

(2011) 03 KL CK 0272
In the High Court Of Kerala
Case No : M.F.A. No. 119 of 2010

Jayalakshmi

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 30-03-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163A
Railway Passengers (Manner of Investigation on Untoward Incidents) Rules, 2003 —
Rule 11(2)

Citation : (2011) 2 ILR (Ker) 869 : (2011) 3 KLJ 38 : (2011) 2 KLT 1001

Hon'ble Judges : R. Basant, J;K. Surendra Mohan, J

Bench : Division Bench

Advocate : I. Sheela Devi, for the Appellant; C.S. Dias and Subail J. Paul, for the Respondent

Final Decision : Allowed

Judgement

R. Basant, J.—Can the compassion underlying Chapter XIII of the Railways Act be alien to the officials of the Railway conducting the cases and the Tribunal which adjudicates the claim? This appears to be the crucial theme arising for consideration in this appeal. We find that the officials of the Railways who conducted the case as also the Tribunal which disposed of the case were woefully lacking the compassion which is the signature tune of the provisions of Chapter XIII of the Railways Act.

2. The Appellants/claimants are the young wife aged 25 years and the minor children aged 7 years and 3 years of one Rajesh Kumar, a young man who was found lying dead by the side of the Railway track on the morning of 17.3.2008 at 7 a.m. Local persons passed on the information to the local police. The local police registered a crime under the caption "unnatural death". Investigation was conducted by the local police. The result of such investigation was reported to the Railway officials. Enquiry was conducted in terms of the Railway Passengers (Manner of Investigation on Untoward Incidents) Rules, 2003. The DRM report

marked as Ext.R1 was submitted after enquiry by the officer of the force authorized to conduct the enquiry. The report was accepted by the Divisional Railway Manager. The report had unambiguously indicated that the deceased was a bona fide passenger. He was returning to Thiruvalla after attending a marriage engagement ceremony at Nilambur. He had boarded the first general compartment of the Malabar Express. He was standing near the corridor. When the train reached at Edappally station the deceased had fallen from the train and died. Railway tickets 1901 and 1902 dated 15.3.2008 and 7591 dated 16.3.2008 were available in his money purse which were seized along with the money purse under the inquest report.

3. Notwithstanding such convincing material, we find that the claim of the claimants was not settled. Claimants were constrained to approach the Tribunal. There was some delay in the claimants approaching the Tribunal. The Tribunal condoned the delay. The claim was surprisingly opposed by the Railways. Attempts were made to pick holes in the claim advanced by the claimants. That the deceased was a bona fide passenger was disputed. It was contended that it was not proved that there was valid ticket to cover the journey of the deceased. Discrepancies regarding the date of the journey were relied on. To cut a long story short the liability was disputed and denied.

4. Claimants were constrained to go for trial. The wife of the deceased examined herself as P.W. 1. The uncle of the deceased who allegedly was traveling in the same compartment was examined as P.W.2, P.W.2 though he had boarded the train along with the deceased and was traveling with him in the same train had not known during his journey till it was terminated at Thiruvalla that the deceased was missing. Exts.A1 to A8 were marked on the side of the claimants.

5. On the side of the Respondents Ext.R1, DRM's report was marked.

6. The Tribunal considered the materials available before it and to our shock and dismay, found that it had not been established that the deceased was a bona fide passenger. Much was made out of the alleged discrepancy about the precise date of the untoward incident. The Tribunal further noted that there were incongruities in the evidence tendered by P. Ws. 1 & 2. Their testimony inter se and with regard to their prior statements aroused reservations in the mind of the Tribunal. The Tribunal in these circumstances came to the conclusion that the claimants are not entitled to any payment from the Railways. Accordingly the Tribunal proceeded to pass the impugned order.

