

Kamukayi vs Union Of India on 16 May, 2023

Author: J.K. Maheshwari

Bench: J.K. Maheshwari, Surya Kant

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3799 OF 2023
(ARISING OUT OF SLP (C) NO. 17062/2022)

Kamukayi & Ors.

...Appellants

Versus

Union of India and Ors.

...Respondents

JUDGMENT

J.K. Maheshwari, J.

1. Leave granted.

2. This appeal arises out of the judgement dated 26.03.2021 passed by the High Court of judicature of Madras in Civil Miscellaneous Appeal No. 2442/2019 filed by appellants. The High Court by the impugned judgment held that appellants had failed to establish any untoward incident or the deceased was a bona fide passenger however upholding the impugned judgement dated 29.06.2017 of the Railway Claims Tribunal, Chennai Bench, claim petition filed seeking compensation for the death of Muchamy @ Muthusamy was dismissed. Challenging both the judgments, the claimants/appellants are before this Court.

3. Succinctly stated, facts of this case are that on 27.09.2014 the deceased- Muchamy @ Muthusamy (husband of appellant 1 and father of appellants 2 and 3) was required to go for medical treatment to Government Hospital, Karur. He reached Lalapettai Railway Station along with his son (appellant 3), who purchased the railway ticket of Karur and handed over to deceased who boarded Train No. 56841- Trichy Erode Passenger to reach Karur. When the train reached Mahadanapuram Railway Station, due to heavy crowd in the compartment and jolting of the train, the deceased unexpectedly fell down from the running train between the platform and track at KM 90/200-300 and sustained grave injuries including decapitation and amputation of right hand. The deceased died on the spot. FIR was lodged in Railway Police Station, Karur, the inquest report was prepared and the final report had also been submitted which clearly reveals that death of the deceased was an outcome of untoward railway incident. The post- mortem conducted in the Government Hospital, Karur

indicates that the cause of death was due to shock and haemorrhage because of injuries on vital organs and decapitation of head. The claim petition was filed on 25.07.2016 before the Railway claims Tribunal, Chennai Bench seeking compensation to the tune of Rs. 4 Lakhs with 12% interest per annum from the date of filing of application till its realisation.

4. The respondents contested the claim taking defence that the deceased was not a bonafide passenger because his journey ticket was not found and only white coloured torn shirt in a mutilated condition with rose colour design lungi and red coloured underwear was recovered from the spot. As per the inquest report, the dead body was found with head decapitated at the level of right shoulder. It is stated that if deceased had fallen from running train, his body would not have been found outside the railway track. However, looking to the nature of injuries, as mentioned in Post-Mortem Report, the allegation of death of the deceased due to untoward incident was denied, therefore Southern Railway is not liable to pay any compensation.

5. The record reveals that the claim petition was filed with some delay which was condoned as per order dated 01.11.2016 by the Claims Tribunal. The Claims Tribunal by its judgement dated 29.06.2017 dismissed the claim application holding that the appellants have failed to prove the death of deceased in an untoward incident and he was not a bona fide passenger making the Railway liable for grant of compensation. The Claims Tribunal was influenced by the statement of one D. Ravishankar, Station Master before whom the search of dead body was made in the presence of deceased's son and at that time, journey ticket was not found with the body. The Claims Tribunal has also relied upon the sketch map and post-mortem report, while non- suiting the appellants.

6. On filing Civil Miscellaneous Appeal No. 2442 of 2019 before the High Court, it was dismissed making an observation that the findings of Claims Tribunal are not perverse as the deceased was not found to be a bona fide passenger and appellants have failed to prove the death of deceased is an outcome of untoward incident.

7. Assailing those findings, learned counsel for the appellants relied upon the FIR, inquest report dated 27.09.2014 and the final report dated 14.11.2014 and contended that occurrence was an outcome of untoward incident as defined under Section 123(C)(2) of the Railways Act, 1989 (in short, "Railways Act"). It is further urged that as per the averments made in the claim petition and the statement of claimant-appellant Manikandan (AW-1), it is apparent that he had purchased the ticket of Rs 10/- and handed it over to his father at Lalapettai Railway Station for the journey in Train number 56841 from Lalapettai to Karur. Learned counsel placing reliance on the judgement of Union of India v. Rina Devi¹ urged, the initial burden of being bonafide passenger has been discharged and the onus has been shifted on the Railway Authorities which has not been discharged by them. Therefore, the findings of the Claims Tribunal and the High Court are perverse. It is further urged in the light of judgement of UOI v. Radha Yadav² because death is proved due to outcome of untoward incident of the deceased being bona fide passenger, the adequate amount of compensation may be awarded.

