



C.M.A.No.3275 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.3275 of 2021

1. K. Elumalai
2. E. Paneerselvam
3. A. Baby
4. E. Usha
... Appellants/Claimants
Vs.

1. Union of India,
Owing Southern Railway,
Rep. by its General Manager,
Chennai – 600 003.

2. E. Shankar
... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal, 1987, against the Order and Decree, dated 25.08.2021 made in O.A.(II-u)/MAS/128/2019 on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellants : Mr. B. Thirumalai
For R1 : M/s. T. P. Savitha
Senior Counsel for Railway
For R2 : M/s. V. Kaaviya



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JUDGMENT

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This Civil Miscellaneous Petition has been filed by the claimants against the order passed in O.A.(II-u)/MAS/128/2019, dated 25.08.2021, on the file of the Railway Claims Tribunal, Chennai Bench, seeking compensation for the death of their mother namely, Maragadammal in the railway accident, wherein, the Tribunal has dismissed the claim petition filed by claimants seeking compensation for the death of their mother Maragadammal.

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 second respondent is also the son of the deceased Maragadammal herein. She was a kidney patient and that on 30.07.2018, she had boarded EMU Train from Avadi to Central Railway Station, while travelling, she fell down from the train near Annanur Railway Station and sustained grievous head injuries. Immediately, it was brought to the knowledge of the railway police and she was immediately taken to the Government Hospital, Avadi and thereafter, she was shifted to



the Rajiv Gandhi Government Hospital, Chennai and she succumbed to injuries. The claimants, who are the legal heirs and dependants of the deceased have come forward with this claim petition. Since, the second respondent is also the another son, has not join with the claimants he has been separately shown as respondent and he has also claimed compensation.

4. The claim was resisted by the railways on the ground that she is not a bonafide passenger since she was not having valid train ticket for travel made by her. However, it is admitted by the railways that she travelled in the train and fell down near Annanur Railway Station.

5. Before the Tribunal, one of the son namely Pannerselvan/ the second claimant was examined as P.W.1 and he has stated that his mother was a kidney patient and she came to Chennai and stayed with her grandson namely Anbazhagan's House at Ambattur on 29.07.2018 and on the next day, his grandson had dropped to her at Avadi Railway Station. He has also stated that his mother has purchased ticket from Avadi Railway Station for travelling up to Chennai Beach Railway Station to get medicine from the Government Stanley Medical College Hospital, Chennai. On the same day,



he received a phone call from the ambulance driver regarding the occurrence and thereafter, he rushed to the Hospital and came to know about the accident.

6. The claimants have also produced the Final Report filed by the Railway Police regarding the occurrence and on perusal of the Final Report, it has been categorically stated that the deceased was travelled from Avadi, later, changed took train from Chennai Beach on the way to Annathur, she fell down and sustained injuries and subsequently, she succumbed.

7. Before the claims Tribunal, the respondent has also marked the Investigation Report of untoward accident recorded by RPF, which has been accepted by DRM. In which, it has been stated that the deceased has not having any travel ticket for travelling in her possession hence she could not be treated as a bonafide railway passenger. However, it is reiterated that the deceased fell down from the running train, near Annanur Railway Station and sustained head injury and subsequently, she died on 01.08.2018 at 11.00 hours.

8. 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 dead 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 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



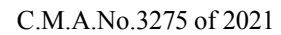
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*misconceived. The initial onus in my opinion always lies with the appellants/claimants to show that there is a death due to untoward incident of a bonafide passenger. Of course, by filing of the affidavit and depending on the facts of a particular 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 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 :



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



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‘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. 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.”

9. In this case, P.W.1 evidence, establish the fact that the deceased was travelled in the Train after purchasing valid ticket. Except filing of DRM Report, the railways has not adduced any contra evidence to dispute the evidence placed on record by the claimants herein. The Railway Claims Tribunal has not properly appreciated the evidence of A.W.1 who had categorically stated that his mother has reached Ambattur on 29.07.2018 and stayed with her grandson's home at Ambattur and on the next day, her grandson dropped her at Avadi Railway Station and thereafter, she purchased ticket and travel in the train. This evidence is corroborate by the Final Report filed by the police after due investigation.

10. In the Apex Court Judgement cited above has held that non-possession of ticket alone is not sufficient to hold that she is an unauthorized passenger unless there is a material to show that she is not a passenger. Once the claimants able to prima facie establish the facts by filing affidavit or by evidence, and raise a presumption in favour of the fact that deceased is a bonafide passenger, then, burden shifts on the railways to rebut the



presumption and same is not available / or produced before the Tribunal. In the absence of rebuttal of presumption, the Tribunal ought to have raised presumption in favour of the claimants. Accordingly, the finding of the Railway Claims Tribunal is not proper and the same is liable to be set aside and also the claimants are entitled for claiming compensation from the respondent.

11. 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 also. 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]***.

12. 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 whichever is higher shall be awarded and the same was followed in the subsequent Judgment of the Hon'ble Supreme Court in ***Kamukayi and others vs. Union of India (UOI) and Others [AIR 2023 (SC) 2761]***.

13. 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 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*



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with interest, the higher of the two amounts has to be given”.

14. 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 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.

15. 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)./MAS/128/2019, on the file of the Railway Claims Tribunal, Chennai Bench. On such deposit,



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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.

23.11.2023

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.



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K.RAJASEKAR,J.

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