

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.11.2015

DATE OF DECISION : 03.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.Nos.3508 & 2787 of 2008

A.Thanikachalam

Smt.T.Parvathi

... Appellants 1 & 2 in C.M.A.No.3508 of 2008

Tmt.Krishnaveni

Minor Gunaseelan

Minor Sheela

(Appellants 2 & 3 Minors
rep.by mother and natural

guardian 1st Appellant) ... Appellants 1 to 3 in C.M.A.No.2787 of 2008

-Vs-

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

... Respondent in both the C.M.A's

Memorandum of Grounds of Civil Miscellaneous Appeals filed under Section 23(1) of the Railway Claims Tribunal Act, 1987 read with Section 16 of Railways Act, 1989, against the orders dated 10.09.2008 & 29.4.2008 made in O.A.Nos.51 & 121 of 2006 respectively on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellants :: Mr.S.Parthasarathy

For Respondent :: Mr.J.Harikrishna

JUDGMENT

C.M.A.No.3508 of 2008 has been filed by the parents of the deceased-T.Jagan and C.M.A.No.2787 of 2008 has been filed by the wife and two minor children of the deceased-Ekambaram, assailing the impugned orders dated 10.09.2008 & 29.4.2008 passed in O.A.Nos.51 & 121 of 2006 respectively by the Railway Claims Tribunal, Chennai Bench, whereby the claim of the appellants for payment of compensation of Rs.4,00,000/- each with interest at 12% per annum from the date of incident till the date of payment, for the death of T.Jagan and Ekambaram respectively due to the accidental fall from the moving trains on the respective dates was rejected by the Tribunal.

T.Jagan filed O.A.No.51 of 2006 before the Railway Claims Tribunal, Chennai Bench seeking for compensation of Rs.4,00,000/- on the ground that their son, aged about 20 years, left the house on the morning of 10.4.2006 at about 7.00 AM by saying that he was going to attend the Ramakrishna Matriculation Higher Secondary School, West Mambalam to write the monthly test after purchasing a monthly season ticket for his travel between Chengalpattu and Mambalam and later came to know from the Railway Police, Chengalpattu that their son, while travelling in a EMU train between Chengalpattu and Singaperumal Koil stations at KM-B56/16, was hit by an electric post, sustained injuries on the back side of his head, accidentally fallen down and died on the spot, which went unnoticed by the driver of the EMU. However, the driver of the EMU TC9 which came towards Tambaram noticed that their son was lying in a pool of blood at the scene of occurrence and passed on the information to the Station Master, Chengalpattu, who in turn lodged a written complaint to the Railway Police, Chengalpattu. Thereupon a case was registered under Section- 174 Cr.P.C., in Crime No.79 of 2006. The appellants/applicants also filed the copies of the FIR, death report, final report, death certificate and the legal heirship certificate and ration card in support of their claim and also undertook to produce the inquest report. They also pleaded that since the monthly season ticket with which the deceased travelled on the ill fated day was not retrieved by the Railway Police, Chengalpattu, they would produce the same if it was retrieved/traced out later.

3. A detailed reply statement was filed by the respondent resisting the claim that T.Jagan had not travelled by an EMU train on the alleged date of accident and that he had not accidentally fallen down from the train between Chengalpattu and Singaperumal Koil stations due to hit by electric post. The respondent also pleaded that the case was constructed by the appellants based on the inquest report and not based on any eye-witness report. It was also pleaded that the alleged incident might have happened due to the negligence of the deceased and not due to overcrowding of the train and therefore the respondent was not liable to pay any compensation under Section 124A of the Railways Act, because the alleged death of T.Jagan would not come under the definition of "untoward incident" of the Act. It was also averred that the deceased was not a bona fide passenger on the alleged date of incident, because the Government Railway Police had not recovered the journey ticket, accordingly prayed for dismissal of the application.

