



2023/KER/71534

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

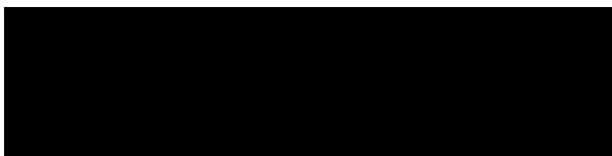
FRIDAY, THE 17TH DAY OF NOVEMBER 2023 / 26TH KARTHIKA, 1945

MFA (RCT) NO. 141 OF 2017

AGAINST THE ORDER/JUDGMENT OA 22/2016 OF RAILWAY CLAIMS
TRIBUNAL, ERNAKULAM

APPELLANT/S:

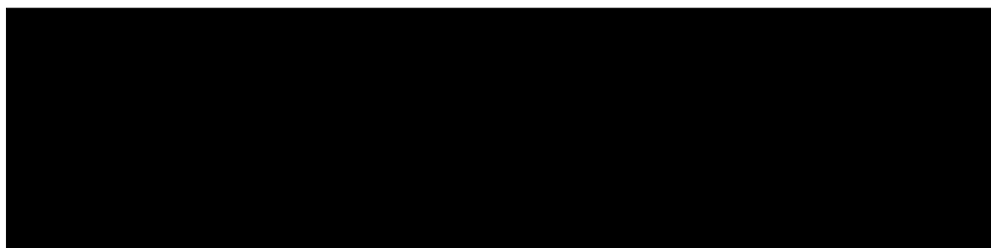
1 MALARKODI P.



2 NAGAMANI P.



3 MASTER VEERAMANI P.



4 SADAIYACHI V.



BY ADV SRI.V.K.BALACHANDRAN

RESPONDENT/S:

UNION OF INDIA
REPRESENTED BY GENERAL MANAGER,
SOUTHER RAILWAY, CHENNAI-03.

BY ADVS.
SRI.N.K.SUBRAMANIAN, SC, RAILWAYS
SRI.K.SHRI HARI RAO, SC, RAILWAYS

THIS MFA (RCT) HAVING COME UP FOR ADMISSION ON
17.11.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



JUDGMENT

Dated this the 17th day of November, 2023

This is an appeal filed under Section 23 of Railway Claims Tribunal Act 1987 by the applicant in O.A (Ilu)ERS.No.22/2016 of Railway Claims Tribunal Ernakulam against the order dated 25.9.20217. The appellants are the dependents of one Poovan, who died on 10.11.2015 while alighting from train No.16305 at Shornur Railway Station. On that day he was bound to go to Salem. After taking a valid General Class ticket, he boarded train No.16305, *bonafide* believing that it is the train going to Salem. However, as soon as he boarded the train, he realised that it was the wrong train. At that time, the train started moving. When he tried to alight from the train, he lost his balance, fell down on the platform, sustained serious injuries and scammed to the same. He also lost the train ticket in the incident.

2. Appellants filed a claim petition before the Railway Claims Tribunal claiming compensation of Rs.4,00,000/-. However, as per the impugned order dated 25.9.2017, the application was dismissed on the ground that he died not as a victim of an untoward incident but it is a case of self inflicted injury coming under the proviso to Section 124 A of Railways Act 1989. Aggrieved by the above order, the claimants preferred this appeal raising various grounds.



3. According to the appellants, accidental falling of a passenger from a train carrying passengers while alighting from the train amounts to untoward incident and that the Tribunal failed to appreciate the law on the point in the correct perspective. Absence of ticket with the deceased cannot be taken as a ground to presume that he was not a *bonafide* passenger. The Officials of the Railway failed to conduct proper enquiry to ascertain the real facts. Therefore, the learned counsel for the appellants prayed for setting aside the impugned order passed by the Railway Claims Tribunal by allowing this appeal.

4. Now, the point that arise for consideration is the following:

Whether the finding of Railway Claims Tribunal that the deceased Poovan Vinayathan died on account of self inflicted injury coming under the proviso to Section 124A of the Railways Act, is perverse?

5. Heard both sides.

6. According to the appellants, the deceased boarded train No.16305 on the *bonafide* belief that it was going towards Salem. After entering the train he realised that it was the wrong train. At that time, he tried to alight from the train, which started moving. While so, he fell down on the platform, sustained injuries and scammed to the same. Whether the above injuries sustained by the deceased can be styled as 'self inflicted injury' coming under the exception to the proviso to Section 124A of the Railways Act, is the question to be answered.



