

Mayadevi vs the General Manager

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Court : Kerala

Decided On : Dec-21-2021

Judge : Honourable Mr.Justice Murali Purushothaman

Appeal No. : WP(C)/21612/2015

Appellant : Mayadevi

Respondent : The General Manager

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN TUESDAY, THE 21ST DAY OF DECEMBER 2021 / 30TH AGRAHAYANA, 1943 WP(C) NO. 21612 OF 2015 PETITIONERS: 1 MAYADEVI, W/O.SREEKANDAN NAIR, AGED 43 YEARS RESIDING AT SANTHOSH BHAVAN, CHARIVULA, KAVINPURAM, KATTACHALKUZHAY POST, BALARAMAPURAM, THIRUVANANTHAPURAM- 695 509. 2 DHARSHANA M.S. D/O.SREEKANDAN NAIR, W/O.ABHILASH, RESIDING AT SANTHOSH BHAVAN, CHARIVULA, KAVINPURAM, KATTACHALKUZHAY POST, BALARAMAPURAM, THIRUVANANTHAPURAM- 695 509. 3 VINODKUMAR M.S. S/O.SREEKANDAN NAIR, RESIDING AT

SANTHOSH BHAVAN,CHARIVULA, KAVINPURAM,
KATTACHALKUZH P.O, BALARAMAPURAM,
THIRUVANANTHAPURAM- 695 509. BY ADVS. DR.V.N.SANKARJEE
SMT.N.SHOBHA SRI.A.S.SREEKANTH RESPONDENTS: 1 THE
GENERAL MANAGER SOUTHERN RAILWAY, HEAD QUARTERS,
CHENNAI- 600 209. 2 THE DIVISIONAL RAILWAY MANAGER
THIRUVANANTHAPURAM DIVISION, SOUTHERN RAILWAY,
THIRUVANANTHAPURAM- 695 584. BY SRI.P.K.RAMKUMAR, SC,
RAILWAYS THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 07.10.2021, THE COURT ON 21.12.2021 DELIVERED THE
FOLLOWING: WP(C) 21612-2015 ..2..

JUDGMENT

The petitioners are the widow and two children of late Sreekandan Nair, who died on 23.07.2012, after being hit by a passenger train while crossing Aluvila Rail Cross at Balaramapuram on 20.07.2012. The petitioners contend that the accident happened while the deceased was crossing an unmanned level cross at a curve and there were no signals installed by the railway administration. According to the petitioners, the accident happened due to the negligence of the railway administration and therefore the respondents are liable to pay compensation as per the provisions of the Railways Act, 1989 and the Railway Accident and Untoward Incidents (Compensation) Rules, 1990. It is further contended that, since the deceased was not a passenger in a train, the petitioners are unable to approach the Railway Claims Tribunal under Section 16 of the Railway Claims Tribunals Act, 1987 and the only remedy available to the petitioners WP(C) 21612-2015 ..3.. is to approach this Court under Article 226 of the Constitution of India.

2. A counter affidavit is filed by the respondents

wherein it is stated that disputed questions of facts are involved in the writ petition which cannot be decided in a proceedings under 226 of the Constitution of India. It is also stated that the accident occurred on 20.07.2012 and in view of Article 72 of Part VII of the 1 st Division of Schedule I of the Limitation Act, 1963, a suit for tortuous action has to be instituted within one year from the date of the action or

omission and therefore, even a suit is hopelessly time barred and foreclosed and cannot be agitated by invoking the writ jurisdiction of this Court. According to the respondents, the accident happened due to the negligence of the deceased while he was crossing the railway track and the accident will not come within the purview of Chapter XIII of the Railways Act, 1989 and the Railway Accident and Untoward Incidents WP(C) 21612-2015 ..4.. (Compensation) Rules, 1990.

3. Heard Sri. V. N. Sankarjee, the learned Counsel for the petitioners and Sri. P. K. Ramkumar, the learned Standing Counsel for the respondents.

4. Sri. Sankarjee submits that the accident occurred

for want of sufficient safeguards at level crossing by the respondents and therefore the respondents are liable to pay compensation for the death of Sreekandan Nair. The learned Counsel relied on the decisions of the Division Bench of the High Court of Orissa at Cuttack in Parikhita Behera and Another v. Divisional Railway Manger, South Eastern Railway and Others [1998 ACJ 1019] and Laxmi Priya Sahoo and Another v. Divisional Railway Manager, East Coast Railway and Another [2012 ACJ 2535] to contend that the writ court can exercise jurisdiction to pay compensation, where accidents have occurred to persons other than passengers in train due to the negligence of the railways. WP(C) 21612-2015 ..5..

