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C.M.P.No.5892 of 2022
in
C.M.A.No.1271 of 2017

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M.DHANDAPANI, J.

This petition has been filed seeking to condone the delay of 958 days in filing the restoration petition in C.M.A.No.1271 of 2017 which was dismissed for default on 09.07.2019.

2. The learned counsel appearing for the petitioners/appellants submitted that, the learned counsel appearing on their behalf in the civil miscellaneous appeal sought certain documents regarding the case, however, the first petitioner/wife of the deceased, had not produced the same as she was very depressed at that time due the death of her husband. Thereafter, due to the non-appearance of the counsel, the above civil miscellaneous appeal was dismissed for non-prosecution on 09.07.2019. Thereafter, due to COVID-19 pandemic situation, the petitioners were unable to contact the counsel to file restoration petition. The above said act is not wilful or wanton, however due to above said reasons. Therefore, the present civil miscellaneous petition is filed.



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3. He further submitted that, it would suffice, this Court may condone the delay and for the delay period, this Court may not award any costs. However, in the present case, mere absence of ticket with such injured deceased will not negative the claim that the deceased was not a bonafide passenger. The first petitioner, who is the wife of the deceased, made a specific claim before the respondent that her husband was a bonafide passenger and he accidentally fell down from the moving train. In terms of Section 123 of the Railways Act, 1989 (in short 'the Act'), the petitioners are entitled for compensation. Accordingly, she prays for appropriate orders.

4. The learned counsel appearing for the respondent/Railway Authority submitted that, mere presence of the body on the railway premises will not be conclusive to hold that the deceased was a bonafide passenger, for which, claim for compensation could not be maintained. However, it is initial burden raised upon the claimants to prove that the deceased was a bonafide passenger, who travelled with valid ticket at the relevant point of time and he accidentally fell down. Then, applying Sections 123 and 124 of the Act, the claimants are entitled to claim compensation. However, there is no proof available that he was a bonafide passenger and travelled in the train after purchasing ticket from the



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railways and he accidentally fell down. In the absence of any proof or any affidavit, the claim made by the claimants are not maintainable. Accordingly, he prays for dismissal of the civil miscellaneous petition.

5. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondent.

6. Admittedly, the body of the deceased was found in railway track between Nellikuppam and Melpakkam Railway Stations at Km 191/400-500 and thereafter, the appellants filed claim petition before the Tribunal claiming compensation as against the railways authorities. In the present case, as per Section 123 of the Act, if the person purchased valid ticket from the railways and they are termed as bonafide passenger, if they accidentally fell down from the moving train, such person is entitled for claiming compensation. Similar issue came for consideration before the Apex Court reported in **MANU/SC/0522/2018** and the relevant portion of the judgment is as follows :-

“17.4. We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger.



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Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

7. In yet another case in ***Kamukayi & Ors. Vs. Union of India & Ors.***, the Apex Court had occasion to consider a similar issue, wherein the Apex Court held as under :-

12. As per the material placed, the FIR of the incident is registered by the Railway Police Station, Karur on 27.9.2014 at 10 A.M. As per the averments of the FIR, it revealed that on 27.9.2014, complainant Manikandan (AWI) son of the deceased purchased a ticket of Erode Passenger Train from Lalapettai to Karur at Lalapettai Railway Station and gave it to his father Muchamy @ Muthusamy, who was going to Government Hospital, Karur for his medical treatment. At about 9 a.m., he received information from his uncle Ayyappan that the deceased had fallen from the train at Mahadanapuram Railway Station with decapitation and amputation of right arm. The inquest report was prepared on the same day by the Inquest Officer specifying the circumstances under which the accident took place, the relevant thereto is reproduced as under:

“The deceased Muchamy @ Muthusamy age 50/14, s/o Mookkan, Kodikkal Street, Lalapettai, in order to take medical treatment for the wound on his leg on 27.09.2014 morning 8 ¼ hours he came to Lalapettai Railway Station along with his son Manikandan and his son purchased a



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train ticket for the deceased to travel from Lalapettai to Karur and he received the ticket and travelled to Trichy by Erode Passenger Train. While the train came to Mahadanapuram Railway Station the deceased adrift and fallen down from the train compartment and entangled with train result of head decapitated, hand amputated and died at the spot.