7. Before us the learned Counsel for the Appellant and the learned standing counsel for the Railways have advanced their arguments. Learned Counsel for the Appellants contends that the officials who conducted the case on behalf of the Railways as also the Tribunal erred perversely and cruelly, in concluding that the claimants are not entitled for compensation. The compassion underlying the statutory provision and the rules was not imbibed by the officials and the Tribunal. The learned Counsel for the Appellants in these circumstances submits

that the impugned order is liable to be set aside.

8. We have considered all the relevant inputs. To us it appears that Chapter XIII of the Railways Act reflects the vibrant compassion of the Legislature in favour of the victims of untoward incidents that take place during the operation of the Railways. Even though there is no specific liability known to law on established legal principles obliging the railways to compensate the victim of such untoward incidents, law declares that Railways shall compensate the victims. More than enforcement of a legal right, the statutory provision recognizes compassion and concern which the Railway administration must show to the unfortunate victims of the untoward incidents. An anxious perusal of the relevant statutory provisions and the rules must convince that the framers of the statute and the rules did not reckon the proceedings as an adversarial litigative process at all. If there be any semblance of doubt on this aspect it will be appropriate to frequent oneself with the stipulations of the Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003 (as amended in 2007). Rules 7 to 10 clearly show that the burden is on the local police and the officers of the force to conduct an enquiry/ investigation into the cause of the incident and come to appropriate conclusion. To us it appears that the provisions clearly reveal due recognition and acceptance of the helplessness of the claimants who may be far far away from the scene/venue of the incident and consequentially incapable of adducing very compelling evidence in support of their claim. The realistic acceptance of the plight of the victims is perfectly clear from the mechanism stipulated for enquiry/ investigation under the Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003. The burden really is not placed entirely on the shoulders of the victims or claimants. But the burden is placed on the shoulders of the Railway and its officials to conduct a proper enquiry to ascertain whether claimants are really entitled to amounts or not.

9. It is in this context that the learned Counsel for the claimants placed reliance on Ext.R1. In the light of Ext.R1 it appears to us that it was practically unnecessary for the claimants to adduce any evidence about the manner in which the untoward incident took place.

10. One must realistically accept the change in approach of the law. The anglo Saxon jurisprudence, groomed in the tradition of the law of torts with entrenched adversarial procedure, could never have imagined or conceived a liability for the Railways with no fault on it even alleged, to pay amounts to the victim of an untoward incident. That is where one has to perceive the difference and shift in accent of the Indo Anglo Saxon system of law and if we may call it so the modern or socialist jurisprudence. The Constitution in its preamble promises that the republic shall be socialist and Constitutional socialism is built on the bedrock of humane humanism which Article 51A(h) obliges each citizen to develop. Concern for the weak, compassion for the deprived, commitment to the less fortunate and empathy for the sufferer is the defining concerns of Constitutional socialism. It would be myopic and puerile to assume that Constitutional socialism

represents any competing political ideology. It would be legally irrational to assume that constitutional socialism would wither away in the light of the policy of liberalization, privatization and globalization which has been ushered in or accepted as the economic policy of the Indian State for the past four decades. The preambular commitment to constitutional socialism must survive and transcend the winds of changes in policy. Every State functionary - be he the law makers, the law enforcer, the law interpreter or the law adjudicator must have the irreducible constitutional commitment to the weak, the infirm and the less fortunate. After all for whose benefit was the Constitution enacted? Justice Bose in *Bidi Supply Co. Vs. The Union of India (UOI) and Others*, answered that it exists for the common man, for the poor and the humble - "for the butcher, the baker and the candle stick maker". Nani Palkhuvala asserts that the Constitution was meant for the ranker; the tramp of the road, for the slave with the sack on his shoulders, for the man with too weighty a burden, too weary a load. Constitutional functionaries and creatures of the State attuned to the Constitutional vision cannot afford to ignore, forget or overlook this fundamental commitment.