5. In Parikhita Behera (supra), one Susanta Behera,

a student of class IX, while passing through an unmanned level crossing in a bicycle was hit by a train and died at the spot. The Division Bench, at paragraph 21 of the decision, held as follows:-

21. Regard being had to the materials on record and the provisions of law as discussed above, we find that in the instant case where a railway line crosses the highway and public path, reasonable protection must be taken to reduce the damage to the public to the minimum. The railway authorities for years together cannot keep their eyes closed or ignore the recurring accident due to unmanned level crossing. For more than two decades the railway authorities cannot remain unconcerned, not taking

effective steps in manning the level crossing at the spot in question. The facts convince us that the railway authorities were negligent in keeping the unmanned level crossing open which became an accident spot and suitable steps ought to have been taken. It is also not appreciated as to why the railway authorities have backed out after giving promises and making assurance to pay suitable compensation to the parents of the victim. Minimum expectation was betrayed. The human aspect cannot be overlooked for this bureaucratic attitude to deal with life and liberty of human being which is well protected by the Constitution of this country. The facts of the case convince us that the writ petitioners are well justified to move this writ court for the apathy shown by the railway authorities as the stand taken by them is found to be not only misconceived but a deliberate attempt to add salt to the injury. The relief of compensation is found to be well justified.

WP(C) 21612-2015 ..6..

6. In Laxmi Priya Sahoo (supra), another Division

Bench of the High Court of Orissa at Cuttack held that writ petition is maintainable for payment of compensation if there is deliberate act of negligence on the part of railway administration. In the said case, writ petitions were filed claiming compensation for the death of Prakash Ranjan Sahoo and for injuries sustained by pillion rider Maheswar Sahoo, who were hit by a train while travelling on a motorcycle through an unmanned level crossing. In paragraph 26 of the said decision, the Court held as follows:-

26. To answer the above points, we have carefully examined the facts and rival legal contentions urged in the above writ petitions. As can be seen from the provisions of section 18 of the Railways Act, 1989, the railway administration has the statutory obligation to provide sufficient safeguards to the level crossing by putting railway check gate and keeping it closed at the time when train is due to pass at the level crossing area. In the instant case had the railway administration taken

the precautionary measure either by putting a railway gate and keeping it closed at the time the train was due to pass, or put up some other obstruction which could prevent the public from passing over the level crossing giving them information and notice of the approaching train, the accident of the kind that had happened in this

WP(C) 21612-2015 ..7..

case could have been avoided. After receiving notice under section 113 from the petitioners as per the Railways Act, 1989, an inquiry must have been conducted by the railway authorities under sections 114 and 115 of the Railways Act, 1989. If such report would have been produced, then it could have disclosed whether there is negligence on the part of the railway administration on account of which the accident took place resulting in death of the deceased and severe injuries to the minor boy. Therefore, the said inquiry report as required under section 113 of the Railways Act having not been produced, this court draws an adverse inference against the Railways that there is negligence on the part of the railway administration in not taking sufficient precautionary measures by posting guard or keeping the railway gate closed at the time while the train was due to pass through that level crossing. Non-compliance with the aforesaid statutory obligations by the railway administration, we reject the contentions urged by the learned counsel for the Railways that there are serious questions of disputed

facts and due to carelessness on the part of the

deceased and the injured the alleged accident occurred on the fateful day resulting in death of deceased and severe injuries to the minor boy. For the above reasons, we hold that the writ petitions are maintainable in law.

7. On going through the aforesaid decisions, I find

that in all those cases, the accidents have happened while the victims were crossing the level cross or passing through the thoroughfare across the railway

line. It was accordingly the Courts have held that under Section 18 of the Railways Act, 1989, the railway administration has WP(C) 21612-2015 ..8.. statutory obligation to provide sufficient safeguards at level crossing by putting railway check gate and keep it closed at the time when train is due to pass at the level crossing area. The Courts have also held that there is obligation on the part of the railway administration to ensure that whenever a railway passes over a thoroughfare, adequate warning should be given to the public about the passing of the train at the time they pass so that, accidents may be avoided.