13. The post-mortem was conducted by the Civil Assistant Surgeon, Government Head Quarters Hospital, Karur on the same day i.e. 27.9.2014 and the Doctor opined regarding cause of death as under:

“The deceased would have appearance to have died of shock and haemorrhage and injury to vital organs and decapitation of head about 4 to 8 hours prior to autopsy.”

.....

18. Now, reverting to the issue whether the deceased was a bona fide passenger? In this regard, the ocular statement of AW1- Manikandan, son of the deceased, who procured a valid train ticket for travel from Lalapettai to Karur and handed it over to the deceased is on record. As per the statement of AW1, the averments made in the claim petition have been testified and even in the cross-examination, he has reiterated that ticket for deceased from Lalapettai to Karur was purchased for a sum of Rs. 10/- and sent him off at Station to go to Karur. The deceased fell down at Mahadanapuram Railway Station. The said averment of the claim petition and the statement of D. Ravisankar, Station Master finds support from inquest report prepared by the Inquest Officer on the date of incidence i.e. 27.9.2014 and the final report prepared by the Investigation Officer, Railway Police Station Trichy on 14.11.2014. The said reports have been referred to in the investigation report dated



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7.6.2017. *Considering the material brought on record, in our view, the initial burden that the deceased passenger was having a valid ticket has been discharged shifting onus on the Railway Administration to disprove the said fact. Nothing has been placed before Claims Tribunal or brought on record during the course of hearing that the Railway Administration has discharged the burden of not having the valid railway ticket with the deceased passenger, except to say that during recovery ticket was not found. In absence of any cogent evidence, notwithstanding anything contained in any other law, the Railway Administration shall be liable to pay compensation as prescribed.*

19. *In view of above discussion, we are of the considered opinion that as per law laid down by this Court in Rina Devi (supra), it is proved beyond reasonable doubt that deceased Muchamy @ Muthusamy died in an untoward incident which took place on 27.9.2014 while travelling in a passenger Train No. 5684 and he was a bona fide passenger. The findings adversely recorded by the Claims Tribunal and affirmed by the High Court are perverse, therefore set-aside. In our view, as per the provisions contained in Section 124A of Railways Act and Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, the appellants are entitled to claim compensation.*

20. *In view of the above, the claimants are held entitled to seek compensation, but during hearing, it is brought to our notice that after the date of accident and filing the claim petition on 25.7.2016, the Compensation Rules, 1990 were amended w.e.f. 01.01.2017. Therefore, the amount of compensation has to be arrived at while taking into account the amended Rules. The said issue was considered by this Court in the case of Rina Devi (supra), wherein in paragraphs 18 and 19, this Court has observed as thus:*

“18. The learned Amicus has referred to judgments of this Court in Raman Iron



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Foundry and Kesoram Industries to submit that quantum of compensation applicable is to be as on the award of the Tribunal as the amount due is only on that day and not earlier. In Kesoram Industries, the question was when for purposes of calculating “net wealth” under the Wealth Tax Act, 1957 provision for payment of tax could be treated as “debt owed” within the meaning of Section 2(m) of the said Act. This Court held that “debt” was obligation to pay. The sum payable on a contingency, however, does not become “debt” until the said contingency happens. The liability to pay tax arises on such tax being quantified. But when the rate of tax is ascertainable, the amount can be treated as debt for the year for which the tax is due for purposes of valuation during the accounting year in question. There is no conflict in the ratio of this judgment with the principle propounded in Thazhathe Purayil Sarabi that in the present context right to compensation arises on the date of the accident. In Raman Iron Foundry, the question was whether a claim for unliquidated damages does not give rise to “a debt” till the liability is determined. It was held that no debt arises from a claim for unliquidated damages until the liability is adjudicated. Even from this judgment it is not possible to hold that the liability for compensation, in the present context, arises only on determination thereof and not on the date of accident. Since it has been held that interest is required to be paid, the premise on which Rathi Menon is based has changed. We are of the view that law in the present context should be taken to be that the liability will accrue on the date of the