11. Groomed in Anglo Saxon tradition it is only natural that one starts with an attempt to locate "fault" or "breach of the duty to take care" before ordering compensation. But modern jurisprudence does not invariably look for fault as the foundation of liability. Our jurisprudence has covered major distance now and the journey from "fault" to "suffering" though long and tiresome, has been real. State as patron patriarch recognizes suffering or injury as the foundation of liability and ensures that the victim who has been left to suffer injuries non voluntarily in accidents is compensated. Like Section 140 of the M.V. Act and Section 163A of the M.V. Act, Chapter XIII of the Railways Act also accepts that involuntary injury/suffering/misery deserves to be compensated not because there is fault on the part of any one but because the victim deserves to be compensated. This principle - that the victim deserves to be compensated, founded on social welfare themes is accepted as right and duty in our socialist republic. The ones who have the capacity to pay-the monopoly operators - like the Railways and the Insurance companies are saddled with the obligation to compensate the unfortunate victim. This legal regimen accepts that the victim or sufferer does not suffer any injury voluntarily but the complexities of modern life expose him to involuntary risks not of his choice. The State steps in to compensate the victim either by its own social welfare activities or by legislation obliging the person or entity undertaking the activity which exposes the victim to such threat or risk to compensate the victim.

12. Adjudication in cases like this is not and cannot be a mere resolution of lis between parties. It is not adversarial litigation in which contestants cross swords. The attempt is to translate the compassion of the Legislature to tangible relief in the hands of the victim. The adjudicator must have the mindset. He must realise and accept that it is as much his responsibility to translate the legislative compassion to tangible benefits for the victim and at the same time show the

door to an unworthy - not bona fide, claimant. The State/ Railway functionary which defends the claim must also imbibe the mindset that is expected of him. We feel that both the officials as also the Tribunal woefully lacked this vital perception. It is not disputed before us that a report was submitted and the Divisional Railway Manager has accepted the report under Rule 11(2).

13. If that be so, it passes our comprehension as to why such a vexatious trial was proceeded with unnecessarily. It is here, we feel, that the railway officials who conducted the case as also the Tribunal had completely missed the bus and had gone astray while considering the claim of the claimants.

14. That the deceased was a bona fide passenger; that he had suffered the accident while he was traveling in the train; that the death must have taken place on the night between 16.3.2008 and 17.3.2008; that he had succumbed to the injury suffered in the accident, are all convincingly borne out by Ext.R1 DRM report relied on by the Respondent. The Tribunal, we are most disturbed to note, looked at the evidence and proceeded on the adjudication as though it was a criminal trial where the burden rested entirely on the shoulders of the claimants/prosecution.

15. We have no hesitation to agree that the claim must have been allowed by the Tribunal. In the light of Ext.R1, which is practically not disputed and is relied on as a document on the side of the railways, the Tribunal could not have, but, granted the claim of the claimants. We are satisfied that the impugned order does warrant interference.

16. That under the Act and the Rules, the claimants are entitled to an amount of ` 4 lakhs is not disputed. We are informed that there is no specific provision in the statute or the rules prescribing the rate of interest payable. In the nature and facts of this case, we are certainly of the opinion that the claimants must be held to be entitled to interest @ 9% per annum from the date of the application before the Railway Claims Tribunal to the date of payment. We must express our disapproval and displeasure against the unnecessary conduct of the litigation by imposing on the Respondent/Railways cost also. We direct that a total amount of ` 20,000/- (Rupees Twenty thousand only) [ ` 10,000/- for the proceedings before the Tribunal and ` 10,000/- for the proceedings before this Court) be ordered to be paid as cost. Notwithstanding the valiant and able efforts made by the learned Counsel Shri C.S. Dias on behalf of the Railway Administration to persuade us not to award costs, we are satisfied that it would be dereliction of the burden of duty on us if we do not express our dissatisfaction against the mindless manner in which this case is conducted by imposition of costs.

17. In the result:

a) This appeal is allowed;

b) The Respondent is directed to pay an amount of Rs. 4 lakhs along with interest @ 9% per annum from the date of the petition before the Railway Claims

Tribunal to the date of payment;

c) We further direct that a total amount of Rs. 20,000/- (Rupees Twenty thousand only) be paid as cost to the claimants.