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C.M.A.No.2653 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.2653 of 2021

1. Arumuga Nainar

2. R. Subathra

... Appellants/Applicants

Vs.

Union of India,
Through General Manager,
Southern Railway, Chennai – 3.

... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal, 1987, against the Order and Decree dated 19.03.2021 made in O.A.(II-U)/83/2019 on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellants : Mr. B. Thirumalai

For Respondent : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants against the dismissal of the application in O.A.(II-U)/83/2019, dated 19.03.2021 seeking compensation for the death of their son A. S.



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Muralikrishna, in the railway accident held on 06.07.2015.

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2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimants is that the deceased was a native of Tutikorin District. He was working in a private Company near Chrompet and was staying at Poonamallee. On 06.07.2015, the deceased in this case had informed his parents that he was going to Chengalpattu for searching job in a new company and thereafter left from his home. Subsequently, the parents of the deceased came to know from the Chengalpattu Railway Police that his son was died. While travelling in the local train, due to overload and jerk and jolt of the train prior to 19.00 hours, he fell down and suffered injury and subsequently, he succumbed to died. They have also stated that the deceased was travelling after purchasing second class train ticket and since it is an untoward incident, the claimants have come forward to file claim petition seeking compensation from the respondents.

4. The claim was opposed by the railways on the ground that the



deceased himself has invited the accident and it is not the accidental death.

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5. Before the Tribunal, the first claimant has filed proof affidavit stating that his son, while travelling in a local train from Chengalpattu to Guindy, due to over crowd and speed, jerk and jolt of the train prior to 19.00 hours, he fell down between Paranur and Singaperumal Koil Railway Station. They also relied on the First Information Report (FIR) which was registered immediately after the identification of the dead body.

6. On perusal of the First Information Report, it shows that one of the Motorman has informed to the Station Master, Singaperumal Koil that he had seen the dead body near the Train track, which was lying at KM53/11-09. Subsequently, based on the FIR, Inquest was also conducted. The Final Report was filed by the Investigation Officer that the deceased while travelling from Chengalpattu to Guindy in any one of EMU Train, accidentally, he fell down and sustained injuries and died on the spot. The second class train ticket was also recovered from the dead body of the deceased.

7. The Tribunal after perusing the second class train ticket, it is



recorded that the journey shall be commenced within one hour from the time of purchasing of train ticket, there is a huge time difference between the time of purchase and the time of the body of the deceased was identified. The Tribunal has taken a view that since the deceased has not begun his journey within the prescribed time limit, the deceased could not be considered as a bonafide passenger.

8. An Explanation to Section 124 (A) of the Indian Railways Act deals with the provision for payment of compensation for untoward accident also provides meaning for the word “Passengers” which reads as follows:

124A. Compensation on account of untoward incident. —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 dies 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 purposes 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.]

9. The Hon'ble Apex Court in ***Union of India vs. Rina Devi and others [2019 (3) SCC 572]*** has considered that the burden of proof when the body was found on the railway station premises and definition of the passengers in relevant paragraphs, it is held as follows:

“Re: (iii) Burden of Proof When Body Found on Railway Premises – Definition of Passenger :

17.1 Conflict of decisions has been pointed out on the subject. As noticed from the statutory provision, compensation is payable for death or injury of a ‘passenger’. In Raj Kumari (supra) referring to the scheme of Railways Act, 1890, it was observed that since travelling without ticket was punishable, the burden was on the railway administration to prove that passenger was not a bonafide passenger. The Railway Administration has special knowledge whether ticket was issued or not. 1989 Act also has similar provisions



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being [Sections 55](#) and [137](#). This view has led to an inference that any person dead or injured found on the railway premises has to be presumed to be a bona fide passenger so as to maintain a claim for compensation. However, Delhi High Court in *Gurcharan Singh (supra)* held that initial onus to prove death or injury to a bona fide passenger is always on the claimant. However, such onus can shift on Railways if an affidavit of relevant facts is filed by the claimant. A negative onus cannot be placed on the Railways. Onus to prove that the deceased or injured was a bona fide passenger can be discharged even in absence of a ticket if relevant facts are shown that ticket was purchased but it was lost. The Delhi High Court observed as follows :

