Salem Railway Divisional Office to enquire about non-receipt of pension and left the house. The Claimants came to know that from the Erode Railway Police that the deceased holding A/c train pass, prior to 02.45 hours on 01.05.2014 while traveling in Bangalore to Kochuveli Express, due to speed, jerk and jolt of the train accidentally fell down from the running train between Veerapandi blocket and Magudanchavadi Railway Stations, the deceased suffered fatal injuries and died subsequently.

3. The application was filed seeking compensation. The Railway Claims Tribunal adjudicated the issues with reference to the documents and evidences filed by the respective parties. Regarding the issue, whether the deceased was a bonafide passenger as stated, the Tribunal arrived a conclusion that he was a Railway pass holder and retired Head Constable from Railway Protection Force and therefore, he was a bonafide passenger traveled in the train. Regarding the untoward incident occurred, the Tribunal considered definition of untoward incident as contemplated under Section 123 of the Act and further considered Section 124-A regarding compensation an account of untoward incident. Taking into note of Section 123 (2) and Section 124-A, the Tribunal arrived a conclusion that deceased as a passenger with a valid travel pass, slipped down from the train and the said incident cannot be termed as untoward incident under Section 123 (2) of Railways Act.

4. In this regard, the learned counsel appearing on behalf of the Appellants contended that the Railway Claims Tribunal has erroneously interpreted Section 123 of the Act and the interpretation adopted based on the judgement rendered in the case of Geeta Vs. Union of India reported in 2014 ACJ 1505, is no more a good law and the Supreme Court has considered the scope of Section 123 and held that untoward incident includes even in cases of negligence.

5. In the case Jameela and others vs. Union of India reported in AIR 2010 SC 3705, the Apex Court held that even if the passenger falling down from running train while travelling on valid ticket, the fact that he was standing at open door ways of the compartment of running train may be negligent act or even rash act, but it is certainly not Criminal act and negligence of passenger does not have effect on liability of Railways. Falling down of deceased from train is clearly accidental.

6. This Court is of the considered opinion that Section 123 (2) unambiguously stipulates that "accidental falling of any passenger from a train carrying passengers". The word accident has been defined in Black's Law Dictionary as under:-

"An unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated; any unwanted or harmful event occurring suddenly, as a collision, spill, fall, or the like, irrespective of cause or blame (the accident was staged as part of an insurance scam)."

7. The meaning cited supra indicates that an unintended and unforeseen injuries occurrence. Therefore, negligence

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cannot be attributed with reference to the Sub-Clause 2 of the 123 of the Act. Sub-Clause 2 states that the accidental falling of any passenger. Therefore, the accidental falling may occur due to the carelessness, negligence or otherwise. However, if intention is not established then it cannot fall under the self-inflicted injury as contemplated under the exceptional clause. Therefore, exceptions contemplated under Section 124 proviso cannot be applied in respect of the injuries on account of the negligence. Even if the respondent/railways establishes negligence on the part of the passenger, still the passenger is entitled for compensation, in view of the fact that Section 124 (2) unambiguously enumerates that the accidental falling of passenger train carries passengers. The word employed is accidental. Accidental indicates that not having occurred as a result of any one's purposeful Act. Therefore, mere negligence or carelessness cannot be construed as a self-inflicted injury and such carelessness and negligence even if established by the railways would fall under Section 123 (2) and therefore, the claimants are entitled for compensation as there was no intention for self-infliction.

8. The learned counsel appearing for the respondent/railways contended that passengers are expected to be careful and cautious while traveling in trains. When they have committed act of carelessness or negligence, then they are not entitled for compensation under the Act. It is contended that negligence on the part of the passenger would not cover the meaning provided under Section 123 (2). Therefore, negligence is also an exception and the passenger against whom a negligence is established, then railway cannot be held liable to pay the compensation.

9. This Court of the considered opinion that the benefit of compensation conferred under the Act is a welfare measure for the benefit of the passengers who are traveling in trains. Thus, constructive interpretations are to be adopted while providing meaning to the word employed in the provision. When Sub-clause 2 to Section 123 contemplates the accidental falling of any passenger from a train carrying passengers is to be considered as an "untoward incident", then the negligence on the part of the passenger would not arise at all. The word accidental employed in the provision to be interpreted so as to ensure that the compensation is paid even in case where passengers are less careful or committed an act of negligence by standing in a foot board or nearby doors. Therefore, the accident which is defined as above, would include only the intentional self-inflicted injuries and not include the injuries sustained on account of carelessness or due to negligence.