4.The facts in brief leading to the filing of the C.M.A.No.2787 of 2008 are as follows. The wife and minor children of the deceased-Ekambaram filed O.A.No.121 of 2006 before the Railway Claims Tribunal, Chennai Bench seeking for compensation of Rs.4,00,000/- on the ground that Ekambaram, a construction worker at Parrys, Chennai, was returning from his work along with his associates on 28.5.2002 in the EMU train from Beach station and in between Chetpet and Nungambakkam railway stations near the rail over bridge, the said Ekambaram fell down from the train and died due to the blunt injury to chest and abdomen. The appellants/applicants also filed the copies of the FIR, inquest report, final report, death certificate, legal heirship certificate and post mortem certificate in support of

their claim. They also pleaded that the journey ticket of the deceased was lost.

5. A detailed reply statement was filed by the respondent resisting the claim that Ekambaram had not fallen down from the train between Chetpet and Nungambakkam stations on the alleged date of incident and that the respondent was not liable to pay any compensation under Section 124A of the Railways Act, because the alleged death of Ekambaram would not come under the purview of Section 123(C) (2) of the Act. It was also pleaded that the deceased was not a bona fide passenger, because the journey ticket was not produced, accordingly prayed for dismissal of the application.

6. Based on the pleadings of the parties, the Tribunal framed the following issues for consideration:-
O.A.No.51 of 2006:

- (i) Whether the applicants prove that T.Jagan, S/o A.Thanikachalam was a bona fide passenger at the time of incident as alleged?
- (ii) Whether the applicants prove that they are the only dependants of the deceased T.Jagan?
- (iii) Whether the applicants prove that the deceased T.Jagan sustained injuries and died in an untoward incident while travelling by EMU train on 17.2.2006 between Chengalpattu and Singaperumalkoil RS at KMB56/16?
- (iv) Whether the respondents prove that the applicants are not entitled to any relief for the reasons set out in para 2 & 5 of the reply statement and whether the respondent disproves the case of the applicants?
- (v) Whether the applicants are entitled to any compensation and if so, how much?
- (vi) What relief?"

O.A.No.121 of 2006:

- (i) Whether the applicants prove that Ekambaram, S/o Kulanthaipaiyan was a bona fide passenger at the time of incident as alleged?
- (ii) Whether the applicants prove that they are the only dependants of the deceased Ekambaram, S/o Kulanthaipayan?
- (iii) Whether the applicants prove that the deceased Ekambaram, s/o Kulanthaipaiyan sustained injuries and died in an untoward incident on 28.05.2002 evening while travelling by EMU train in between Chetpet RS and Nungambakkam RS in Railway over bridge?
- (iv) Whether the respondent proves that the applicants are not entitled to any relief for the reasons set out in paras 3 & 5 of the reply statement and whether the respondent disproves the case of the applicants?

(v) Whether the applicants are entitled to any compensation and if so, how much?

(vi) What relief?"

7. So far as the issue No.1 in O.A.No.51 of 2006 was concerned, the Tribunal, after examining the mother of the deceased as A.W.1 and upon perusal of the documents marked from Exs.A1 to A6 through her and after discarding the evidence of one M.Sathish Kumar, a friend and co-passenger of the deceased, who was examined as A.W.2 as not reliable, held that the appellants/applicants have not come out cleanly and clearly in regard to the purchase and possession of the travel authority and also the evidence adduced by them lacks consistency, throwing up doubts on the veracity and therefore held that the deceased cannot be treated as a bona fide passenger of the train in question and answered the issue in favour of the respondent. So far as the issue No.2 was concerned, the Tribunal, after corroborating the contents of the Ex.A6-Legal Heirship certificate issued by the Tahsildar, Kanchipuram dated 7.9.2006 with Ex.A2-Inquest report, held that the parents of the deceased, namely, the appellants/applicants are the dependants under Section 123(b) (i) of the Railways Act and answered the issue in favour of them. So far as the issue Nos.3 & 4 are concerned which are interrelated, the Tribunal, relying upon the documents filed by the appellants/applicants, namely, Ex.A1-FIR, Ex.A2-Inquest report, Ex.A3-Final report, Ex.A4-Death certificate and Ex.A5-Post-mortem certificate, found that the deceased on 10.4.2006 prior to 9.15 AM while travelling by EMU train between Chengalpattu and Singaperumal Koil railway station at KM-B56/16 was accidentally hit by electric post, sustained grievous injuries and died on the spot and that the police have concluded the case as accidental death and closed the case. The Tribunal also found that the respondents did not adduce any evidence to establish that the incident would not come under Section 123(c) (2) of the Railways Act and not liable under Section 124A of the Act. Accordingly, the Tribunal categorically held that the appellants/applicants have proved that the deceased died in an untoward incident on 10.4.2006 while travelling by the train in question and answered the issues in favour of the appellants/applicants. However, on the ground that the deceased was not a bona fide passenger, the Tribunal held that the appellants are not entitled for any compensation and answered the issue No.6 against the appellants/applicants, giving rise to the filing of C.M.A.No.3508 of 2008.