8. Per Contra, learned counsel for the respondents submitted that there are two necessary ingredients which need to be proved on strict parameters; first the deceased (2019) 3 SCC 572

(2019) 3 SCC 410 being a 'bonafide passenger' and second being the occurrence of an 'untoward incident'. As per the findings concurrently recorded by the Claims Tribunal and High Court, those ingredients have not been found proved, therefore the present appeal may be dismissed.

9. After having heard learned counsel for the parties and on perusal of provisions of the Railways Act, in particular Chapter XIII which deals with the liability of Railway Administration for death and injury to passengers due to accidents. Section 123 (c) defines "untoward incident". As per clause (2), the accidental falling of any passenger from a train carrying passengers would be an untoward incident. As per Section 124A, the Railway Administration is liable to pay compensation on account of untoward incident. When in the course of working of railway, an untoward incident occurs then whether or not there has been any wrongful act, neglect or default on the part of the Railway Administration as such, would entitle a passenger who has been injured or died. The claim can be maintained to recover the damages, and notwithstanding anything contained in any other law the Railway is liable to pay compensation as prescribed for such untoward incident. By the explanation of the said Section clarifying about 'passenger', it would include a person who has purchased a valid ticket for travelling by a train carrying passengers on any date or a valid platform ticket and becomes a victim of an untoward incident.

10. This court in the case of Rina Devi (Supra) has explained the burden of proof when body of a passenger is found on railway premises. While analysing the said issue, this Court has considered the judgement of Madhya Pradesh High Court in Raj Kumari v. Union of India³ and the judgements of Delhi High Court in Gurcharan Singh v. Union of India⁴, Andhra Pradesh High Court in Jetty Naga Lakshmi Parvathi vs. Union of India⁵ and also considered the judgement of this Court in Kamrunnissa vs. Union of India⁶ and in para 29 concluded as thus-

"We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which 1992 SCC OnLine MP 96 2014 SCC OnLine Del 101 2011 SCC OnLine AP 828 (2019) 12 SCC 391 can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly."

11. In view of the said legal position and on the basis of the pleadings and the material placed on record before the Claims Tribunal, it is required to be analysed whether the findings of the Claims Tribunal and High Court are just or perverse.

12. As per the material placed, the FIR of the incident is registered by the Railway Police Station, Karur on 27.9.2014 at 10 A.M. As per the averments of the FIR, it revealed that on 27.9.2014, complainant Manikandan (AW1) son of the deceased purchased a ticket of Erode Passenger Train from Lalapettai to Karur at Lalapettai Railway Station and gave it to his father Muchamy @ Muthusamy, who was going to Government Hospital, Karur for his medical treatment. At about 9

a.m., he received information from his uncle Ayyappan that the deceased had fallen from the train at Mahadanapuram Railway Station with decapitation and amputation of right arm. The inquest report was prepared on the same day by the Inquest Officer specifying the circumstances under which the accident took place, the relevant thereto is reproduced as under:

“The deceased Muchamy @ Muthusamy age 50/14, s/o Mookkan, Kodikkal Street, Lalapettai, in order to take medical treatment for the wound on his leg on 27.09.2014 morning 8 ¼ hours he came to Lalapettai Railway Station along with his son Manikandan and his son purchased a train ticket for the deceased to travel from Lalapettai to Karur and he received the ticket and travelled to Trichy by Erode Passenger Train. While the train came to Mahadanapuram Railway Station the deceased adrift and fallen down from the train compartment and entangled with train result of head decapitated, hand amputated and died at the spot.”

13. The post-mortem was conducted by the Civil Assistant Surgeon, Government Head Quarters Hospital, Karur on the same day i.e. 27.9.2014 and the Doctor opined regarding cause of death as under:

“The deceased would have appearance to have died of shock and haemorrhage and injury to vital organs and decapitation of head about 4 to 8 hours prior to autopsy.”