10. The number of passengers traveling in trains in our great nation is innumerable. People are forced to travel in a crowded manner. The Railway Authorities have no control for the number of passengers to be accommodated in coaches. Even some times reserved coaches are occupied by unreserved passengers. The Ticket Travel examiners are not checking the coaches properly. Considering the peculiar circumstances prevailing in Indian Railways, this Court is the opinion that negligence cannot be a ground to reject compensation to the victims, who sustained injuries on account of untoward incident in railway premises.

11. Railway passengers are frequently complaining that proper measures are not taken to provide adequate safety in railway coaches. The maintenance of coaches are yet to be done properly as well as the design prevailing in coaches, more specifically, in E.M.U Trains as well as in Express Trains. The wash basin as well as the toilet doors in every coach are placed adjacent to both sides of the coach doors. Whenever, the aged persons move to reach the toilet or the wash basin, when the doors are under open, there is every possibility of falling down on account of sudden jerk and jolt due to the high speed of the train. Then there is every possibility of untoward incident. Indian Railways has not taken adequate steps to modify the design in coaches, so as to ensure safety measures for the passengers regarding usage of wash basins and toilets. Thus, the imperfectness regarding the maintenance of the railway coaches are also to be considered with reference to the possibility of untoward incidents in trains.

12. In all such cases, Railways are blaming the passengers who all are standing nearby doors. However, the wash basin itself is placed adjacent to the door and while using the wash basin if the doors are open then there is every possibility of falling down from the running train. These aspects are to be looked into by the Railway Administration.

13. The Courts are bound to adopt a pragmatic approach by considering the prevailing facts and circumstances. The possibility of untoward incident, on account of certain imperfectness on the part of the Railway Administration is also to be taken into consideration, while invoking the Exclusion Clause under the provision of the Railways Act. Once the untoward incident from a running train or in the railway premises are established, then the Tribunal is bound to look into facts and circumstances regarding the untoward incident and even the benefit of doubt is to be extended in favour of the claimants, so as to grant compensation.

14. Untoward Incidents are happening on many occasions. Undoubtedly, it happens on account of the negligence or carelessness on the part of the passengers also. Equally, the

Railway Administration is also responsible for not providing adequate safety to the passengers who are traveling in train. Therefore, to that extent, the practical situations as well as the safety measures and the crowd traveling in trains are to be taken into consideration. These all are practical aspects which are to be considered for deciding the issue regarding the grant of compensation.

15. In the present case, the Railway Tribunal arrived a conclusion that the deceased might have slipped down from the train is a presumptive finding arrived by the Tribunal. However, Tribunal came to conclusion that the deceased was a bonafide passenger and was holding a valid pass at the time of traveling. Therefore, the findings of the Tribunal is that untoward incident cannot be a ground within the meaning of the Act. It is perverse and not in consonance with the principles established as well as the meaning defined for "untoward incident".

16. Thus this Court has no hesitation in arriving a decision that the award passed by the Railways is infirm and not in consonance with the Act. Accordingly the Award dated 01.10.2015 passed in O.A. (II - U) No.250/2014 is set aside. The respondent is directed to pay the amount of Award of Rs.4,00,000/-. The date of accident was 01.05.2014. Thus the Appellants/Claimants are entitled for compensation of Rs.4,00,000/- along with the interest which is calculated as Rs. 2,43,000/- as per the amendment issued with effect from 01.01.2017. The appellants/claimants are entitled for a compensation of Rs.8,00,000/- along with interest at the rate of 6 % per annum from the date of passing of the order in the present appeal. Thus the respondent/railways are directed to pay the compensation amount of Rs.8,00,000/- along with interest 6% from the date of passing of the order in the present appeal. The Award is to be apportioned between the appellants/claimants as detailed hereunder:-

First appellant/wife is entitled for a sum of Rs. 3,00,000/- and appellants two and three are entitled for a sum of Rs. 2,50,000/- each.

17. The respondent/railways is directed to pay the Award amount within a period of twelve weeks from the date of receipt of a copy of this judgment and on such deposit, the appellants are permitted to withdraw the entire amount by filing an appropriate application and all payments are made through RTGS.

18. Accordingly the Civil Miscellaneous Appeal stands allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Pns

To

1.The Railway Claims Tribunal,
Chennai Bench.

2.The General Manager,
Union of India owning,
South Central Railway,
Chennai - 600 003.

Copy to: The Section Officer,
VR Section,
High Court,
Madras.

+1cc to M/s.T.P.Savitha, Advocate, SR.No.8361.

LN(CO)
CSR 11.03.2021

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