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accident and the amount applicable as on that date will be the amount recoverable but the claimant will get interest from the date of accident till the payment at such rate as may be considered just and fair from time to time. In this context, rate of interest applicable in motor accident claim cases can be held to be reasonable and fair. Once concept of interest has been introduced, principles of the Workmen Compensation Act can certainly be applied and judgment of the four-Judge Bench in Pratap Narain Singh Deo will fully apply. Wherever it is found that the revised amount of applicable compensation as on the date of award of the Tribunal is less than the prescribed amount of compensation as on the date of accident with interest, higher of the two amounts ought to be awarded on the principle of beneficial legislation. Present legislation is certainly a piece of beneficent legislation.

19. Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay. Seeming conflict in Rathi Menon and Kalandi Charan Sahoo stands explained accordingly. The four-Judge Bench judgment in Pratap Narain Singh Deo holds the field on the subject and



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squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given.”

21. The said judgment was further explained by this Court in the case of Radha Yadav (supra), relevant para 11 is reproduced as thus:

“11. The issue raised in the matter does not really require any elaboration as in our view, the judgment of this Court in Rina Devi is very clear. What this Court has laid down is that the amount of compensation payable on the date of accident with reasonable rate of interest shall first be calculated. If the amount so calculated is less than the amount prescribed as on the date of the award, the claimant would be entitled to higher of these two amounts. Therefore, if the liability had arisen before the amendment was brought in, the basic figure would be as per the Schedule as was in existence before the amendment and on such basic figure reasonable rate of interest would be calculated. If there be any difference between the amount so calculated and the amount prescribed in the Schedule as on the date of the award, the higher of two figures would be the measure of compensation. For instance, in case of a death in an accident which occurred before amendment, the basic figure would be Rs.4,00,000/-. If, after applying reasonable rate of interest, the final figure were to be less than Rs.8,00,000/-, which was brought



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in by way of amendment, the claimant would be entitled to Rs.8,00,000/-. If, however, the amount of original compensation with rate of interest were to exceed the sum of Rs.8,00,000/- the compensation would be in terms of figure in excess of Rs.8,00,000/-. The idea is to afford the benefit of the amendment, to the extent possible. Thus, according to us, the matter is crystal clear. The issue does not need any further clarification or elaboration.”

22. The said view has been reaffirmed by this Court in the case of **Union of India vs. Dilip and others.**

23. Accordingly and as per above discussion we allow this appeal and set aside the impugned judgment dated 26.03.2021 passed by the High Court and also the Claims Tribunal dated 29.06.2017. Consequently, claim application is allowed. The appellants are held entitled for compensation to the tune of Rs. 4,00,000/- along with interest @ 7% p.a. from the date of filing the claim application till its realisation. It is made clear that after applying the rate of interest, if the final figure is less than Rs. 8,00,000/-, then appellants shall be entitled to Rs. 8,00,000/-. The amount of compensation be satisfied by the respondents within a period of eight weeks. No order as to costs.

8. A perusal of the above decision makes it clear that mere presence of body on the railways premises will not be conclusive to hold that the deceased was a bonafide passenger, for which, claim for compensation could be maintained. However, absence of ticket with the deceased will not negative the claim if the appellants prove that the deceased was a bonafide passenger who



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travelled with valid ticket and he accidentally fell down from the moving train, they are entitled to claim compensation. In order to prove that the deceased was a bonafide passenger, it is for the claimants to adduce oral evidence and documentary evidence before the Tribunal. If any eye-witness is available who purchased the ticket and travelled along with the deceased person, then, the burden will shift on the railways to prove that the deceased was not a bona fide passenger. In the present case, no eye-witness was examined to prove that the deceased purchased ticket from the Railways and he was a bonafide passenger. In the absence of any evidence, the Tribunal arrived at a conclusion that the deceased was not a bonafide passenger and negatived the claim, which cannot be interfered with and this petition is liable to be dismissed.

9. Accordingly, this civil miscellaneous petition is devoid of merits and, the same stands dismissed.

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