8. So far as the issue No.1 in O.A.No.121 of 2006 was concerned, the Tribunal, after examining the wife of the deceased as A.W.1 and upon perusal of the documents marked from Exs.A1 to A5 through her, the report of the DRM on the side of the respondent and after discarding the evidence of one R.Murugan, an eye-witness, who was examined as A.W.2 as not reliable, held that the deceased was not a bona fide passenger of the train on the day in question and answered the issue in favour of the respondent. So far as the issue No.2 was concerned, the Tribunal, after corroborating the contents of Ex.A6-Legal Heirship certificate issued by the Tahsildar, Chengam, although found their status mentioned therein as the wife

and two minor children of the deceased, refused to hold that the appellants/applicants are the dependants under Section 123(b)(i) of the Railways Act, since no material/evidence was made available about the financial dependency or otherwise of the mother and father of the deceased and accordingly refused to answer the issue fully in favour of the appellants/applicants. So far as the issue Nos.3 & 4 are concerned which are interrelated, the Tribunal, going by the contradictory statements made by both A.W.1 and A.W.2 and upon considering the evidence of A.W.2-eye witness as regards the timings of the incident being in conflict with what is indicated in the documents available on record, held that there was no untoward incident as alleged by the appellants/applicants and answered the issue No.3 against the appellants/applicants and issue No.4 in favour of the respondent. In the light of the above findings, the Tribunal held that the appellants are not entitled for any compensation and answered the issue Nos.5 & 6 against the appellants/applicants, giving rise to the filing of C.M.A.No.2787 of 2008.

9. Assailing the impugned orders, Mr.S.Parthasarathy, learned counsel for the appellants in both matters, taking support from the inquest report filed by the Chengalpattu Railway Police Station in Crime No.79 of 2006 under Section 174 Cr.P.C., dated 10.4.2006 so far as the deceased-T.Jagan was concerned, submitted that when the cause of death of the deceased has been accepted that the deceased, while travelling in a EMU train, had dashed against a post, sustained grievous head injuries and died on the spot and that there were no other reasons for his death, since he had fallen down from the UP train, the burden lies upon the Railways to prove that the deceased was not a bona fide passenger. Even in the case of the deceased-Ekambaram was concerned, the inquest report shows that the deceased while travelling in a train plying between Beach and Tambaram, had fallen down in between Chetpet and Nungambakkam railway stations on 28.5.2002. But the Tribunal miserably failed to consider the judgments of the High Courts on this aspect holding that the benefit of doubt that the deceased could have been a bona fide passenger should be given while dealing with a beneficial piece of legislation. In support of his submissions, the learned counsel relied upon a judgment of this Court in the case of Rajathi and others v. Union of India, 2001 (1) TLNJ 146, wherein it has been held that the burden lies upon the Railway to prove that the deceased was not a bona fide passenger and when the Railway fails to prove the same, the presumption is that the deceased was a bona fide passenger. He also relied upon a judgment of this Court in the case of Union of India v. G.Loganayaki and others, 2008 (1) TCJ 108 holding that the burden of proof that the deceased held a valid ticket is impossible to be discharged by the dependants who can have no means or knowledge about the ticket purchased by the deceased. Again citing one another judgment of the Andhra Pradesh High Court in the case of Union of India v. Baburao Koddekar and another, AIR 2003 AP 23, the learned counsel further submitted that after the Amendment Act 28 of 1994 came into force inserting Section 124-A to the Railways Act, 1989 with effect from 1.8.94, in order to claim compensation, the burden is not cast on the claimants to prove negligence, wrongful act or default on the part of the railway administration as, under the Scheme of the Railways Act, a fixed

compensation of Rs.4 lakhs is provided in cases of death on account of untoward incidents without any elaborate enquiry about the income, age or status of the deceased. Hence the only factor relevant is whether the passenger is a bona fide passenger having a valid journey ticket and the procedure for such adjudication is only summary in nature. Therefore, after the amendment was brought to Sections 123 and 124 of the Act, the burden is on the Railways to prove that the deceased is not a bona fide passenger with a valid ticket and the nature of death falls within any of the exceptions to Section 124.

