
(2017) 05 KL CK 0021
In the High Court Of Kerala
Case No : 30 of 2010

UNION OF INDIA

APPELLANT

Vs

A.GEETHA, D/O.ANANDAVALLI & Ors

RESPONDENT

Date of Decision : 24-05-2017

Acts Referred:

[6608](#)>Railway Claims Tribunal Act, 1987, [6608-16](#)>Section 16 - Application to Claims Tribunal

Citation : (2017) 05 KL CK 0021

Hon'ble Judges : K.Surendra Mohan, Mary Joseph

Bench : DIVISION BENCH

Advocate : JAMES KURIAN, BIJU BALAKRISHNAN

Judgement

1. The respondent, the Union of India represented by the General Manager, Southern Railways, Chennai in O.A.No.30/2003 on the files of Railway Claims Tribunal, Ernakulam Bench (for short "the Tribunal") is before this Court in this appeal seeking to set aside the judgment dated 6.8.2008. The appellants are the applicants in the O.A., who are none other than the mother and the siblings of Sandhya, the deceased. The parties are referred to hereinafter as "the applicants" and "the respondent" in accordance with their status in the original side.

2. O.A.No.30/2003 was filed under Section 16 of the Railway Claims Tribunal Act, 1987 (for short "the Act") seeking for a compensation of Rs. 4,00,000/- for the death of Sandhya, aged 18 years, the daughter of the first respondent in an untoward incident that took place on 8.4.2002 at Manjadimoodu near Chirayinkeezhu.

3. The facts are summarised hereinbelow:- On 8.4.2002, the fateful day, Sandhya was travelling in Thiruvananthapuram-Kurla Nethravathi Express from Thiruvananthapuram Central towards Ernakulam. When the train reached at Manjadimoodu near Chirayinkeezhu, she was thrown out of the train due to the impact of a hookless door that swung and hit her. She was rushed to the Taluk

Hospital, Chirayinkeezhu and from there, to the Medical College Hospital, Thiruvananthapuram. She succumbed to the fatal injuries sustained by her at 4.30 p.m. on the same day.

4. Thereafter, the mother and siblings as her legal heirs preferred O.A.No.30/2003 before the Ernakulam Bench of the Tribunal seeking compensation. In the Original Application, it was specifically stated that Sandhya the deceased was travelling in an unreserved bogie and the bag containing her belongings including the ticket were lost.

5. The respondent filed reply statement denying the averments of the applicants. The reasons for the denial were, the non-reporting of the incident to the driver, guard or Station Master and the non-pulling of the chain by the co-passengers. It is contended that since the deceased was found lying near the Chiryanikeezhu Railway Gate, in the absence of the ticket to establish the factum of her travel in the train, the respondent was not liable to pay any compensation to the applicants for her death. It is also contended that all the dependants of the deceased were not arrayed as claimants in the original application. Raising the grounds as aforesaid, the original application was sought to be dismissed.

6. The Tribunal framed the following issues for consideration :- "i. Whether the deceased died of injuries alleged to have been sustained in an untoward incident on 8-4-2002?

ii. Whether the deceased was a bonafide passenger at the time of incident alleged ?

iii. Whether the applicants are the only legal heirs of the deceased?

iv. To what amount of compensation, if any, the applicant are entitled to?

v. Relief?"

7. Evidence was let in by both parties before the Tribunal. The first applicant mounted the box and deposed as PW1 and let the documents marked in evidence as Exts.A1 to A8. The evidence on the side of the respondents was confined to his testimony as RW1 and a document marked as Ext.R1.

8. On appreciation of the evidence, the Tribunal found issues (i) to (iv) affirmatively in favour of the applicants and they are found entitled to get the compensation for the death of Smt.Sandhya. Accordingly, a sum of Rs. 4,00,000/- was awarded together with interest at 9% per annum from 25.7.2003, the date of registration of the case till payment and directed the respondent to pay the same to the first applicant, who was also representing the second and third applicants, who were minors at the relevant time. 50% of the award amount was directed to be deposited in Fixed Deposit in the Indian Bank, M.G.Road, Pallimukku, Ernakulam- 682016 for a period of three years and the F.D.R. was directed to be handed over to the first applicant with permission for her to draw the interest accrued on the sum. Out of grievance, the respondent

preferred this appeal.

9. Sri.James Kurian and Sri.Biju Balakrishnan, the respective counsel representing the respondent and the applicants were heard extensively on the rival contentions advanced by them.

10. Sri.James Kurian, the learned counsel for the respondent advanced arguments mainly based on two grounds, the first among which was confined to the non-pulling of the chain by the co-passengers of Smt.Sandhya and the second one based on the non-production of the ticket establishing the factum of her travel in the train on 8.4.2002. According to the counsel, the deceased was found lying near the Chirayinkeezhu Railway Gate at a point of time much after the accident and the failure of the applicants to establish the factum of her fall from the train. According to him, the Tribunal has gone wrong in the said circumstances in allowing the application in favour of the claimants and awarding compensation to them vide the judgment under challenge.

11. Per contra, Sri.Biju Balakrishnan has urged that the Tribunal is perfectly justified in awarding compensation to the claimants and interference of any nature is unwarranted. According to him, the appeal deserves to be dismissed with costs. The counsel has also placed reliance on Jayalakshmi and other v. Union of India [2011(2) KHC 706] to rest his contention.

12. The pleadings of the applicants in the original application disclose that Smt.Sandhya was travelling alone in the train. Her bag containing material things including the ticket taken by her for travelling purpose was lost. Her body was found lying in the railway track. It is pertinent to note that even though disclosure of the facts is made in the original application, the respondent has not ventured to controvert those. The respondent has also no case that any enquiry in the matter was conducted by them and the contrary was revealed to them. The only objection raised was regarding the non-pulling of the chain by co-passengers and non-production of the ticket by the claimants. The lady being a passenger not in accompaniment with any of the original applicants, it is difficult for the latter to state specifically about the incident. The attending circumstances being so, the authorities of the Railway, being in reachable space to the place of incident, are the appropriate person to conduct an enquiry and to get convinced themselves about the untoward incident rather than the original applicants, who were in a remote place at the relevant time. The authorities of the railway cannot take advantage of their inaction to conduct an enquiry and the incapacity of the original applicants to place on record evidence supporting their claim. In the case on hand, the attending circumstances drawn out from the pleadings of the original applicants are leaning in favour of the original applicants rather than those advanced by the respondent.

13. The dictum in the decision supra rendered by a Division Bench of this Court, of which one among us, was a constituent member, is also relevant in the context and is extracted hereinbelow:- "8. We have considered all the relevant

inputs. To us it appears that Chap.13 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). R.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."

Therefore, the contention of the learned counsel for the respondent that the applicants failed to discharge the burden to establish their claim would not sustain. As disclosed from the dictum, the burden is on the shoulders of the Railway and its officials and they have to discharge the same by conducting appropriate enquiry into the cause of the incident. In the case on hand, neither the Railway nor its Officials seem to have conducted an enquiry of the nature and it is highly improper for them to blame the claimants for their inaction.

14. The Tribunal is perfectly justified in passing the impugned judgment, and thereby, directing the respondent to compensate the applicants. Therefore, interference called for is unwarranted. In the result, the appeal fails and is dismissed. No order as to costs.