
(2009) 02 KL CK 0066
In the High Court Of Kerala
Case No : MFA No. 12 of 2009

Union of India (UOI)

APPELLANT

Vs

Leelamma and Others

RESPONDENT

Date of Decision : 25-02-2009

Acts Referred:

Railways Act, 1989 — Section 123, 124A

Citation : AIR 2009 Ker 134 : (2009) 2 ILR (Ker) 9 : (2009) 1 KLT 914

Hon'ble Judges : C.N. Ramachandran Nair, J;C.K. Abdul Rahim, J

Bench : Division Bench

Advocate : T.P.M. Ibrahim Khan, SC., Railways, for the Appellant;

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—Union of India represented by the General Manager, Southern Railway, who is the respondent in OA. No. 31/2006 before the Railway Claims Tribunal, Emakulam Bench, is the appellant. The Tribunal allowed compensation of a sum of Rs. 4 lakhs together with Interest at the rate of 9% p.a. to the applicants, who are wife and children of one Sri. K. A. Poulose, who succumbed to the injuries sustained in an "untoward incident" which took place on 24-6-2005 at Trichy Railway Station.

2. The applicants before the Tribunal contended that the deceased was a passenger in Train No. 6177-A from Chennai to Trichy and when he tried to alight from the compartment at Trichy Station, the train moved with a jerk, thereby loosing his grip from the handle of the door and falling down between the train and platform. He succumbed to the injuries in the hospital. According to the applicants the deceased had purchased ticket to travel in the train, but the same was lost.

3. The appellant/respondent defended the claim disputing the version that the deceased fell down while alighting from the compartment at Trichy Station. The contention of the appellant was that on the particular date, train No. 6177-A left

from Trichy to Kumbakonam without any detention or chain pulling and after the departure of the train only the deceased was found lying on the track with injuries. As per enquiry report of the Railway Police, the conclusion was that the deceased attempted to board the moving train No. 6177-A bound for Kumbakonam from Trichy and thereupon he fell down and was run over by train.

4. The appellant/respondent disputed the liability on the ground that the fall was due to rash and negligent act of the deceased himself and hence the incident does not attract the provision enabling payment of compensation for "accidental falling". Consequently, it was contended that the injury sustained will amount of self inflicted injuries and therefore the appellant should be absolved from the liability u/s 124A(b) of the Railways Act, 1989. It was also contended that the deceased was not a bona fide passenger since he failed to produce the journey ticket.

5. As per Section 123(c)(2) of the Railways Act 1989 "untoward incident" includes the accidental falling of any passenger from a train carrying passengers. Here the dispute mainly pertains to the aspect as to whether the deceased fell down while alighting from the train when It reached at Trichy Station or while trying to board the moving train bound to Kumbakonam. However, the fall of the deceased was accidental, is not disputed by the appellant. No case has been put forth contending that it was a suicide or an attempt to suicide, or a self inflicted injury. There was no case that the injury was sustained due to any criminal act of the deceased or any act committed by him in a state of intoxication or insanity. Therefore the appellant could not be heard to contend that the claim is not admissible because the accident is one falling under the proviso (a) to (e) of Section 124A of the Railways Act, 1989.

6. In the decision reported in *Joji C. John v. Union of India* 2002 (1) KLT 678 a Division Bench of this Court held, that, when there is an "untoward incident" even when no negligence is proved on the part of Railway Officers, the Railway is liable to pay the compensation. Even if there is no negligence on the part of the Railway employees, it cannot be presumed that the injuries caused to the victim of the accident are self inflicted injuries so as to deny compensation as provided under Railway Accidents and Untoward Incidents (Compensation) Rules, 1990.

7. This view has been further reiterated in a recent decision of the Honourable Supreme Court in *Union of India v. Prabhakaran Vijaya Kumar* 2008 (2) KLT 700 (SC) : AIR 2008 SCW 4165. Interpreting the term "accidental falling of a passenger from a train carrying passengers", it is held that the train includes situation where a person is trying to board the train and falls down from the train while trying to do so. In the instant case since the accidental fall is admitted by the appellant/respondent and since there is no contention that it is a self inflicted injury or it is caused due to any criminal act or act of intoxication or insanity the Railway cannot deny compensation.

8. The further dispute of the appellant is based on the plea that the deceased

was not a "bona fide passenger". The only ground on which the contention is based is that the train ticket was not produced in evidence. The claimants had a specific case pleaded that, the deceased was holding journey ticket, but the same was lost in the accident. In the decision *Joji C. John v. Union of India* (cited supra) it is held that the burden is on the Railway to prove that the claimant is not a "bona fide passenger". It is further held that merely because the Ticket is lost during the accident, the passenger cannot be labelled as "not a bona fide passenger".

9. The question mooted for consideration is whether due to mere non-production of the ticket, an adverse inference can be drawn by the Tribunal that the person got injured and succumbed to death was travelling without a valid journey ticket and that he was not a bona fide passenger. According to the claimants the deceased was holding journey ticket and the same was lost in the accident. The normal presumption is that a passenger in a Railway holds a valid ticket. When the appellant/respondent contends that the deceased was a passenger who fell down while attempting to board a train, the burden is heavily upon them to prove that he attempted such Journey without purchasing a ticket. Since that burden is not discharged by the Railway, the Tribunal is perfectly justified in rejecting the contention that the deceased was not a bona fide passenger. The Railway Tribunal in such cases are perfectly Justified in drawing a presumption that the person concerned was travelling or attempting to travel with a valid ticket and in such case the passenger cannot be termed as "not a bona fide passenger".

10. In the case at hand, we find that the applicants are successful in establishing that the deceased while travelling in the train had accidentally fallen down from the train and sustained injuries which eventually lead to his death. Therefore, we have no hesitation to hold that it is an "untoward incident" prescribed u/s 123(c). Hence we find no merit in the contention of the appellant. Consequently the appeal is dismissed.