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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.2627 of 2021

1. M. Vijayalakshmi
 2. M. Harikrishnan (Minor)
 3. M. Gokula Krishnan (Minor)
- [Minor appellants represented by their mother
M. Vijayalakshmi, the 1st appellant herein]

... Appellants/Applicants

Vs.

Union of India,
Owing Southern Railway,
Rep. by its General Manager,
Chennai – 3.

... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal, 1987, against the Order and Decree dated 28.01.2020 made in O.A.(II-U)/MAS/124/2019 on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellants : Mr. B. Thirumalai
For Respondent : Mr. Vijay Anand

JUDGMENT

The Civil Miscellaneous Appeal has been filed by the dependants of the deceased namely, K.Muthukumar, who had died in the



Train Accident on 21.12.2018, challenging the dismissal of their claim petition as per Order dated 28.01.2020, passed by the Railway Claims Tribunal, Chennai.

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

3. The case of the claimants is that the deceased namely, K.Muthukumar, aged about 45 years, was travelling in Chengalpattu to Chennai Central EMU train on 21.12.2018, he had fell down due to Jerk and Jolt of the Train, while the Train was just started from Platform No.2 at the end of Paranur Railway Station at KM No.55/19-17, which resulted in causing severe grievous injuries and succumbed on the spot. This accident took place on the Railway Station at Paranur, the Railway Police, Chengalpattu registered the First Information Report regarding the occurrence in F.I.R.No.160 of 2018. Thereafter, the dead body was subjected to Post-mortem and the Divisional Railway Manager (DRM) has also conducted enquiry in this regard. The wife, minor children and mother of the deceased have come forward to file the Claim Petition seeking compensation of Rs.8,00,000/-.



4. The respondent/Railways filed a reply before the Tribunal and contended that the deceased is not an authorised passenger and his dead body was found between the railway tracks without any railway tickets. Hence, the claimants are not entitled to get compensation from the railways.

5. The Railway Claims Tribunal, after considering the evidences placed on record, has rejected the contention of the claimants stating that since the dead body of the deceased was not found with journey ticket, he could not be considered as an authorised passenger and refused to grant compensation.

6. Aggrieved over the denial of granting compensation, the claimants have filed this appeal.

7. It is an admitted case of the parties that while the train was started from Platform No.2 of Paranur Railway station, the deceased fell down from the train and he was rescued from Platform No.2 at Paranur Railway station between the railway track and platform. According to the claimants, the deceased was aged about 45 years and was working as a



Security in a Private Company at Mahindra World City near Singaperumal

Koils and he used to travel by EMU train by purchasing 2nd class ordinary ticket from Maduranthakam to Guduvanchery and that on 21.12.2018 at about 5.00 hours the deceased left his home for going to his work and later, the claimants came to know that the deceased fell down from the train due to jerk and jolt and died on the spot of the accident.

8. In DRM Report, it is stated that in the enquiry of RDO, no witnesses have stated that the deceased was found with a journey ticket and that no evidences on the side of the claimants have to prove that the deceased was travelled as an authorized passenger.

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



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C.M.A.No.2627 of 2021

‘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 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](#)



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C.M.A.No.2627 of 2021

*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 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



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C.M.A.No.2627 of 2021

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 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



WEB COPY



C.M.A.No.2627 of 2021

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. 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 this case, admittedly, one eye witness namely Mrs.K.Kalaimani, who is the Private Security Personal at Paranur Railway Station stated that the untoward incident had happened in Platform No.2 at Paranur Railway Station. It is also stated that the deceased fallen down from the running train due to heavy rush, jerk and jolt of the train, the deceased fallen down from the train and lost his travel ticket in the untoward incident. It is clear case of the both sides that a fallen down from the train at the platform when the train was departing. The point to be considered herein is



whether the deceased who was passenger shall be considered as “Bonafide passenger” or not?

11. As per the Judgment of the Hon'ble Apex Court in ***Union of India vs. Rina Devi [2018 INSC 469 : 2019 (3) SCC 572]***, that the initial burden to proof that the deceased person is a bonafide passenger that is on the claimants which can be discharged by filing an affidavit of relevant facts and the burden will shift on the railways.

12. The evidence of P.W.1, wife of the deceased has stated that her husband was working as a Security in a Private Company at Mahindra World City near Singaperumal Koil and that on 21.12.2018 at about 5.00 hours the deceased left his home for going to his work on valid passenger ticket. Thereafter, they came to know that the deceased fell down from the running train while it departed from Platform No.2, due to jerk and jolt and died on the spot.

13. The Railway police has also conducted investigations regarding the occurrence and they have been filed Final Report, wherein, it



has been categorically stated by the Police that the deceased while travelling in the Train, accidentally fell down from the running train. In this case, the claimants have discharged their initial burden to prove that the deceased is an authorised passenger by filing affidavit and by adducing evidence and the burden to discharge this presumption that the deceased is unauthorized passenger has not been complied by the railways.

14. As held by the Apex Court in the ***Union of India vs. Rina Devi*** case cited supra, this Court is of the view that the Tribunal has not properly appreciated the evidences placed on record including the Final Report and the Statement of Witness found in the DRM Report. Hence, this Court is of the view that the Order of the Tribunal is not sustainable and the same is liable to be set aside. The claimants are entitled for getting compensation from the respondent/railways.

15. The learned counsel for the claimants has submitted that the Central Government has notified as per G.O.No.877, Ministry of Railways, New Delhi, dated 22.12.2016, the compensation to be awarded for the death of the passenger to Rs.8,00,000/-. Hence, the same amount shall be awarded



as compensation to the claimants. In support of his contention he has also relied on the Judgment of the Hon'ble Supreme Court in ***Union of India (UOI) vs. Radha Yadav [2019 (3) SCC 410]***.

16. In the Judgment of the Hon'ble Apex Court in ***Union of India vs. Rina Devi [2019 (3) SCC 572]*** case cited above in Paragraph No.15.4 has given a guidelines out of calculating the quantum of compensation and has held that the compensation to be awarded on the date of accident with interest to be calculated and compared with the enhanced compensation and the same was followed in the subsequent Judgment of the Hon'ble Apex Court in ***Kamukayi and others vs. Union of India (UOI) and Others [AIR 2023 (SC) 2761]***.

17. In ***Union of India vs. Rina Devi [2019 (3) SCC 572]*** case cited above 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 of the Tribunal, the claimant will be entitled to higher of the two amounts. This order will not affect the



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C.M.A.No.2627 of 2021

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 Rathie 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”.

18. In this case, at the time of death of the deceased, 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.

19. This Court is of the view, since 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



C.M.A.No.2627 of 2021

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.

20. In the result, this Civil Miscellaneous Appeal is allowed. The respondent-Railways 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)/MAS/124/2019 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. The share of the minor appellants are directed to be deposited in any one of the Nationalized Bank till the minor appellants attain majority. On such deposit, the first appellant being the mother of the minor appellants is directed to withdraw the accrued interest once in three months for the



C.M.A.No.2627 of 2021

welfare of the minor appellants. There shall be no order as to costs in the present appeal.

15.12.2023

ssi

Index:Yes

Speaking Order:Yes

Neutral Citation Case: Yes

To:

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

K.RAJASEKAR,J.

ssi



WEB COPY



C.M.A.No.2627 of 2021

C.M.A.No.2627 of 2021

15.12.2023