

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil First Appeal No. 464/2013

1. Smt. Neeru W/o Late Shri Janguram Sethi, age near about 44 years.
 2. Ajay S/o Late Shri Janguram Sethi, age near about 23 years.
 3. Kumari Sarita D/o Late Shri Janguram Sethi, age near about 20 years.
 4. Smt. Ramdevi W/o Late Shri Kalwatrai Sethi, age near about 82 years.
- All plaintiff/claimant residing at II D-68, Jainarayan Vyas Colony, Bikaner, District Bikaner, Presently Jaipur.

----Appellants

Versus

1. Union of India through General Manager, North Western Railway, Jaipur, Opp. Railway Hospital, Hasanpura, Jaipur.

----Respondent

Connected With

S.B. Civil First Appeal No. 158/2014

The Union Of India Through General Manager, North Western Railway, Opposite Jaipur Railway Hospital, Hasanpura, Jaipur

----Appellant

Versus

1. Smt. Neeru W/o Late Shri Jaggu Ram Sethi, R/o D-68, Jai Narayan Vyas Colony, Bikaner, Distt. Bikaner At Present Jaipur
2. Ajay S/o Late Shri Jaggu Ram Sethi, R/o D-68, Jai Narayan Vyas Colony, Bikaner, Distt. Bikaner At Present Jaipur
3. Kumari Sarita D/o Late Shri Jaggu Ram Sethi, R/o D-68, Jai Narayan Vyas Colony, Bikaner, Distt. Bikaner At Present Jaipur
4. Smt. Ramdevi W/o Late Shri Kalwant Rai Sethi, R/o D-68, Jai Narayan Vyas Colony, Bikaner, Distt. Bikaner At Present Jaipur

----Respondents

For Appellant(s)	:	Mr. K.K. Pandit
For Respondent(s)	:	Mr. Samit Bishnoi with Mr. Rakesh Kumar Saini (for UOI)

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN
Judgment / Order

20/04/2024

1. These two appeals were filed aggrieved from judgment and decree dated 15.07.2013 in Civil Suit No.380/2008 by learned

Additional District Judge No.2, Jaipur Metropolitan whereby a suit/claim under the Fatal Accident Act, 1955 against Union of India through General Manager, North (West) Railway, Jaipur was decreed and claim of ₹23,77,496/- along with interest @ 6% was granted in favour of plaintiff-claimants.

2. S.B. Civil First Appeal No. 464/2013 was filed by the appellants-claimants for enhancement in award whereas S.B. Civil First Appeal No. 158/2014 filed by the appellant-defendant challenging the award. As both the matters arise from a common order, therefore, they are tagged together and we are disposing of them with a common order.

3. While considering the appeals, a question was raised about the jurisdiction of the Civil Court, therefore, with consent of learned counsels for the parties, we are addressing the issue of jurisdiction as the first issue and in case, if the Court finds that the impugned judgment is required to be considered on merit then we will consider the same on merits.

4. Learned counsel for appellant-defendant (UOI) while referring to Sections 13 and 15 of the Railway Claim Tribunal Act, 1987 (hereinafter referred as Act of 1987) would submitted that for any incident of death or injury to any passenger occurring as a result of a railway accident or untoward incidents, a claim will lie before the Railway Claims Tribunal (hereinafter referred to as RCT) and the jurisdiction of Civil Court including the Motor Accident Claim Tribunal is barred. He further submitted that the record clearly indicated that initially a claim petition was filed before the RCT, Jaipur and during pendency of the same, an application under Order 23 Rule 1 CPC was moved for withdrawal but same

was dismissed. He also submitted that without waiting for any adjudication on claim before the RCT, the plaintiffs had filed a suit under Section 1A of the Fatal Accident Act before learned District Judge by invoking jurisdiction of the Civil Court. He also submitted that the Civil Court has dismissed the objections of the railway without considering the legal position. He also submitted that under the Railway Act and the RCT Act, the exclusive jurisdiction for adjudication is provided as special mechanism and the trial Court not only exceeded the jurisdiction but also over stepped while passing a decree, which is nullity in the eye of law.

