

(2009) 09 KL CK 0102
In the High Court Of Kerala
Case No : M.F.A. No. 131 of 2009

Union of India (UOI)

APPELLANT

Vs

Prameela and Others

RESPONDENT

Date of Decision : 18-09-2009

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 16, 24
Railways Act, 1989 — Section 123

Citation : (2011) ACJ 362

Hon'ble Judges : P.R. Raman, J; P.R. Ramachandra Menon, J

Bench : Division Bench

Advocate : N.B. Sunil Nath, S.C, for the Appellant; K. Shrihari Rao and N. Shoba, for the Respondent

Final Decision : Allowed

Judgement

P.R. Raman, J.—The Respondent Union of India represented by the General Manager, Southern Railway, before the Railway Claims Tribunal, in OA No. OAU/ERS/2007/0046, is the Appellant in this appeal.

2. Respondents herein were applicants before the Tribunal, claiming an amount of Rs. 4,00,000 with interest thereon as compensation u/s 16 of the Railway Claims Tribunal Act, 1987, for the death of one Jayakumar, aged 47 years, in an untoward incident, which took place on 17.2.1994, at Kanhangad Railway Station. It was the contention of the Respondents herein that deceased was travelling from Kollur to Ernakulam by Mangalore-Palghat Link Express on 17.2.1994 and when the train reached Kanhangad Railway Station, he fell down from the running train and died due to head injury on 18.2.1994 at Mangalore Wenlock Hospital.

3. The Appellant herein denied their liability as also the "untoward accident". It was mainly contended that the claim for compensation based on an untoward accident was as a result of an amendment brought out to the Railways Act, by virtue of Section 123(c), as introduced by the Amendment Act w.e.f. 1.8.1994

and in this case, the date of the accident being on 17.2.1994, much prior to the amendment, the claimants are not entitled for any compensation. Incidentally, it was also contended that the applicants are not the only Dependants of the deceased.

4. The Railway Claims Tribunal framed necessary issues. The evidence consists of oral testimony of PW 1 and Exhs. A1 to A6 for the applicants and no evidence, either oral or documentary, was produced by the Railways.

5. The Tribunal found that the deceased was a bona fide passenger in Mangalore-Palghat Link Express train from Kollur to Ernakulam, based on the analysis of the evidence adduced in the case. Being a question of fact determined by the Tribunal based on consideration of the materials on record, no interference is called for in this regard.

6. The next question considered by the Tribunal was as to whether the deceased died due to an untoward incident? Admittedly, u/s 123(c)(2) of the Railways Act, death arising out of fall from the running train clearly comes within the ambit of the term "untoward incident", as defined, on the facts as established, the death was as a result of the fall from the running train and, therefore, attracts Section 123(c)(2) of the Railways Act.

7. The next issue was as to whether the applicants are the only Dependants of the deceased Jayakumar. Based on Exh. A6 Legal Heirship Certificate issued by the competent authority and finding that all heirs are joined together to file the application, this issue was rightly decided by the Tribunal in favour of the applicants.

8. This next question considered by the Tribunal was whether the Railways is liable to compensate, if so, what is the compensation to be awarded? In view of the various findings, it was held that the Railways is liable to pay compensation and hence, awarded a sum of Rs. 4,00,000 as compensation to the applicants.

9. This appeal has been preferred mainly contending that the amendment to the Railways Act, by inserting Section 123(c)(2) w.e.f. 1.8.1994 has no retrospective effect and in the present case, the accident had occurred on 17.2.1994 and hence the respondents-applicants are not entitled for any compensation. This question is squarely covered by two decisions. In Rathi Menon Vs. Union of India, it was decided by the Apex Court that even if the incident occurred before the amendment of the Rules and Schedule to the Act, raising compensation payable, claimant would be entitled to the benefit of higher rates prevailing post-amendment. In K.V. Thomas Vs. Union of India (UOI), a Division Bench of this Court considered the question as to whether the Tribunal can entertain a claim for compensation in respect of an untoward incident that occurred prior to the enactment of the Railways (Amendment) Act 28 of 1994, w.e.f. 1.8.1994. It held that by virtue of the provisions contained in Section 24 of the Railway Claims Tribunal Act, 1987, all matters pending before the civil court will stand transferred to the Tribunal. Thus, there is a bar of jurisdiction of the civil court

and hence even though the accident and death occurred prior to the introduction of the-provisions contained in Section 123(c)(2) of the Railways Act, the Tribunal has jurisdiction. In view of the above two decisions, there arise no doubt that in the present case, though the accident occurred prior to the introduction of the amendment to Section 123(c)(2) of the Railways Act, the Tribunal has jurisdiction to entertain such claims as well arising out of the such accidents prior to the amendment.

10. Regarding the compensation amount to be paid, though the amendment enhancing the compensation from Rs. 2,00,000 to Rs. 4,00,000 was w.e.f. 1.11.1997, the determination of the question having been done subsequently, irrespective of the date of the accident, as held by the Apex Court in Rathi Menon's case (supra) claimants are entitled to be compensated in the post-amendment rates. Hence, we find no merit in the appeal. Accordingly, the appeal is dismissed.