

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

FRIDAY, THE 2ND DAY OF FEBRUARY 2024 / 13TH MAGHA, 1945

MFA (RCT) NO. 12 OF 2015

OA 23/2013 OF RAILWAY CLAIMS TRIBUNAL, ERNAKULAM

APPELLANT/2ND PETITIONER

SANTHA
AGED 64 YEARS
D/O.KOCHIKA, BINDU BHAVANAM, THEKKEMURI, MUTTAM, EAST
KALLADA P.O., KOLLAM DISTRICT.

BY ADVS.
SRI.V.JAYAPRADEEP
SRI.SHANE WILFRED MORRIS

RESPONDENTS/RESPONDENTS

- 1 SOUTHERN RAILWAY
REPRESENTED BY THE GENERAL MANAGER, CHENNAI-3.
- 2 THE RAILWAY CLAIMS TRIBUNAL
ERNAKULAM BENCH, REPRESENTED BY ITS REGISTRAR.
- 3 LALITHA, AGED 46 YEARS,
W/O.KRISHNANKUTTY, CHAMAVILA VEEDU, CHEMMAKKADU P.O.,
PERINAD VILLAGE, KOLLAM DISTRICT, PIN-691601 AND NOW WITH
TEMPORARY ADDRESS AS PATTTERIMADATHIL, C/O.THOMAS NIVAS,
THITTAMEL, CHENGANNUR-689121.

BY ADVS.
SRI.JOHN MATHEW, SC, RAILWAYS
SRI.K.SHRI HARI RAO, SC, RAILWAYS
SMT.P.RADHIKA - R3
SRI.A.DINESH RAO, SC, RAILWAYS

THIS MFA (RCT) HAVING BEEN FINALLY HEARD ON 29.1.2024, ALONG WITH
MFA (RCT).31/2015, THE COURT ON 02.02.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

FRIDAY, THE 2ND DAY OF FEBRUARY 2024 / 13TH MAGHA, 1945

MFA (RCT) NO. 31 OF 2015

OA 23/2013 OF RAILWAY CLAIMS TRIBUNAL, ERNAKULAM

APPELLANT/APPLICANT

LALITHA, AGED 47 YEARS, WIFE OF LATE SURENDRAN,
THEKKEVALAMANNOR, PULIYOOR PANCHAYAT, CHENGANNUR.

SRI.ANIL S.RAJ
SMT.ANILA PETER
SMT.K.N.RAJANI
SRI.RADHIKA RAJASEKHARAN P.
SRI.J.VIVEK GEORGE

RESPONDENT/RESPONDENT

- 1 UNION OF INDIA
REPRESENTED BY THE GENERAL MANAGER, SOUTHERN RAILWAY, CHENNAI-3.
- 2 C.SANTHA
BINDU BHAVANAM, EAST KALLADA P.O., KOLLAM-691 502.
- 3 C.SAROJINI
VARAMBEL VEEDU, PERUMPUZHA PO. KOLLAM-691 504.
- 4 NIRMALA
RAJU BHAVANAM, SOORANADU NORTH PO, KOLLAM-690 561.
- 5 GEETHA
EDAYILA VEEDU, EAST KALLADA PO, KOLLAM-691 502.
- 6 C.SUDHAKARAN
SUDHEESH BHAVANAM, EAST KALLADA PO, KOLLAM-691 502.
- 7 C.SAHADDEVAN
SUDHEESH BHAVANAM, EAST KALLADA PO, KOLLAM-691 502.
- 8 C.BABU
SUDHEESH BHAVANAM, EAST KALLADA PO, KOLLAM-691 502.

**[RESPONDENTS 2 TO 8 ARE DELETED FROM THE PARTY ARRAY VIDE
ORDER DATED 18.3.2015]**

BY ADVS.
SRI.JOHN MATHEW, SC, RAILWAYS
SRI.M.S.IMTHIYAZ AHAMMED, SC, RAILWAYS
SRI.K.SHRI HARI RAO, SC, RAILWAYS

THIS MFA (RCT) HAVING BEEN FINALLY HEARD ON 29.1.2024, ALONG WITH
MFA (RCT).12/2015, THE COURT ON 02.02.2024 DELIVERED THE FOLLOWING:

C.PRATHEEP KUMAR, J.