10. Again placing reliance on a judgment of the Division Bench of the Kerala High Court in the case of Union of India v. Leelamma and others, AIR 2009 Kerala 134 reiterating the principle that the burden to establish that the deceased was not a bona fide passenger lies on the Railway administration, the learned counsel contended that when the inquest report clearly shows that the deceased-T.Jagan, while travelling in the train between Chengalpattu and Singaperumal koil stations, had dashed against an electric post, as a result, he sustained injuries, fallen down and died on the spot and that the deceased-Ekambaram had fallen down in between Chetpet and Nungambakkam stations and died on the alleged dates and when the Railway administration after being afforded an opportunity has failed to adduce evidence that both the deceased were travelling without a ticket, a presumption has to be drawn under Section 114 of the Evidence Act, keeping in view of the prohibition under Section 68 of the Act against boarding a train without ticket, that the deceased were bona fide passengers and on this basis, the claim petitions ought to have been allowed by the Tribunal.

12. Opposing the above prayer, Mr.J.Harikrishna, learned counsel for the respondent submitted that only the dependants of a bona fide passenger are entitled to get compensation in the event of death occurring in an accident. But in the cases of hand, when the Tribunal has rightly held that the both the deceased were not bona fide passengers, as they were not in possession of journey tickets or valid travel authority, the appeals cannot be entertained as such. In support of his submissions, he has relied upon a Full Bench judgment of the Allahabad High Court in the case of Smt.Sundri and others v. Union of India and another, AIR 1984 Allahabad 277, wherein the view taken by the Division Bench of the Allahabad High Court in the case of Smt.Yashoda Devi v. Union of India, AIR 1979 Allahabad 287 holding that the word "passenger" as used in Section 82-A did not include within its ambit a person travelling by train from one place to another without ticket or some other lawful authority, was held to be the correct law.

13. Heard the learned counsel for the parties.

14. It is no doubt true that the parents of the deceased-T.Jagan laid the claim before the Railway Claims Tribunal on the ground that the deceased-Jagan, while travelling in a EMU train between Chengalpattu and Singaperumal Koil stations on 10.4.2006, was hit by an electric post, as a result, he sustained injuries on the back side of his head and died on the spot after falling down. Upon consideration of the evidence let in by the parties, both oral

