

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30-4-2007

CORAM

THE HONOURABLE MR.JUSTICE K. VENKATARAMAN

C.M.A.No.748 of 2001

1. Mrs.V.Gurulakshmi  
2. Mrs.T.Venkataramani ... Appellants/Applicants

vs.

Union of India,  
owning Southern Railway,  
rep. by its General Manager,  
Chennai 600 003. ... Respondent/Respondents

Civil Miscellaneous Appeal filed under Section 23(1) of the Railway Claims Tribunal Act against the order dated 28.3.2001 made in O.A.No.7 of 2000 on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellants : Mr.T.Rajamohan  
For Respondent : Mr.V.G.Sureshkumar

JUDGMENT

The claimants before the Railway Claims Tribunal, Chennai Bench have preferred this Civil Miscellaneous Appeal against the order passed in O.A.No.7 of 2000 dated 28.3.2001. The Southern Railway is the respondent in this appeal.

2. The short facts which are necessary for the disposal of the present appeal are as follows:-

(a) One Viswanathan, husband of the first appellant and father of the second appellant, was travelling from Kovilpatti to Tirunelveli. On 6.3.1999, he boarded Madurai-Tuticorin local passenger No.729 in order to proceed to Tirunelveli. He had to change over to a connecting train at Maniachi Junction. He was standing at the entrance of the train and he was pushed by the alighting passengers and due to jerk of the train, he accidentally fell between the train and the platform while stopping at Maniachi Junction. His right leg was crushed before the train came to a halt. Immediately, he has been rendered medical aid and sent to Tirunelveli for treatment by the guard of the train. He was originally brought to Tirunelveli and admitted in Ortho-Surgical Ward of

Tirunelveli Government Medical College Hospital where he was inpatient for two days. Later, he was discharged and admitted in a private hospital, i.e., Devaki Hospital, Tirunelveli, on 8.3.1999. On treatment, it was found that the injury was grievous warranting amputation of his right leg below knee. Later, he suffered renal failure by reason of injury suffered in the accident. For specialised treatment, he was discharged from Devaki Hospital and admitted in Kidney Care Centre, Tirunelveli on 15.3.1999 and was inpatient till 2.5.1999. It was diagnosed that by reason of injury which he suffered in the accident, he developed renal failure due to shock/septicemia. He also suffered cirrhosis of liver resulting in jaundice. Hence, he has been advised kidney transplantation. However, before such treatment could be given, he died on 7.7.1999. The claimants/appellants filed the claim application stating that the death was directly attributable to the injuries sustained by the deceased in the rail accident which occurred on 6.3.1999.

(b) Reply statement has been filed on behalf of the Railway. In the reply statement it has been stated that the accident is due to the rash and negligent act of the deceased and the respondent is not liable to pay any compensation under Section 124-A(b) of the Railways Act, 1989. Further, it has been averred that there is no evidence that the death of the deceased was due to the injuries that he suffered due to the falling from the train.

(c) The Railway Claims Tribunal framed the following issues:-

(1) Whether the applicants prove that the deceased S.Viswanathan sustained injuries and later on died in an untoward incident on 6.3.1999 while travelling by Madurai Tuticorin local passenger No.729?

(2) Whether the respondent proves that the applicants are not entitled to any relief for the reasons set out in paras 2 and 3 of the Reply Statement?

(3) Whether the respondent proves that the deceased was not bona fide passenger of Train No.729 Madurai-Tuticorin local passenger on 6.3.1999?

(4) What order?

(d) On issue No.1, it has been held that the death of the deceased is not directly attributable due to injuries sustained in the accident as claimed by the appellants. On issue No.2, it has been held that the respondent has not adduced any evidence to substantiate its defence and therefore, it came to the conclusion that the respondent failed to prove the said issue. On issue No.3, the Tribunal has held that the respondent has not produced any oral or documentary evidence, whereas the appellants have produced Ex.A-6 season ticket and the documents produced on the side of the appellant would be sufficient to answer issue No.3 in favour of the appellants. On issue No.4, the Tribunal found that the appellants are entitled to compensation of only Rs.1,20,000/-. The said order is challenged by the claimants in the present appeal.