8. In this case, there is no evidence to show that the

accident has happened either at a level crossing or where the railway lines passes over a thoroughfare. The petitioners mainly relied on Ext.P1 FIR, Ext.P3 Inquest Report and Ext.P4 report of the Additional Sub Inspector of Police under Section 174 of Cr.P.C. in support of their contention that the accident happened at a level crossing. From these documents, it is not clear as to whether the accident happened at the railway crossing or near the WP(C) 21612-2015 ..9.. railway crossing or when the deceased was walking through the railway line. The documents produced along with the writ petition are not sufficient to show that the accident happened at a level crossing, particularly, when the respondents dispute the same. Section 2(22) of the Railways Act, 1989 defines 'level crossing' to mean an inter-section of a road with lines of rails at the same level. There is no evidence to show that the deceased was a road user and was run over by the train at a 'level crossing'.

9. Section 2 (29) of the Railways Act, 1989 defines

'passenger' to mean a person travelling with a valid pass or ticket. Chapter XIII of the Railways Act, 1989 deals with liability of railway administration for death and injuries to passengers due to accidents. Section 123 (a) defines 'accident' and provides that accident means an accident of the nature described in Section 124. Section 124 of the Railways Act, 1989 reads as follows; WP(C) 21612-2015 ..10..

124. Extent of liability.-When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or has suffered a loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident. Explanation.-For the purposes of this section passenger includes a railway servant on duty.

Here, it will be apposite to refer to the definition of 'untoward incident' defined under Section 123 (c) of the Railways Act, 1989, which reads as follows:- 123(c) untoward incident means-

(1) (i) the commission of a terrorist act within the meaning of sub-section (1) of section (3) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987);or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in WP(C) 21612-2015 ..11.. any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers. Section 124-A deals with compensation on account of untoward incidents and reads as follows:-

124A. Compensation on account of untoward incidents. -When in the course of working a 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 such as would entitle a passenger who has been injured or the dependent of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident: Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to-

- (a) suicide or attempted suicide by him;
- (b) self-inflicted injury;
- (c) his own criminal act;
- (d) any act committed by him in a state of intoxication or insanity;
- (e) any natural cause or disease or medical or surgical

treatment unless such treatment becomes necessary due to injury caused by the said untoward incident. Explanation.-For the purpose of this section, passenger includes-

- (i) a railway servant on duty; and
- (ii) 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. WP(C) 21612-2015 ..12..

10. Under the Railways Act, 1989, liability of the

railway administration to provide compensation is limited to rail passengers who are victims of accidents of the nature described in Section 124 or untoward incidents defined in Section 123 (c). The deceased will not come within the purview of the said provisions. Therefore, the petitioners are not entitled for compensation under Section 124 or Section 124A. Sri. Sankarjee also relied on the decision of the Hon'ble Supreme Court in Union of India v. Rina Devi [2018 (2) KHC 920: 2018 (2) KLT 1060: AIR 2018 SC 2362: (2019) 3 SCC 572] and the Division Bench decision of this Court in Union of India v. A. Geetha and others [2017 (3) KHC 303] to contend that the burden is on the railway administration to prove the untoward incident or the accident. Those were cases where the railway administration disputed the claim of the petitioners that WP(C) 21612-2015 ..13..

the victims were passengers. Therefore, the Courts held

that, where the claimant has discharged his initial burden that he was a bonafide passenger, then the burden will shift on the railways. In the case at hand, the petitioners have no dispute that the deceased was not a passenger. There are no materials before this Court to arrive at a

conclusion that the accident occurred due to the

negligence of the railway administration. The petitioners have not made out a case for grant of compensation under Section 124 or Section 124A of the Railways Act, 1989 and accordingly, the writ petition is dismissed without prejudice to avail any other remedy as may be available in law. No order as to costs. Sd/- MURALI PURUSHOTHAMAN JUDGE WP(C) 21612-2015 ..14.. APPENDIX PETITIONERS' EXHIBITS: P1:TRUE COPY OF F.I.R 680/2012 DATED 23.7.2012 OF THE BALARAMAPURAM POLICE STATION. P2:TRUE COPY OF THE POSTMORTEM REPORT PM NO.1920/12 DATED 24.7.2012. P3:TRUE COPY OF THE INQUEST REPORT DATED 24.7.2012 IN FIR P4:TRUE COPY OF THE REPORT UNDER SECTION 174 IN FIR NO.680/12 OF THE BALARAMAPURAM POLICE STATION.

P5:TRUE COPY OF THE DEATH CERTIFICATE DATED 28.7.2012 ISSUED BY THE SUB REGISTRAR OF BIRTHS AND DEATH, THIRUVANANTHAPURAM

CORPORATION. P6:TRUE COPY OF THE LEGAL HEIRSHIP CERTIFICATE
DATED 25.3.2013 ISSUED BY THE VILLAGE OFFICER. spc/

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