

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2016

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.2343 of 2009  
and MP.No.1 of 2009

The Union of India owning  
Southern Railway,  
Rep. by its General Manager,  
Chennai.

...Appellant/Respondent

Vs.

1.Parimala  
2.S.Gugan  
3.S.Sarala  
4.S.Shakila  
5.Minor S.Manikandan  
6.Varadmmal

...Respondent/Applicants

Prayer : Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987 against the order dated 28.01.2009 passed by the Railway Claims Tribunal, Chennai Bench, received by the Railways on 10.02.2009 in O.A.No.32 of 2007 to be set aside and stay the order dated 28.01.2009 till the disposal of the above civil miscellaneous application.

For Appellant :Mr.L.Rajasekar  
For Respondents :Mr.T.Rajamohan

JUDGMENT

This appeal is preferred by Union of India, Southern Railway, against the award passed by the Railway Tribunal in awarding compensation. One Sundaramuthy, a milk vendor while travelling in EMU/MA3 train in vendor's compartment from Veppampattu to Arakkonam had fallen from upper berth, suffered injuries and died. His heirs preferred a claim under Sec.123 (c) (2), 124-A and 125 of the Railway Act, 1989.

2. The only defence taken by the appellant was that the deceased did not fall as stated that he was travelling in the vendor's coach, where there is no upper berth, and that there was only a luggage rack provided to keep the luggage of the vendor,s and that a mere lying of the dead body in the vendor coach cannot

imply that there was an untoward incident within the meaning of Sec.123 (c) of the Railways Act, 1989.

3. The Railway Claims Tribunal has taken note of the two witnesses for the applicants, as well as R.W.1, examined by the appellant, and came to an irrefutable conclusion that the body of Sundaramurthy was found inside the coach. The Tribunal further relied on Ext.A7, the inquest report as well as the postmortem report to come to the conclusion that the deceased suffered internal injuries owing to sudden jerk of the train, and held that Sundaramurthy died in an untoward incident within the meaning of Sec.123(c). It accordingly awarded Rs.4,00,000/- lakhs as statutorily prescribed under Sec.124-A of the Railway Act. It may be that, the factual presentation of the claimants before the Tribunal might not have been accurate. Consequently, Sundaramurthy might have not fallen from the upper berth. However, there is no case for the appellant that Sundaramurthy was not a bonafide passenger or that he did not travel in the train. Nor could it bring his death under any one of the exceptions enumerated in the proviso to Section 124-A of the Railway Act. On the contrary as has been rightly found by the Tribunal, the inquest report and the postmortem certificate provide a different version. There is no contra evidence to disprove these evidences to deflect its ultimate effect. I therefore find the award of the Railway Claims Tribunal is in order and consequently this appeal is liable to be dismissed.

4. In conclusion, I find no merit in the appeal and hence it is dismissed but without costs. The appellant is directed to deposit the award amount as determined by the Railway Claims Tribunal with accrued interest, less any amount already deposited within four weeks from the date of receipt of a copy of this order and thereupon, the claimants are permitted to withdraw the same forthwith and apportionment of respective shares to the claimants as determined by the Tribunal remains intact. Consequently, connected miscellaneous petition is closed.

Sd/-  
Asst.Registrar (CO)

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Sub Asst. Registrar

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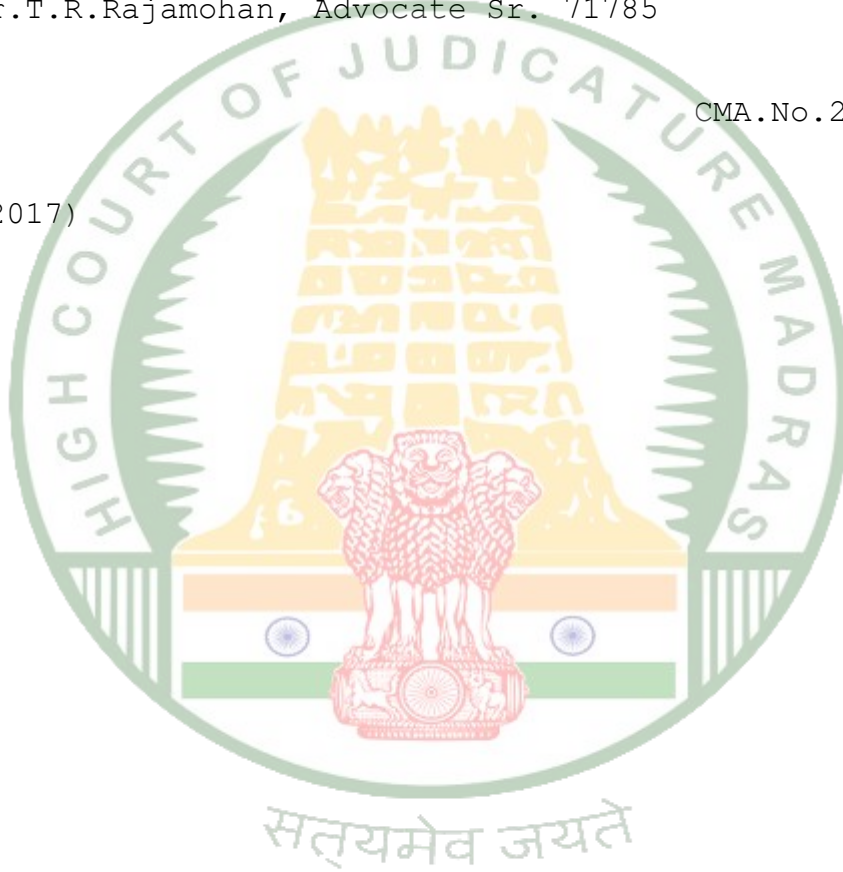
To

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

+1cc to Mr.T.R.Rajamohan, Advocate Sr. 71785

CMA.No.2343 of 2009

SR(CO)  
VR(11/08/2017)



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