3. Mr.T.Rajamohan, the learned counsel appearing for the appellants, contended that the Tribunal has erred in awarding only a sum

of Rs.1,20,000/-, as against the claim of compensation of Rs.4,00,000/-. Further, the learned counsel submitted that the death of S.Viswanathan is directly attributable to the injuries sustained by him in the accident due to spreading of infection resulting in septicemia, shock and renal failure and this fact has been overlooked by the Tribunal. The learned counsel further submitted that the Tribunal failed to appreciate the expert evidence adduced by A.W.2 Dr.Balasubramaniam, Nephrologist, who treated the deceased for septicemia, shock and renal failure. Thus, the sum and substance of the argument of the learned counsel appearing for the appellants is that the Railway Claims Tribunal without considering the claim of the appellants, has awarded only a sum of Rs.1,20,000/-.

4. Per contra, Mr.V.G.Suresh Kumar, the learned counsel appearing for the respondent, contended that the Tribunal has considered that the death of the deceased was not directly attributable to the injuries sustained by the deceased in the accident and hence, awarded just and reasonable compensation of a sum of Rs.1,20,000/- which need not be revised or modified.

5. I have heard the learned counsel appearing for the appellants and the respondent.

6. The Railway Claim Tribunal has clearly held that the respondent has not proved that the appellants are not entitled to any relief in view of the accident that took place on 6.3.1999. The Tribunal further found that Ex.A-6 season ticket, which is not disputed by the respondent, will amply prove that the deceased was travelling in the passenger train No.729 Madurai-Tuticorin local passenger on 6.3.1999 and that he has suffered injuries in the accident and later died. Further, the Tribunal has held that the appellant is entitled to a sum of Rs.1,20,000/- as compensation.

7. No appeal has been preferred by the respondent-Railways questioning the said finding. Hence, the respondent-Railways cannot be allowed to urge that the accident has not been taken place in the manner as spoken to by the claimants.

8. As regards the enhancement of compensation claimed by the appellants through this appeal, it has to be seen whether they are entitled for enhanced compensation. It is an admitted case that the deceased was being brought to Tirunelveli and admitted in Ortho-Surgical Ward of Tirunelveli Government Medical College Hospital and he has taken treatment for 2 days. Later, he was discharged and admitted in Devaki Hospital on 8.3.1999 and it was found that the injury was grievous warranting amputation of right leg below knee. It was also found that the deceased had suffered renal failure by reason of injury suffered in the accident. For specialised treatment, he was discharged from Devaki Hospital and admitted in Kidney Care Centre, Tirunelveli on 15.3.1999. It is seen that the Doctor therein diagnosed that the deceased had developed renal failure due to shock/septicemia and he had also suffered cirrhosis of liver resulting in jaundice. Hence, he has been advised for

kidney transplantation and before the same could be done, he died on 7.7.1999.

9. The Chief Doctor of Kidney Care Centre, Dr.J.Balasubramaniam, has been examined as A.W.2, he deposed about the seriousness of the disease septicemia resulting in renal failure. Septicemia is a disease of systemic illness caused by spread of microbes or their toxins via blood stream. In this connection, the learned counsel for the appellants has drawn my attention to the passage in the book "PRINCIPLES OF INTERNAL MEDICINE" by HARRISON wherein the author has defined the nature and seriousness of the disease 'septicemia' as follows:-

"The host's reaction to invading microbes involves a rapidly amplifying polyphony of signals and responses that may spread beyond the invaded tissue. Fever or hypo-thermia, tachypnea, and tachycardia often herald the onset of sepsis, the systemic inflammatory response to microbial invasion. When counterregulatory control mechanisms are overwhelmed, often as the microbe moves from a local site to invade the bloodstream, homeostasis may fail, and dysfunction of major organs may supervene (severe sepsis). Further failure of counterregulatory control leads to septic shock, which is characterized by hypotension as well as organ dysfunction. As sepsis progresses to septic shock, the risk of dying increases substantially. Early sepsis is usually reversible, whereas patients with septic shock often succumb despite aggressive therapy."