14. The final report was prepared and findings are as under:

“In this case I enquired the circumstantial witnesses. They deposed same thing what they deposed before the Sub-Inspector, hence I am not recording any statement separately. As per the investigation made with occurrence place witness, inquest panchayatar witness, and as per enquiry with the doctor who done the post-mortem the deceased Muchamy @ Muthusamy, 50/14, s/o Mookkan, Kodikkal Street, Lalapettai, Krishnarayapuram-TK, Karur-Dt used to go to Karur GH for the medical treatment of the wound on his leg on the date of occurrence came to station with his son by bicycle and his son purchased the ticket and sent him in the train Trichy to Karur and went to his job. The deceased Muchamy@Muthusamy travelling in the train came to Mahadanapuram railway station he fell down from the train, head was decapitated, right hand amputated and excessive of blood loss he died at spot. Hence, I have come to the conclusion that the death of the deceased is an “accidental death” and submitting the final report.

The case ends.”

15. The Southern Railway submitted the investigation report dated 7.6.2017 under Rule 7(2) of the Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003 (for short “Rules, 2003). The said report refers the intimation to the Station Master, Mahadanapuram, wherein the occurrence of untoward incident has not been denied except to say that the passenger was travelling without a ticket. In

the said report, final conclusion of the enquiry was reported as under:

“Enquiry reveals that on 27.9.2014, the deceased was on his way to Government Hospital, Karur for medical treatment and travelled in T.No. 56841 Pass (Ex. TPJ-ED) from Lalapettai to Karur. When the said train was leaving after its scheduled stoppage, the deceased fell down and died at the spot.”

16. The said finding of the investigation was recorded after considering the statement of D. Ravisankar, Station Master, Tanjore, who was on duty at Mahadanapuram Railway Station on 27.9.2014. As per his statement, it is apparent that on 27.09.2014, Train No. 56841 arrived at Mahadanapuram at 08:43 hrs and left at 08:44 hrs. While moving from platform it was stopped due to ACP in Coach No. 01446. When he attended the said coach, he noticed one male person aged about 50 years was run over and died on the track. Therefore, even as per the statement of D. Ravisankar, it is clear that on account of chain pulling in Coach No. 01446, he noticed the dead body of the deceased was found lying on the railway track. Looking to the said fact findings of the investigation report, which is after considering the inquest report and final report of the Railway Police Station Inspector, Trichy, it is submitted in this regard that untoward incident cannot be doubted in absence of any other material.

17. The said enquiry report was accepted by DRM on 7.6.2017. On perusal of the allegations of the FIR, inquest report, final report and the investigation report prepared under Rule 7 of the Rules, 2003, the allegation regarding an untoward incident, as pleaded in the claim petition, is fully established and supported by the testimony of Manikandan-AW1, son of the deceased. Therefore, the findings recorded in this regard by the Claims Tribunal and the High Court are without considering the documents of the investigation and the final report accepted by the DRM on 7.6.2017 and therefore such findings are perverse and set-aside.

18. Now, reverting to the issue whether the deceased was a bona fide passenger? In this regard, the ocular statement of AW1- Manikandan, son of the deceased, who procured a valid train ticket for travel from Lalapettai to Karur and handed it over to the deceased is on record. As per the statement of AW1, the averments made in the claim petition have been testified and even in the cross-examination, he has reiterated that ticket for deceased from Lalapettai to Karur was purchased for a sum of Rs. 10/- and sent him off at Station to go to Karur. The deceased fell down at Mahadanapuram Railway Station. The said averment of the claim petition and the statement of D. Ravisankar, Station Master finds support from inquest report prepared by the Inquest Officer on the date of incidence i.e. 27.9.2014 and the final report prepared by the Investigation Officer, Railway Police Station Trichy on 14.11.2014. The said reports have been referred to in the investigation report dated 7.6.2017. Considering the material brought on record, in our view, the initial burden that the deceased passenger was having a valid ticket has been discharged shifting onus on the Railway Administration to disprove the said fact. Nothing has been

placed before Claims Tribunal or brought on record during the course of hearing that the Railway Administration has discharged the burden of not having the valid railway ticket with the deceased passenger, except to say that during recovery ticket was not found. In absence of any cogent evidence, notwithstanding anything contained in any other law, the Railway Administration shall be liable to pay compensation as prescribed.