M.F.A.(RCT)Nos.12 & 31 of 2015

Dated : 2nd February, 2024

JUDGMENT

1. These two appeals are filed against the very same judgment dated 24.7.2014 of the Railway Claims Tribunal, Ernakulam Bench in O.A.(IIu)/ERS/2013/0023. M.F.A.31/2015 is the appeal filed by the petitioner in the OA while M.F.A.12/2015 has been preferred by a third party to the OA.
2. The above OA was filed by one Lalitha, claiming to be the wife of deceased Surendran, who died in an untoward incident on 6.12.2013 at Chengannur Railway station while boarding Kottayam-Kollam passenger train. The appellant in M.F.A.12/2015 is one Santha, the widowed sister of deceased Surendran. According to her, the deceased died unmarried and issue-less and as such, she being the widowed sister of the deceased, is entitled to get the compensation due from the Railway, being his dependent .
3. In the impugned judgment, the Railway Claims Tribunal awarded a compensation of Rs.4,00,000/- along with interest at 6% per annum from the date of the application and directed the Railway to deposit the entire sum before the Tribunal. The order further directs the Registrar of the Tribunal to deposit the amount in fixed deposit in a public sector bank till the Tribunal decides entitlement and release on production of proper order from competent

court by the applicant to the effect that she is the wife and sole survivor of the victim. Aggrieved by the above finding of the Tribunal, the claimant preferred M.F.A.31/2015.

4. The appellant in M.F.A.12/2015 along with six other siblings of the deceased filed I.A.2/2013 before the Tribunal praying for impleading them as additional respondents 2 to 8 in the OA, claiming themselves to be the legal heirs of deceased Surendran. The Tribunal rejected I.A.2/2013, with the following observation in paragraph 16 of the judgment :-

“The above definition clearly dis-entitles the applicants in I.A.2 of 2013 from claiming any compensation because of the facts that they all are majors and they did not adduce any evidence to show that they wholly or partly dependent on the victim when he was alive. Therefore, the prayer in I.A.No.2 of 2013 has no merit and has to be rejected.”

Aggrieved by the order rejecting I.A.2/2013 along with the judgment in the OA and denying compensation, Santha preferred M.F.A.12/2015.

5. On an earlier occasion, the appellant in M.F.A.12/2015 filed W.P. (C).30927/2014 before this Court contending that the Tribunal disposed of the OA without disposing of the impleading application, I.A.2/2013, and as such, the impleading petitioners are disabled from challenging the judgment of the Tribunal before this Court. From the judgment dated 24.11.2014 of this Court in the above writ petition, it can be seen that this Court called for a report from

the Railway Claims Tribunal. In the report, the Tribunal reported that the impleading petition was disposed of on 24.7.2014, on the very same day the impugned judgment was passed, by a separate order. In the above circumstances, this Court found that the writ petitioner has an alternate remedy to challenge the order in the IA along with the judgment and accordingly the writ petition was permitted to be withdrawn, with the above liberty. In the above circumstance, this Court has to now consider the legality of the order passed by the Tribunal in I.A.2/2013 which was produced as Annexure-A1, in addition to the legality of the impugned judgment.

6. Now the points that arise for consideration are the following :

(i) Whether the appellant in M.F.A.31/2015 is the widow of deceased Surendran eligible to get compensation from the Railways, on account of the death of Surendran ?

(ii) Whether the appellant in M.F.A.12/2015 is a dependant of deceased Surendran eligible to get impleaded as a party in the O.A. and entitled to get compensation from the Railways ?

7. Heard all the parties.

8. Point No.(i) – Smt.Lalitha filed the O.A. claiming that she is the wife of deceased Surendran. The document mainly relied upon by her is Ext.A7 legal heirship certificate issued by the Tahsildar, Chengannur describing Lalitha as the wife of deceased Surendran. However, when she was examined before the Tribunal, she deposed that earlier she had married one Krishnan Kutty and that

three children were born in that wedlock. She further clarified that Surendran had not married her, but she was staying along with Surendran since 1988. Though she claimed that her marriage with Krishnan Kutty was divorced, she could not produce any documents to substantiate the above claim. It was in the above context, the compensation ordered by the Tribunal was directed to be deposited in a Nationalized bank till the claimant produces an order from a competent court to the effect that she is the wife of Surendran. Even now she could not produce any documents to prove that her earlier marriage with Krishnan Kutty was dissolved or that she is the legally wedded wife of deceased Surendran.