10. The learned counsel appearing for the appellants has further drawn my attention to the passage in the book "PATHOLOGIC BASIS OF DISEASE" by ROBBINS wherein the author has discussed the seriousness of the disease 'shock' which reads as follows:-

"Shock, commonly called circulatory collapse, may develop following any serious assault on the body's homeostasis, such as profuse hemorrhage, severe trauma, extensive burns, large myocardial infarction, massive pulmonary embolism, or bacterial sepsis. Whatever the clinical provocation, at the most fundamental level shock constitutes widespread hypoperfusion of tissues due to reduction in the blood volume or cardiac output, or redistribution of blood, resulting in an inadequate effective circulating volume."

In the said book at page 118, the author has given a chart how an injury resulting in infection can lead to shock and thereafter multiple organ failure and lastly to death. Even A.W.2 Dr.J.Balasubramaniam, Nephrologist who treated the deceased, has opined that shock and septicemia can ultimately lead to multiple organ failure.

11. It has to be seen that the first appellant in her sworn affidavit has stated that during his life time, the deceased was hale and healthy and before the accident, he did not have any kidney problem. Further, it is apparently evident on record that the deceased who had suffered crush of right leg in the untoward incident which lead to amputation of right leg below knee and spreading of infection further resulting in septicemia, shock and renal failure and ultimately, the death of the deceased is directly attributable to the injuries sustained by him in the rail accident which took place on 6.3.1999.

12. Further, it has to be seen that in the claim application, the appellants have clearly stated as follows:-

"It was diagnosed that by reason of injury which he had suffered in the accident, the deceased had developed renal failure due to shock/septicemia. He had also suffered a cirrhosis of liver resulting in jaundice. The doctors of the centre who treated the deceased advised that in view of the renal failure and cirrhosis of liver, the deceased would not live longer and there is no scope for further treatment other than the kidney transplantation. However, before such a treatment could be given, he died on 7.7.1999. The death was directly attributable to the injuries sustained by the deceased in the rail accident which occurred on 6.3.1999."

13. In the reply statement, no specific denial has been made with regard to the above statements made in the claim application. In paragraph 2, it has been averred as follows:-

"The respondent submit that the deceased while alighting from the running Train No.729 was run over by the train at Maniachi Junction on 6.3.1999 and injured in the right leg only. The respondent submit that the passenger train No.729 in which the deceased travelled stops sufficient time for de-training and entraining of passenger. Therefore, this incident is due to the rash and negligent act of the deceased. Hence, the respondent is not liable to pay any compensation under Section 124(A)(b) of the Railways Act 1989. The respondent further submits that the deceased who sustained injury at Maniachi Junction was taken to the hospital at Tirunelveli and was given the treatment only for the right leg and other treatment was given necessitated for the deceased due to the injury sustained for falling from train, the deceased was discharged from hospital on 8.3.1999. Therefore, it is evident that the death of the deceased was not due to the injury sustained for falling from train."

14. The said reply statement will amply prove that there is no denial with regard to the fact that due to the injury sustained by the

deceased in the accident, he had developed renal failure due to shock and septicemia. Further, there is no denial about the fact that the deceased suffered cirrhosis of liver resulting in jaundice. The above narration of facts will clearly show that the deceased was a bona fide passenger holding a valid season ticket for travel and that his death is directly attributable to the injuries sustained by him in the rail accident which occurred on 6.3.1999 and hence, the appellants are entitled to compensation of a sum of Rs.4,00,000/-. The Railway Claims Tribunal, Chennai Bench without considering those aspects has held that the death of deceased was not directly attributable to the injuries sustained by him in the accident as claimed by the appellants and awarded only a sum of Rs.1,20,000/-.

15. In the result, the order of the Railway Claims Tribunal, Chennai Bench made in O.A.No.7 of 2000 dated 28.3.2001 is modified to the effect that the appellants will be entitled to compensation of a sum of Rs.4,00,000/- and not Rs.1,20,000/- as awarded by the Tribunal. The Civil Miscellaneous Appeal is allowed. No costs.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

dpp

To

1. The Railway Claims Tribunal, Chennai Bench.
2. The Section Officer, V.R.Section, High Court, Madras.

1 cc To Mr.T.Rajamohan, Advocate, SR.29890.  
1 cc To Mr.V.G.Suresh Kumar, Advocate, SR.30273.

C.M.A.No.748 of 2001

MBS (CO)  
RVL 09.05.2007

WEB COPY