5. Aforesaid contentions were opposed by learned counsel for appellant-claimants and he would submitted that the option lies with the claimant to opt for compensation either under the Fatal Accident Act or under the RCT Act, therefore, the objection of lack of jurisdiction by Civil Court is not tenable. He further submitted that the judgment and decree passed by the trial Court is based on settled principle of law, therefore, there is no scope of interference at the instance of defendant. He also submitted that the defendant has not participated in the trial before the trial Court and no evidence was led on behalf of the defendant. He also submitted that the trial Court has decreed the claim on the basis of ex-parte evidence and the claimants, aggrieved from compensation being on the lower side had filed the appeal for enhancement.

6. Heard learned counsels of the parties and perused the entire record.

7. In brief, the facts of the matter are that plaintiffs-appellants- Smt. Neeru, Ajay, Kumari Sarita and Smt. Ramdevi, legal heirs of

Late Sh. Janguram Sethi had filed a claim petition on 05.11.2008 before learned District Judge, Jaipur Metropolitan, Jaipur claiming that the jurisdiction of Railway Claim Tribunal is up to ₹4,00,000/- and the Civil Court has unlimited jurisdiction and there was no bar to file a claim petition. The husband of plaintiff-Neeru, father of plaintiffs no.2 and 3 and son of plaintiff no.4 met with an accident at railway platform, Suratgarh when he was travelling in Train No.337, Bathinda-Lalgarh passenger from Mandi Dabwali to Bikaner. Due to his injuries, he succumbed and an information was given to GRP, Hanumangarh, wherein a Case No.37/2006 dated 07.11.2006 was registered. According to plaintiffs, accident was a result of sudden appearance of bull, wherefore the deceased got imbalanced and slipped from train resulting in to death due to train accident. A compensation of ₹35,33,456/- was claimed on various heads. The defendant (UOI) has filed written statement stating that if passenger met with an accident due to any Act of railway then he was entitled for a compensation as provided under the Railway Act and the Railway Claim Tribunal, Act but for seeking compensation a claim petition is required to be filed before RCT. It was further stated that the plaintiff had already filed a claim petition before the RCT and same is pending at the stage of evidence. A specific provision of Section 128 was also mentioned wherein there is bar for claiming compensation from more than one forum in respect of same accident. Further, it was stated that in order to withdraw the claim petition from RCT, an application under Order 23 Rule 1 CPC was filed by claimants but same was dismissed. A prayer is made to dismiss the claim

petition under Order 7 Rule 11(D) of CPC as the claim petition is barred under the law.

8. On the basis of pleadings of the parties following issues were framed:-

" (1) क्या दिनांक 7-11-06 को स्व. जंगूराम सेठी प्रार्थीगण के साथ भटिण्डा-लालगढ़ सवारी गाड़ी में गाड़ी से यात्रा कर रहे थे ? वादी

(2) क्या दिनांक 7-11-06 को जंगूराम सूरतगढ़ रेलवे स्टेशन पर पानी लेकर वापस आ रहे थे तब उनके सामने आवारा साण्ड आ जाने से उनका पैर फिसला और रेल के नीचे आ जाने के कारण उनकी मृत्यु हो गई ? वादी

(3) क्या प्रतिवादी द्वारा प्लेटफार्म का रख रखाव सही ढंग से नहीं किए जाने के कारण आवारा साण्ड प्रविष्ट हुआ और जंगूराम की मृत्यु हुई ? वादी

(4) क्या जंगूराम की मृत्यु का प्रत्यक्ष कारण प्लेटफार्म पर आवारा साण्ड की उपस्थिति थी ?

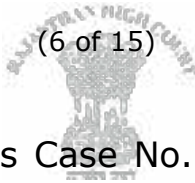
वादी

(5) अनुतोष । "

To establish the claim of the plaintiffs, two witnesses, PW1 and PW2, were examined and documents Ex.A1 to A30 were exhibited, but no evidence was produced by the defendant and the suit was decreed in favour of plaintiffs-claimants.

9. Aggrieved from impugned judgment, both the parties are in appeal before this Court.

10. A perusal of record clearly indicated that the claim petition was filed for claiming compensation for the death of Janguram Sethi S/o Kulwant Ram age 45 years. The cause of death was a railway accident and the documents from Ex.A1 to A30 produced by the claimants clearly indicate that when Janguram Sethi was rushing to board the train then his foot got slipped and as a result of which he met with an accident with a running train. When the



matter was first reported as Case No.37/2006 then there was no mention of bull or any other cattle. This report was submitted and relied by PW1 in her evidence. Though, the manner in which evidence was recorded by the trial Court is a serious issue.