19. In view of above discussion, we are of the considered opinion that as per law laid down by this Court in *Rina Devi* (supra), it is proved beyond reasonable doubt that deceased Muchamy @ Muthusamy died in an untoward incident which took place on 27.9.2014 while travelling in a passenger Train No. 5684 and he was a bona fide passenger. The findings adversely recorded by the Claims Tribunal and affirmed by the High Court are perverse, therefore set-aside. In our view, as per the provisions contained in Section 124A of Railways Act and Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, the appellants are entitled to claim compensation.

20. In view of the above, the claimants are held entitled to seek compensation, but during hearing, it is brought to our notice that after the date of accident and filing the claim petition on 25.7.2016, the Compensation Rules, 1990 were amended w.e.f. 01.01.2017. Therefore, the amount of compensation has to be arrived at while taking into account the amended Rules. The said issue was considered by this Court in the case of *Rina Devi* (supra), wherein in paragraphs 18 and 19, this Court has observed as thus:

“18. The learned Amicus has referred to judgments of this Court in *Raman Iron Foundry* and *Kesoram Industries* to submit that quantum of compensation applicable is to be as on the award of the Tribunal as the amount due is only on that day and not earlier. In *Kesoram Industries*, the question was when for purposes of calculating “net wealth” under the Wealth Tax Act, 1957 provision for payment of tax could be treated as “debt owed” within the meaning of Section 2(m) of the said Act. This Court held that “debt” was obligation to pay. The sum payable on a contingency, however, does not become “debt” until the said contingency happens. The liability to pay tax arises on such tax being quantified. But when the rate of tax is ascertainable, the amount can be treated as debt for the year for which the tax is due for purposes of valuation during the accounting year in question. There is no conflict in the ratio of this judgment with the principle propounded in *Thazhathe Purayil Sarabi* that in the present context right to compensation arises on the date of the accident. In *Raman Iron Foundry*, the question was whether a claim for unliquidated damages does not give rise to “a debt” till the liability is determined. It was held that no debt arises from a claim for unliquidated damages until the liability is adjudicated. Even from this judgment it is not possible to hold that the liability for compensation, in the present context, arises only on determination thereof and not on the date of accident. Since it has been held that interest is required to be paid, the premise on which *Rathi Menon*

is based has changed. We are of the view that law in the present context should be taken to be that the liability will accrue on the date of the accident and the amount applicable as on that date will be the amount recoverable but the claimant will get interest from the date of accident till the payment at such rate as may be considered just and fair from time to time. In this context, rate of interest applicable in motor accident claim cases can be held to be reasonable and fair. Once concept of interest has been introduced, principles of the Workmen Compensation Act can certainly be applied and judgment of the four-Judge Bench in Pratap Narain Singh Deo will fully apply. Wherever it is found that the revised amount of applicable compensation as on the date of award of the Tribunal is less than the prescribed amount of compensation as on the date of accident with interest, higher of the two amounts ought to be awarded on the principle of beneficial legislation. Present legislation is certainly a piece of beneficent legislation.

19. 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. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay.

Seeming conflict in Rathi Menon and Kalandi Charan Sahoo stands explained accordingly. The four-Judge Bench judgment in Pratap Narain Singh Deo holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given.”

21. The said judgment was further explained by this Court in the case of Radha Yadav (supra), relevant para 11 is reproduced as thus:

“11. The issue raised in the matter does not really require any elaboration as in our view, the judgment of this Court in Rina Devi is very clear. 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.”

22. The said view has been reaffirmed by this Court in the case of Union of India vs. Dilip and others⁷. 2019 SCC Online SC 2119

23. Accordingly and as per above discussion we allow this appeal and set aside the impugned judgment dated 26.03.2021 passed by the High Court and also the Claims Tribunal dated 29.06.2017. Consequently, claim application is allowed. The appellants are held entitled for compensation to the tune of Rs. 4,00,000/- along with interest @ 7% p.a. from the date of filing the claim application till its realisation. It is made clear that after applying the rate of interest, if the final figure is less than Rs. 8,00,000/-, then appellants shall be entitled to Rs. 8,00,000/-. The amount of compensation be satisfied by the respondents within a period of eight weeks. No order as to costs.

.....J. (SURYA KANT)J. (J.K. MAHESHWARI) NEW DELHI;

16.05.2023.