9. At the time of arguments, the learned counsel for the appellant in M.F.A.31/2015 would argue that the appellant had been residing along with the deceased since 1988 and as such the presumption of a valid marriage can be inferred between them. He has also relied upon the evidence of PW2, the wife of the brother of the deceased. From the evidence of PWs 1 and 2 at the most what can be presumed is that Smt.Lalitha cohabited along with the deceased Surendran from 1988 till Surendran breathed his last. However, during the said period, the marriage between Lalitha and her husband Krishnan Kutty was subsisting.

10. In the decision in **T.Remam and Others v. A.K.Radhamani and Another, 2024 KHC Online 30**, a Division Bench of this Court held that, cohabitation between a man and woman, however long it may be, will not acquire the

character of a valid marriage, if it is during the subsistence of another marriage.

11. In the instant case, Smt.Lalitha cohabited along with deceased Surendran during the subsistence of her earlier marriage with Krishnan Kutty and hence she cannot claim the status of the wife of deceased Surendran. In the above circumstances, she cannot claim the compensation as a dependant of deceased Surendran as defined under Section 123(b) of the Railways Act, 1989. Therefore, M.F.A.31/2015 filed by Smt.Lalitha is liable to be dismissed. Point No.(i) answered accordingly.

12. Point No.(ii) – The fact that Smt.Santha, the appellant in MFA 12/2015 is the widowed sister of late Surendran is not disputed. She has also produced Annexure-A2 certificate issued by the Tahsildar, Kollam, dated 11.12.2013 stating that she along with the other applicants in Annexure-A1 impleading application are the siblings of deceased Surendran. Annexure-A3 certificate dated 10.11.2014 issued by Tahsildar, Kollam further states that Smt.Santha is a widow. As per Section 123(b) of the Railways Act, widowed sister is a dependant eligible to claim compensation under the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990.

13. Though in Annexure-A1 impleading application all the siblings of deceased Surendran were sought to be impleaded as respondents 2 to 8., the proposed respondents 3 to 8 will not come under the definition “dependant” as defined under Section 123(b) of the Railways Act. On the other hand, Smt. Santha

being the widowed sister is his dependent and as such she is liable to be impleaded as additional respondent No.2 in the OA. Since from the available evidence it is revealed that Smt.Santha is the widowed sister of the deceased, and a dependant of the deceased, she is entitled to get the compensation on account of the death of Surendran in the untoward incident occurred on 6.12.2012 at Chengannur railway station.

14. The learned Standing Counsel for the Railways submitted that the compensation amount along with interest excluding the TDS amount has already been deposited before the Tribunal on 28.8.2014. In the above circumstances, I.A.2/2013 in O.A.(Ilu)/ ERS/ 2013/ 0023, on the file of the Railway Claims Tribunal, Ernakulam Bench is liable to be allowed in part so as to implead Smt.Santha as additional respondent No.2. Since it is revealed from the available evidence that Smt.Santha, the additional respondent No.2 in O.A.(Ilu)/ERS/2013/0023 and the appellant in M.F.A.12/2015 is the dependant of the deceased Surendran, she is also entitled to get the compensation of Rs.4,00,000/- along with interest awarded by the Tribunal. Point No.(ii) answered accordingly.

15. In the result, M.F.A.12/2015 is allowed as follows :

I.A.2/2013 in O.A.(Ilu)/ERS/2013/0023 on the file of the Railway Claims Tribunal, Ernakulam Bench, is allowed and Smt.Santha is impleaded as additional respondent No.2 in the OA. Additional respondent No.2, Smt.Santha, who is also the appellant in M.F.A.12/2015, being the dependant

of deceased Surendran is entitled to get the compensation amount deposited by the Railways, on account of his death. The Tribunal is directed to disburse the entire amount deposited by the Railway (respondent No.1 in the O.A.) and deposited in the Nationalized bank to additional respondent No.2, Smt.Santha.

In the result, M.F.A.31/2015 is dismissed.

Sd/-

C.Pratheep Kumar, Judge

Mrcs/29.1.2024