11. A perusal of record indicate that the instant claim petition was filed on 05.11.2008 under the Fatal Accident Act wherein para no.1, it was specifically mentioned that the applicants-plaintiffs are entitled to file a civil suit for claiming higher compensation under the Fatal Accident Act. For ready reference, para no.1 is reproduced as under:-

“ यह है कि प्रतिवादी ने समस्त भारत वर्ष में जनसाधारण को विधिवत यात्रा की सुविधा उपलब्ध करवाने के लिये अपने रेल्वे का जाल बिछा रखा है जिसके तहत रेल मार्ग में होने वाली असावधानी और गलती के लिये भारतीय रेलवे एक्ट 1989 में क्षतिपूर्ति प्रदान की जाी है। परन्तु प्लेटफार्म इत्यादी को मेनटेन करने में असावधानी बरतने पर कोई दुर्घटना होने पर उसका दायित्व प्रतिवादी का पैसेन्जर के लिये फैटल एक्सीडेंट क्लेम 1955 के तहत है। इसके साथ साथ ट्रेन में यात्रा करने के दौरान किसी प्रकार की घटना होने पर उसकी क्षतिपूर्ति की जिम्मेदारी प्रतिवादी की है, जिसके लिये विधिवत रेल्वे क्लेम ट्रिब्यूनल संस्थापित की हुई है जिसका क्षेत्राधिकार सिर्फ 4 लाख रुपये तक सीमित है और इससे उपर का एवम् प्लेटफार्म रख रखाव की नागवारी से हुई दुर्घटना का दायित्व प्रतिवादी का फैटल एक्सीडेंट एक्ट 1955 के तहत दिवानी अदालत का असीमित है। ”

12. In para no.4 it was mentioned that the claimants had filed a claim petition No.OA/11/7/2007 before the RCT, Jaipur wherein they have moved an application under Order 23 Rule 1 (3) CPC on 13.02.2008 but same was dismissed on 11.03.2008. Despite aforesaid facts, the matter was registered by the office of the District Judge and then transferred to the Court of Additional District Judge No.2, Jaipur Metropolitan.

13. The defendant (UOI) had filed an application under Order 7(ii)(D) and Section 13, 13A, 15 and 148 of RCT Act, 1987,

objecting that in case, if from the plaint, if it was found that the suit is not maintainable then same would be dismissed under Order 7 Rule 11(D) of CPC. Further, the objection of filing of the claim petition under Section 16 before the RCT was raised and the bar of jurisdiction as provided under Section 15 of RCT Act was highlighted. Learned Additional District Judge No.2, Jaipur Metropolitan, Jaipur on 12.01.2012 has dismissed the application and ruled that the suit is maintainable before the Civil Court. Thereafter, two affidavits were filed on behalf of plaintiffs and without closing the evidence, the suit was decreed.

14. As regard to Order 7 Rule 11 CPC is concerned, the law over the point is settled. Legal position on Section 9 of CPC is also very much clear. In case, any issue of bar of jurisdiction of Civil court is raised, then same is required to be decided at the earliest.

15. Section 13 of RCT Act, 1987 provides for jurisdiction, powers and authority of Claims Tribunal whereas Section 15 provides for bar of jurisdiction. Section 13 and Section 15 are reproduced as under:-

“13. Jurisdiction, powers and authority of Claims

Tribunal.—(1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil court or a Claims Commissioner appointed under the provisions of the Railways Act,-

(a) relating to the responsibility of the railway administrations as carriers under Chapter VII of the Railways Act in respect of claims for-

(i) compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods



entrusted to a railway administration for carriage by railway;

(ii) compensation payable under section 82A of the Railways Act or the rules made thereunder; and

(b) in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway.

1 [(1A) The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of section 124A of the Railways Act, 1989 (24 of 1989), all such jurisdiction, powers and authority as were exercisable immediately before that date by any civil court in respect of claims for compensation now payable by the railway administration under section 124A of the said Act or the rules made thereunder.]

2 [(1B) The Claims Tribunal shall also exercise, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017 (7 of 2017), the jurisdiction, powers and authority conferred on the Tribunal under Chapter VII of the Railways Act, 1989 (24 of 1989).]

(2) The provisions of the 3 [Railways Act, 1989 (24 of 1989)] and the rules made thereunder shall, so far as may be, be applicable to the inquiring into or determining, any claims by the Claims Tribunal under this Act.