7. In the DRM report, it is stated that on 10.11.2015, at about 09.12 hrs, the Station Master has given information to the Senior DMO that one passenger was accidentally fallen out while alighting from train No.16305 Express and sustained serious injuries. He was brought to Railway Hospital and after giving first aid, referred to Medical College Thrissur for better treatment. The Duty Doctor in the Medical College declared that he was brought dead. As per the postmortem certificate, death was due to the injuries sustained to hip and right thigh. As per the final report submitted before the Judicial First Class Magistrate Court, Ottappalam, when train No.16305 Express rolled out from platform No.6 of Shornur Railway Station, the deceased jumped out from the moving train and sustained injuries, since he was mistakenly boarded train No.16305 Express, instead of Train No.13352 Express to go to Salem. As per the investigation conducted by the Railway, it is revealed that on 10.11.2015, at about 9.12 hrs, the deceased Poovan Vinayathan jumped out from the moving train and sustained injuries as he was mistakenly boarded train No.16305 Express instead of Train No.13352. Therefore, from the available evidence it is crystal clear that at the time of the incident the deceased was attempting to alight from the moving train as he entered the wrong train.

8. In the decision in **Union of India v. Rina Devi [2018 (2) KHC 920]**, the Apex Court held that in order to come within the purview of 'self inflicted injury'



there should be intention to inflict such injury and mere negligence of any particular degree is not sufficient. In paragraph 16.6, the Apex Court held as under:

“16.6 We are unable to uphold the above view as the concept of ‘self inflicted injury’ would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on ‘no fault theory’. We may in this connection refer to judgment of this Court in United India Insurance Co. Ltd. versus Sunil Kumar laying down that plea of negligence of the victim cannot be allowed in claim based on ‘no fault theory’ under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an ‘untoward incident’ entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor.”

9. In the decision in **Union of India v. Prabhakaran Vijaya Kumar [2008 (2) KLT 700 (SC)]**, the Hon'ble Supreme Court also held that accidental falling of a passenger from a running train carrying passengers amounts to an untoward incident.

9. In this case, the respondent has no case that the deceased had any intention to inflict any such injury to himself. On the other hand, he was trying to alight from the train as it was the wrong train. In the above circumstances, it is to be held that there was no intention on the part of the deceased to inflict any



injury to himself and as such it is a clear case of accidental falling coming within the purview of 'untoward incident', as defined under Section 123(c) of the Railways Act. Therefore, the appellants are entitled to get the compensation due as per Railway Accidents and Untoward Incidents (Compensation) Rules 1990.

10. As per the schedule to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, the compensation payable for death w.e.f. 1.1.2017 is Rs.8,00,000/-. In the instant case, the incident occurred on 10.11.2015 and the compensation payable then was Rs.4,00,000/-. In the decision in **Union of India v. Rina Devi [2018 (2) KHC 920]** the principle to be followed for ascertaining the quantum of compensation is narrated in paragraph 15.4 as follows :-

“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...”

11. In the above decision, the Hon'ble Supreme Court awarded interest also to the applicants from the date of the accident till the date of the award at 6% and thereafter, at the rate of 9% per annum. In the decision in **Union of India v. Radha Yadav [2019 ICO 333]**, the Hon'be Supreme Court relying upon the decision in **Rina Devi** (supra) held that :-



“What this Court has laid down is that the amount of compensation payable on the date of accident with reasonable rate of interest shall first be calculated. If the amount so calculated is less than the amount prescribed as on the date of the award, the claimant would be entitled to higher of these two amounts. Therefore, if the liability had arisen before the amendment was brought in, the basic figure would be as per the Schedule as was in existence before the amendment and on such basic figure reasonable rate of interest would be calculated. If there be any difference between the amount so calculated and the amount prescribed in the Schedule as on the date of the award, the higher of two figures would be the measure of compensation. For instance, in case of a death in an accident which occurred before amendment, the basic figure would be Rs.4,00,000/-. If, after applying reasonable rate of interest, the final figure were to be less than Rs.8,00,000/-, which was brought in by way of amendment, the claimant would be entitled to Rs.8,00,000/-. If, however, the amount of original compensation with rate of interest were to exceed the sum of Rs.8,00,000/- the compensation would be in terms of figure in excess of Rs.8,00,000/-. The idea is to afford the benefit of the amendment, to the extent possible. Thus, according to us, the matter is crystal clear. The issue does not need any further clarification or elaboration.”

12. In the light of the above decisions, in this case also, the appellants are entitled to get interest at the rate of 6% per annum from the date of incident, ie, 10.11.2015 till today, which would come to less than Rs.8,00,000/- In the above circumstances, the appellants are entitled to get a compensation of



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Rs.8,00,000/-. In addition to the same, they are also entitled to get interest at the rate of 6% per annum for the above amount from today till realization from the respondent. The respondent is directed to deposit the amount within a period of two months from today.

The appeal stands disposed of accordingly.

Sd/-
C. PRATHEEP KUMAR,
JUDGE

SOU.