

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.1236 of 2017

1.Mrs.C.Ramayamma

2.C.Nagamani alias Raji

3.C.Durga

...Appellants

Vs.

The Union of India owning,
South Central Railway,
Rep.by its General Manager,
Secunderabad.

...Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 23 of Railway Claims Tribunal Act, 1987 praying to set aside the dismissal order dated 18.12.2015 in OA (II-U) No.244 of 2014 order passed by the Railway Claims Tribunal, Chennai Bench and pleased to grant award for sum of Rs.4,00,000/- with interest.

For Appellants : Mr.R.Sekaran

For Respondent : Mr.U.Venkatesan

J U D G M E N T

The Award dated 18.12.2015 passed in OA (II-U) No.244 of 2014 by the Railway Claims Tribunal, Chennai, is under challenge in the present Civil Miscellaneous Appeal.

2.The appellants are legal heirs of the deceased and the deceased died in the Rail accident on 11.12.2013. The Application was filed under Section 16 of the Railway Claims Tribunal Act, seeking compensation of Rs.4,00,000/- along with the interest at the rate of 9% per annum.

3.The facts in nutshell as narrated are that deceased left Tirupathi after purchasing II class journey ticket. Later they came to know from Gudur Railway Police that deceased while traveling from Tirupathi to Tuni prior to 12.00 hours on 11.12.2013 accidentally fell down from the running train in between Kondagunta and Vendodu Railway Stations, and suffered grievous injuries and died at the place of incident. The II

class train ticket purchased by him for said travel, is stated to have been lost and could not be traced / retrieved by the railway police. FIR No.153/2013 (Ex.A-1) was registered GRP/Guntakal PS/Gudur on even date based on information received from Shri.V.Mohan Rao, Railway Staff, Gudur Railway Station. Thereafter Inquest Report was marked as Ex.A-2 and postmortem report was marked Ex.A-3. The cause of death as seen in the postmortem report was that "death due to laceration of brain hit by train", prior to 24 to 28 hours of PME, which was conducted on 12.40 hours on 12.12.2013. Final Police report marked as Ex.A-4 was submitted stating that the deceased fell down from train No.17487 Tirumala Express on 09.12.2013. Death Certificate, Ex.A-5, LHC dated 19.03.2014 Ex.A-6 were placed on record along with the OA to establish their relationship with the deceased.

4.The issues were framed by the Tribunal with reference to the documents and evidences. Regarding the issue whether the deceased was a bonafide passenger or not? the Tribunal held that there was no eye witness to support the applicants' projection and no travel ticket was found on the deceased. The Tribunal basically relied on the point that the railway ticket was not retrieved from the spot or was not with the deceased person. In the absence of railway ticket, the passenger cannot be construed as a bonafide purchaser and accordingly, denied the benefit of compensation under the provisions of the Act.

5. The burden of proof as per the judgment of the Supreme Court of India in the case of Union of India vs. Rina Devi, is on the part of the railways and, more specifically, initially on the side of the victim. Therefore, in the present case, the initial evidence reveals that the death occurred due to rail accident and the FIR was registered by the Railway Police, the Inquest Report was also prepared, further postmortem was conducted and cause of death was opined as that "death is due to laceration of brain hit by train". Thus, there is no reason to fix the burden on the part of the claimants and in such circumstances, it is for the railways to disprove the claim of the applicants.

6. The Apex Court also held that though the initial burden is on the side of the applicants, once the factum regarding the accident in the railway premises is established and the inquest report also reveals that the death occurred due to the accident, then the burden of proof is shifted to the railways to establish that the deceased was not a bonafide passenger.

7.This being the principles laid down, in the present case the respondent / railways has not established that the deceased was not a bonafide passenger. Therefore, the Tribunal has

committed an error in arriving a finding on the basis that the travel ticket was not produced and therefore, the claimants are not entitled for compensation. Such a finding arrived is perverse and not in consonance with the established principles.

8. It is needless to state that when a passenger met with an accident in a running train or somewhere in the railway premises, there is a possibility of losing a train ticket on account of the fact that a person died will be shifted to hospital, postmortem centre and thereafter to cremation ground etc. In such circumstances, law cannot expect that the legal heirs or the other persons would be interested in collecting the railway ticket at that point of time and for this humane approach is certainly required with reference to the welfare legislation. More so, for grant of compensation a pragmatic approach is required and the progressive interpretation is to be adopted. When a railway passenger is in distress, he will not think about protecting the railway ticket and this being the circumstances, Courts are also bound to consider such practical circumstances and take a decision that the passenger is bonafide passenger or not.

9. If the basic factum regarding the death in the railway premises is established, FIR is filed and inquest report also reveals that the accident occurred and further postmortem report states that the death occurred due to the laceration of brain hit by train, then there is no other reason to fix the responsibility on the part of the claimants as inquest report as well as the final report have filed and there is no question to produce the travel ticket.

10. This being the facts and circumstances, the Railway Claims Tribunal committed an error with reference to the principles to be adopted for establishing the factum regarding the bonafide passenger. In the present case, the deceased was a bonafide passenger with reference to the documents filed including FIR, inquest report and postmortem report. Thus, this Court has no hesitation in arriving a conclusion that the deceased was a bonafide passenger and consequently, the appellants are entitled for compensation.

11. In the present case, the accident occurred on 11.12.2013 and therefore, the appellants / claimants are entitled for compensation at the rate of 9% per annum from the date of accident. As of now, the interest is calculated as Rs.2,58,000/-. The amount of compensation is Rs.4,00,000/-. Thus, the total come around Rs.6,58,000/- . In view of the fact that the sum of Rs.8,00,000/- is contemplated from the notification dated 01.01.2017, the respondent/Railways is liable to pay the total compensation of Rs.8,00,000/- along with

interest @ 6% per annum from the date of passing of this order in the present appeal. The said compensation of Rs.8,00,000/- along with interest is to be apportioned between the appellants/claimants as hereunder:

The first appellant/wife is entitled for a sum of Rs.3,00,000/- and the appellants 2 and 3 are entitled for Rs.2,50,000/- each.

12. In this view of the matter, the Award dated 18.12.2015 passed in O.A.(II-U) No.244 of 2014 is set aside and C.M.A.No.1236 of 2017 is allowed. No costs.

13. The respondent / railways are directed to deposit the award amount along with the accrued interest within a period of twelve weeks from the date of receipt of a copy of this judgment and on such deposit, the claimants are permitted to withdraw the Award amount by filing an appropriate application and all payments are made through RTGS.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Pns

To

The Railway Claims Tribunal,
Chennai.

+1cc to M/s.U.Venkatesan, Advocate Sr.7989
+1cc to M/s.M.Vijay Anand, Advocate Sr.7935

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