15. Bar of jurisdiction.—On and from the appointed day, no court or other authority shall have, or be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in 4 [sub-sections (1), (1A) and (1B)] of section 13.”

16. Section 16 of the RCT Act, further provides for application to Claims Tribunal (RCT) and the entire chapter provides the procedure for claim petition whereas Section 23 provides for

appeal. Section 28 of RCT Act provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

17. The scheme and the scope of RCT Act specifically provides that the Act was enacted for inquiring into and determining claims against a railway administration for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to it to be carried by railway or for the refund of fares or freight or for compensation for death or injury to passengers occurring as a result of railway accidents and related matters. The object and reasons behind the Act clearly indicate that to reduce the burden of civil court and to set up Tribunal that satisfy the burden, the Act was enacted. Section 15 specifically bars the institution of any such matter referred to in Section 13(1), 1A and 1B, in any Court or Authority.

18. It is an admitted fact that at the time of accident, the deceased was travelling in Bikaner division and he was also resident of Bikaner. The incident also occurred in Bikaner division. The railway police choki Suratgarh, District Sri-Ganganagar had registered inquest No.37/2006. Thus, neither occurrence of incident nor residence of deceased was in the jurisdiction of Civil Courts at Jaipur.

19. A perusal of record also indicated that complete residential address of Jaipur was not mentioned by the petitioners at the time of filing of the civil suit before the District Judge, Jaipur Metropolitan and only on the basis that the office of North West

Railway was in Jaipur, the claim petition was filed before the Civil Court at Jaipur.

20. Herein, the record indicates that neither of AW1 or AW2 were eye witnesses and moreover, the documents submitted by AW1 were just exhibited but the trial Court without considering the fact that these documents were not proved, decided the issue in favour of plaintiffs.

21. Since, we are only dealing with the issue of jurisdiction, therefore, we are not commenting on the procedure adopted by the trial Court but it indicates that the officers like Additional District Judges were not aware about the procedure in civil matters. The Judicial Academy is tasked with the training of such judicial officers so that they must know how to deal with the civil cases, particularly the recording of evidence, evaluation of evidence and also drawing conclusion after application of legal principles on the basis of prevalent laws.

22. Herein this case, a bare perusal of Sections 13 and 15 of the Railway Claims Tribunal Act clearly indicates that if the incident was a result of rail then a claim petition is mandatory required to be filed before the Railway Claims Tribunal, and the Civil Court has no jurisdiction, to entertain a claim petition.

23. Considering the material on record, we have observed that:

(i) the plaintiffs were not resident of Jaipur and still they filed claim petition by invoking jurisdiction of Jaipur Metro by mentioning that at present resident of Jaipur.

(ii) When this claim petition was filed it was mentioned that another claim petition is pending before the RCT but no report of

this fact was made by the office of Munshrim at the time of registration.

(iii) The format of report on institution of civil suit indicates that reporting is a formal process and the staff is not meant to report on valuation, limitation and jurisdiction etc.

(iv) If this fact was mentioned that the matter pertains to railway incident and a claim petition was pending before the RCT and application for withdrawal was dismissed even then no steps were taken at the time of issuance of notice by the trial Court.

(v) Aforesaid indicate that the procedure as prescribed for report under the General Rules (Civil) were not observed at the time of registration and issuance of notice.

24. After appearance of defendant, an application was filed raising the objections but same was dismissed by learned Additional District Judge on 12.01.2012 without understanding the provision of Order 7 Rule 11 (D) CPC, Section 13 and 15 of the Railway Claim Tribunal Act. The dismissal of application clearly indicate that the concerned presiding officer without following principle of law for disposal of application under Order VII, Rule 11 CPC, had dismissed the application. If the provisions of the RCT Act were considered in light of averment in the plaint, then the suit was liable to be dismissed under Order VII, Rule 11(d) CPC.

25. The procedure during trial also indicate that the affidavit of two witnesses were filed before the trial Court, wherein the affidavit of PW1 was executed on 05.04.2012 and filed on 05.04.2012 but on 07.07.2012 when this witness was present, oath was administered and except Ex.15, other documents from Ex.1 to Ex.29 were exhibited but without narrating about the

documents. Evidence of any witness is complete after an opportunity of cross-examination and re-examination but nowhere this process was adopted. Similar was status of PW-2. Thus, the trial Court was either negligent in trial or not aware about the recording of the evidence.