“3(ii) In my opinion, the contention of the learned counsel for the appellants/claimants is totally misconceived. The initial onus in my opinion always lies with the appellants/claimants to show that there is a death due to untoward incident of a bonafide passenger. Of course, by filing of the affidavit and depending on the facts of a particular case that initial onus can be a light onus which can shift on the Railways, however, it is not the law that even the initial onus of proof which has to be discharged is always on the railways and not on the claimants. I cannot agree to this proposition of law that the Railways have the onus to prove that a deceased was not a bonafide passenger because no such negative onus is placed upon the Railways either under the [Railways Act](#) or the [Railway Claims Tribunal Act](#) & Rules or as per any judgment of the Supreme Court. No doubt, in the facts of the particular case, onus can be easily discharged such as in a case where deceased may have died at a place where he could not have otherwise been unless he was travelling in the train and in such circumstances depending on the facts of a particular case it may not be necessary to prove the factum of the deceased having a ticket because ticket as



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*per the type of incident of death can easily be lost in an accident. I at this stage take note of a judgment of a learned Single Judge of this Court in the case reported as **Pyar Singh Vs. Union of India 2007 (8) AD Del. 262** which holds that it is the claimant upon whom the initial onus lies to prove his case. I agree to this view and I am bound by this judgment and not by the ratio of the case of Leelamma (supra). ”*

17.2 In Jetty Naga Lakshmi Parvathi (supra) same view was taken by a single Judge of Andhra Pradesh after referring to the provisions of the [Evidence Act](#) as follows :

“22. So, from [Section 101](#) of the Indian Evidence Act, 1872, it is clear that the applicants, having come to the court asserting some facts, must prove that the death of the deceased had taken place in an untoward incident and that the death occurred while the deceased was travelling in a train carrying passengers as a passenger with valid ticket. Therefore, having asserted that the deceased died in an untoward incident and he was having a valid ticket at the time of his death, the initial burden lies on the applicants to establish the same. The initial burden of the applicants never shifts unless the respondent admits the assertions made by the applicants. Such evidence is lacking in this case. Except the oral assertion of A.W.1, no evidence is forthcoming on behalf of the applicants. The court may presume that the evidence which could be, and is not produced, would, if produced, be unfavourable to the person who withholds it. The best evidence rule, which governs the production of evidence in courts, requires that the best evidence of which the case in its nature is susceptible should always be produced. [Section 114\(g\)](#) of the Indian Evidence Act, 1872 enables the court to draw an adverse presumption against a person who can make available to the court, but obstructs the availability of



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such an evidence. The Claims Tribunal, upon considering the material on record, rightly dismissed the claim of the applicants and there are no grounds in this appeal to interfere with the order of the Tribunal.”

17.3 In Kamrunnissa (supra), from the circumstances appearing in that case it was held that there was no evidence that the deceased had purchased the ticket. In the given fact situation of that case, this Court inferred that it was not a case of ‘untoward incident’ but a case of run over. It was observed :

“7. The aforestated report also reveals, that the body of the deceased had been cut into two pieces, and was lying next to the railway track. The report further indicates, that the intestine of the deceased had come out of the body. The above factual position reveals, that the body was cut into two pieces from the stomach. This can be inferred from the facts expressed in the inquest report, that the intestines of the deceased had come out of the body. It is not possible for us to accept, that such an accident could have taken place while boarding a train.

8. In addition to the factual position emerging out of a perusal of paragraphs 7 & 8 extracted hereinabove, the report also reveals, that besides a pocket diary having been found from the person of the deceased a few telephone numbers were also found, but importantly, the deceased was not in possession of any other article. This further clears the position adopted by the railway authorities, namely, that the deceased Gafoor Sab, was not in possession of a ticket, for boarding the train at the Devangere railway station.”

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 bonafide passenger for which claim for compensation could be maintained.



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However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bonafide passenger. 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.”

10. In ***Union of India vs. Rina Devi [2019 (3) SCC 572]*** case cited above, it is held that even the person who is not having valid travel ticket, he is eligible to get compensation if he is established the fact that he travelled in the train after purchasing ticket and there is a presumption in favour of the deceased on filing of affidavit to that effect.

