



C.M.A.No.274 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.274 of 2021

1. B. Ananda Babu

2. Mrs. B. Gnanasundari

... Appellants/Applicants

Vs.

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

... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987, against the order dated 08.10.2015 made in O.A (II-U) No.229 of 2014 on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellants : Mr. R. Sekaran

For Respondent : Mr. S. Janarthanan,
Central Government Standing Counsel

JUDGMENT

The Civil Miscellaneous Appeal has been filed by the parents of the deceased namely, Bejjam Alex Babu, who had died in the Train Accident on 22.08.2013.



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2. The parties are referred to hereunder according to their status and ranking before the trial Court.

3. The case of the claimants is that their son namely, Bejjam Alex Babu, aged about 20 years, was travelling in Krishna Express from Chirala to Ongole on 22.08.2013, he had fell down due to Jerk and Jolt of the Train between Ammanaborlu and Uppugundur Railway Stations at KM No.309/29, which resulted in causing severe grievous injuries and succumbed on the spot of the accident. The Railway Police Station, Ongole registered First Information Report regarding the occurrence in F.I.R.No.88 of 2013. Thereafter, the dead body was subjected to Post-mortem and the Divisional Railway Manager (DRM) has also conducted enquiry in this regard. The parents of the deceased have come forward to file the Claim Petition seeking compensation of Rs.4,00,000/- for the death of their son.

4. The respondent/Railway filed a reply before the Tribunal and contended that the deceased is not an authorised passenger and his body was found between the railway tracks without any railway tickets and it is also a



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self inflicted injury. Hence, the claimants are not entitled to get compensation.

5. Before the Railway Claims Tribunal, the claimants have examined the father of the deceased as A.W.1 and Exs.A1 to A6 were marked. On the side of the respondent, DRM Report was marked.

6. The Railway Claims Tribunal, after considering the evidences placed on record, has rejected the contention of the claimants stating that since no journey ticket was found, the deceased could not be considered as an authorised passenger and refused to grant compensation.

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

8. The learned counsel for the claimants has relied on the evidence of A.W.1, DRM Report, and Final Report filed by the Railway Police, after due investigation regarding the occurrence. The evidence of A.W.1- Father of the deceased is that his son has purchased the ticket and



travelled along with his personal belongings at that time of accident. In the cross examination, he has stated that the police has not handed over any of the belongings of the deceased.

9. In DRM Report, it is also stated that in the enquiry, no witnesses have stated that the deceased was found with a journey ticket and evidence of A.W.1, who is not eyewitness for the purchase of ticket, is not sufficient to show that the deceased was travelled as an authorized passenger.

10. The Hon'ble Apex Court in ***Union of India vs. Rina Devi and others [2019 (3) SCC 572]*** has considered that aspect of burden of proof, to prove the deceased person is an authorised passenger, when his 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



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*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 Claims Tribunal Act](#) &



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*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.I, 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 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



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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.”

11. In this case, admittedly, in DRM Report, it is recorded that Sri Donkena Eswara Rao, Gate Man of level crossing noticed one passenger was travelling near door ways of a coach and fell down and collided with OHE electrical post and died on the spot, due to fatal injuries. Immediately, the Gate Man passed the message to the Key Man and the Key Man also stated before DRM that he received information from JE/P.Way/CJM (Junior



Engineer, inspecting Railway Authority) to the effect that one person fell down from the Train No.17406 Krishna Express at KM No.309/29 and died.

The above statement was recorded which shows that the deceased was fell down from the running train. This relevant fact has been proved by the claimants that the deceased was a passenger of Train.

12. As per the Judgment in *Union of India vs. Rina Devi case*, cited supra, that the initial burden to proof that the deceased person is a bonafide passenger is on the claimants which can be discharged by filing an affidavit of relevant facts and the burden will shift on the railways. A.W.1 in his cross examination has stated that his son was a B.Tech, III year student and that on 22.08.2013, about 3.00 p.m, the deceased left his home by informing his mother that he is going to Ongole to meet his friends by Train. Thereafter, they saw the dead body of the deceased on the next day of the accident at Rajiv Gandhi Institute of Medical Science General Hospital, Ongole. None of the belongings of the deceased were returned to him by the police. Additionally, he reported to the police about the missing belongings (ring and cash) as soon as the accident occurred, and the police did not respond right away.



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13. In this case, it is the clear affidavit as well as the evidence adduced by the father of the deceased -A.W.1 that his son had travelled in the Train and the Report of DRM based on the statement of the Key Man and Gate Man shows that the deceased was fell down from the running train. This evidence has not been controverted or negatived by the respondent by adducing any evidence. Further, the police has also conducted investigation regarding the occurrence and they have been filed Final Report, which has been marked as Ex.A4, wherein, it has been categorically stated by the Police that the deceased while travelling in the Train, accidentally fell down from the running train which shows that it could not be termed as a self inflicted injury. In this case, the claimants have discharged their initial burden to prove that the deceased is an authorised passenger and the burden to discharge this presumption not been complied by the railways.

14. Under the said circumstances, this Court is of the view that the order of the Railway Claims Tribunal is not proper and the Tribunal has not properly appreciated the evidence placed on record including the Final Report and the Statement of Witnesses found in the DRM Report.



Accordingly, the order of the Railway Claims Tribunal is liable to be set aside and the claimants are entitled for claiming compensation from the respondent.

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 and the compensation to be awarded for the death of the passenger is 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 ***Union of India vs. Rina Devi case*** cited above, in Paragraph No.15.4, the Apex Court has given guidelines for calculating the quantum of compensation and has held that the compensation to be awarded on the date of accident with interest to be ascertained and the same shall be compared with the enhanced prescribed compensation and the claimants are entitled for whichever is higher amount and the same was followed in the subsequent Judgment is ***Kamukayi and others vs. Union of India (UOI) and Others [AIR 2023 (SC) 2761]***.



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17. For better understanding paragraph No.15.4 of **Rina Devi's**

case cited above given as under:

“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 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 prescribed compensation is Rs.4,00,000/- and the compensation amount to be 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



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01.01.2017. Since the enhanced compensation prescribed is came into force within 3 years from the untoward incident of this case, the enhanced compensation is higher than the old prescribed compensation with interest. Accordingly, the enhanced compensation is hereby awarded.

19. 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] along with interest at the rate of 6% per annum from the date of filing of this appeal till the date of this order and thereafter, future interest at the rate of 9% per annum from the date of order of this Court. Time for depositing the above said amount of Rs.8,00,000/- within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of O.A(II-U)No.229 of 2014, 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.



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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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