26. A perusal of record indicated that on 07.07.2012 after completion of evidence of PW1, the matter was fixed for evidence of plaintiff on 21.07.2012 and 04.08.2012, but on 04.08.2012 without closing the evidence of plaintiff, the matter was fixed for final argument on 28.08.2012, which indicates that neither the evidence of plaintiff nor the defendant was closed. No specific ex-parte order was passed against defendant.

27. The entire record indicated that the claimants-plaintiffs had preferred a claim petition before the RCT for compensation on death of Late Shri Janguram Shethi, but afterwards they have filed an application for withdrawal of the claim petition and the same was dismissed. During the pendency of this claim petition before the RCT, the instant Civil Suit No. 380/2008 was filed before the District Judge, Jaipur Metro and same was transferred to learned Addl. District Judge No.2, Jaipur Metro, which was ultimately decreed on 15.07.2013. The proceedings revealed that the outcome of the petition pending before RCT was not brought on record by the claimants, but the fact was on record that the claim petition was pending at the time of institution of Civil Suit No. 380/2008.

28. The jurisdiction of Civil Court was specifically barred under Section 15 of the RCT Act, 1987 and no Civil Suit can be filed for the matters, for which, a petition can be filed under Section 13 of

the RCT Act. The Trial Court has miserably failed to understand the issue of jurisdiction and bar as provided under the Law. The dismissal of application on 12.01.2012 indicated that this application was consciously dismissed by the presiding officer and this dismissal has helped the claimants to continue a Civil Suit, which was filed in violation of bar created under the Law. The presiding officers, who dealt the matter, were either ignorant of law or they deliberately acted to favour the claimants so that the claimants may receive a hefty some of compensation under the Fatal Accident Act.

29. In the case of **S.P. Chengalvaraya Naidu (Dead) by LRs vs. Jagannath (Dead) by LRs. : (1994) 1 SCC 1**, Hon'ble Supreme Court observed that a fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Further held that a person, whose case is based on falsehood, has no right to approach the court and can be summarily thrown out, at any stage of the litigation.

30. In case of **Ramjas Foundation & Anr. vs. Union of India & Ors.: (2010) 14 SCC 38**, Hon'ble Supreme Court observed that a person, who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief. The object underline the principle is that every Court is not only entitled, but is duty bound to protect itself from unscrupulous litigants, who do not have any respect for truth and who tried to pollute the stream of justice by resorting to falsehood or by making misstatement or by

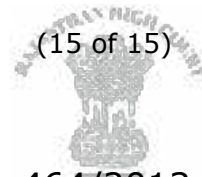
suppressing facts which have bearing on adjudication of the issues arising in the case. It is the duty of a party, asking for a relief to bring under the notice of the Court all facts material to the determination of his right in that particular suit and it is no excuse for him to say that he was not aware of the importance of any fact, which he has omitted to bring forward.

31. Considering aforesaid principles, I am of the considered view that the Trial Court (the Court of District Judge or Addl. District Judge) lacks jurisdiction in matter arising out of Railway Accident(s), wherein a specific mechanism is provided under the RCT Act. The bar under Section 15 of the Act is in clear words and no such proceedings can be instituted before any Civil Court or Tribunal other than established under the RCT Act. Herein, the Trial Court has not only committed serious illegality, but learned presiding officer has deliberately ignored the issue of jurisdiction firstly while deciding the application under Order VII, Rule 11 CPC and secondly at the time of final adjudication of the matter, therefore, the bonafides of judicial officers appears to be doubtful.

32. In view of aforesaid, the judgment was passed by a Court having no jurisdiction, thus, as the judgment and decree dated 15.07.2013 is without jurisdiction and manifestly illegal, the same is liable to be set aside.

33. Therefore, S.B. Civil First Appeal No. 158/2014 filed by Union of India is liable to be allowed but S.B. Civil First Appeal No. 464/2013 preferred by appellant-claimants is bound to be dismissed.

34. As a result of the aforesaid discussion, the Civil First Appeal No. 158/2013 preferred by Union of India, is hereby allowed and



the Civil First Appeal No. 464/2013, is hereby dismissed. The judgment and decree dated 15.07.2013, is hereby set aside and the claim petition preferred by the claimants-plaintiffs under the Fatal Accident Act, is hereby dismissed.

35. No order as to costs.

36. Decree be drawn accordingly.

37. A copy of this order be placed before Hon'ble the Chief Justice of this Court for considering the action as per observation by this Court.

(ASHOK KUMAR JAIN),J