11. In this case, admittedly, the deceased was having a valid second class train ticket, to travel in the train. The time of issuance of ticket is 11.27 hours and the dead body of the deceased was found by the Motorman at about 19.00 hours. It is not the case of the respondents that the deceased had travelled in a particular time i.e., after the lapse of one hour. It is their case that they found the body around 15.30 hours. The Tribunal has also observed that if the deceased had been fallen immediately after purchase of ticket, his dead body would have been identified much earlier, whereas,



the time of identification of dead body was at about 15.30 hours which shows that the deceased had not travelled with valid ticket i.e., he had travelled in a lapsed ticket. The time gap between the time of purchase of ticket and identification of dead body 3 hours and 30 minutes. No evidence has been placed on record to show that whether the Motorman has visited or inspected the place of occurrence prior to 15.30 hours or after 11.57 hours on the date of occurrence.

12. The presumption raised by the Tribunal more particularly, for rejecting the claim must be based on some evidence whereas, in this case, there is no *prima facie* evidence to show that the Motorman or any other person who has inspected the place of occurrence prior to 15.30 hours. The time gap after lapse of one hour, from the time of purchase of ticket and identification of dead body is 2 ½ hours, there is every possibility that the dead body could not have been seen in that period. This Court is unable to accept the view taken by the Tribunal, in the absence of any evidence as discussed earlier that the railway officials have visited the spot, prior to 15.30 hours. Further, when there is a valid train ticket and the Inquest Report has also concluded that it is not a case of run over and it is the case of



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accidental fall, it squarely fall within the definition of untoward incident as stated in Section 124-A of the Indian Railways Act.

13. In this case, at the time of death of the deceased, the eligible compensation is Rs.4,00,000/- and within three years, the compensation amount awarded has been enhanced to Rs.8,00,000/- as per G.O.No.877, Ministry of Railways, New Delhi, dated 22.12.2016 came in force from 01.01.2017.

14. In the Judgment of the Hon'ble Apex Court in ***Union of India vs. Rina Devi*** cited above in Paragraph No.15.4 has given a guidelines of calculating the quantum of compensation and the same was followed in the subsequent Judgment is ***Kamukayi and others vs. Union of India (UOI) and Others [AIR 2023 (SC) 2761]***.

15. In ***Union of India vs. Rina Devi*** in Paragraph No.15.4 is extracted hereunder:

“15.4. 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



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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 (supra) and Kalandi Charan Sahoo (supra) stands explained accordingly. The 4-Judge Bench judgment in Pratap Narain Singh Deo (supra) holds the field on the subject and 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”.

16. This Court is of the view, the claimants are entitled for higher amount and if the compensation is awarded by fixing a sum of Rs.4,00,000/- with interest, it would be lesser than Rs.8,00,000/-. They are entitled for higher sum of Rs.8,00,000/- as on date of Award passed by this Court. However, the claimants are not entitle for the interest from the date of accident till the date of award and the claimants would be entitled only for a sum of Rs.8,00,000/- without interest from the date of application till the date of Judgment of this Court. The claimants are entitled for future interest i.e., from the date of Judgment of this Court till the date of payment at the rate of 7.5% per annum.



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17. In the result, this Civil Miscellaneous Appeal is allowed.

The respondent - Railway is directed to deposit a sum of Rs.8,00,000/- [Rupees Eight Lakhs only] within a period of four weeks from the date of receipt of a copy of this judgment to the credit of O.A.(II-U)/83/2019, on the file of the Railway Claims Tribunal, Chennai Bench. On such deposit, the appellants/claimants are entitled to withdraw the amount, now awarded by this Court along with interest and costs. The Tribunal shall disburse the amount now awarded by this Court by directly giving the credit to Savings Bank Account of the claimants without any formal application. There shall be no order as to costs in the present appeal.

11.12.2023

ssi

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

K.RAJASEKAR,J.

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To:

1. The Railway Claims Tribunal,
Chennai Bench.
2. The Section Officer,
V.R.Section,



High Court, Chennai.

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