and documentary, more particularly, Ex.A2-Inquest report and Ex.A3-final report, the Tribunal categorically held that the deceased on 10.4.2006 prior to 9.15 AM while travelling by EMU train between Chengalpattu and Singaperumal Koil Railway stations at KM/B-56/16 was accidentally hit by electric post, sustained grievous injuries and died at the spot and that the police have concluded the case as accidental death and accordingly closed their case. The Tribunal also held that the respondent have not adduced any evidence to establish that the incident would not come under Section 123(c)(2) of the Railways Act, 1989 and the respondent is not liable under Section 124A of the said Act. Moreover, the Tribunal went on to hold that the applicants, the appellants herein have proved that the deceased died in an untoward incident on 10.4.2006 while travelling by the train. After holding so, the Tribunal has clearly erred in dismissing the claim petition only on the ground that the deceased was not a bona fide passenger. When the inquest report filed by the Chengalpattu Railway Police Station in Crime No.79 of 2006 under Section 174 Cr.P.C., dated 10.4.2006 itself clearly revealed that the deceased-Jagan, while travelling in a EMU train had dashed against a post, sustained grievous head injuries and died on the spot and that there were no other reasons for his death, since he had fallen down from the UP train, the burden lies upon the Railways to prove that the deceased was not a bona fide passenger. Similarly, in the case of the deceased-Ekambaram is concerned, when the claim petition was filed by the wife and minor children of the deceased on the ground that the deceased while travelling in a train plying between Beach and Tambaram had fallen down in between Chetpet and Nungambakkam railway stations on 28.5.2002 and died due to the injury to the chest and abdomen, the respondent resisted the said claim also on the ground that the deceased was not a bona fide passenger, when the inquest report shows that the incident had actually taken place on the said date. Moreover, the Tribunal also discarded the evidence of one R.Murugan, an eye-witness, who was examined as A.W.2, on the ground that his statement was contradictory to the materials available on record. In my view, the Tribunal miserably failed to consider the judgments of the various High Courts, holding that the benefit of doubt that the deceased could have been a bona fide passenger should be given, while dealing with a beneficial piece of legislation. In this context, it is relevant to refer to the judgment of the Hon'ble Apex Court in the case of Union of India v. Prabhakaran Vijaya Kumar and others, (2008) 4 MLJ 323 (SC), wherein the Apex Court, while interpreting the expression "accidental falling of a passenger from a train carrying passengers" which is an "untoward incident" under Section 123(c)(2) of the Railways Act and the consequential payment of compensation under Section 124A for such "untoward incident", has held that it is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation. In the said judgment, the Apex Court has further held as follows:-

"14. In our opinion, if we adopt a restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in

Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford travelling by air or in a private car. By giving a restrictive and narrow meaning to the expression, we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger i.e., a passenger travelling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression."

15. In the cases on hand, as mentioned already, when it is an admitted fact that both the deceased died in an untoward incident on the respective dates while travelling in the train, the onus is on the Railways to prove that the deceased were not bona fide passengers, since the normal presumption is that a passenger in a train holds a valid ticket. In fact, under similar circumstances, this Court in the case of *The Union of India owning Southern Railway by its General Manager, Chennai v. G.Jayalakshmi and others*, 2012 (3) CTC 741, while considering an identical issue, has held as follows:-

"15. This Court in similar circumstances in the case of *S.Poonkodi and others v. The Union of India, Southern Railway*, CDJ 2007 MHC 3784, observed as hereunder:-

"16....Moreover, if the deceased had travelled as a ticketless traveller, one would normally expect the Railway Authorities to have detected such ticketless travelling. When a person dies in an accident by falling down from train, it is not possible for the legal representatives to produce the ticket or valid authority to travel in the train. Depending upon the facts and circumstances of a given case, the Tribunal/the Appellate Court infer about the deceased being a bona fide passenger. In the present case, facts and circumstances prima facie indicate that the deceased was a bona fide passenger, who lost his life in the railway accident."

16. At this juncture, it is also relevant to point to the observation made by the Honourable

Supreme Court reported in Bimla Devi and others v. Himachal Road Transport Corporation and others, 2009 (1) TN MAC 700 (SC) : AIR 2009 SC 2819, wherein while dealing with a claim arising under the Motor Vehicles Act, the Honourable Supreme Court observed that it was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the Claimants and the Claimants were merely to establish their case on the touchstone of preponderance of probability. It went on to observe that the standard of proof beyond reasonable doubt could not be applied in the case of Claim Petitions.

17. It is no doubt true that the position of law as provided in Section 106 of the Evidence Act is that if a fact is within the special knowledge of a person, the burden of proving such fact is on that person and as provided in Illustration (b) of that Section, if a person is charged with travelling on a railway without a ticket, the burden of proving that he had a ticket is upon him. But, such principle is not applicable to a case of a dead person, who was proved to have died in the course of railway travel and whose body was taken in custody of the Railway Police. In such a situation, it is the duty of the Railway Authority to first give evidence that he was without a valid ticket and if such evidence is given, the onus shifts upon the Claimants to prove that he was a bona fide passenger having a valid ticket. In this case, as no person on behalf of the Railways has given any such evidence nor as any person come forward to disclose as to what articles were found with the victim, I am of the considered view that the initial burden of proving the said fact had not been discharged. In such circumstances, in the absence of any evidence of the Railway Authorities asserting absence of valid ticket, I am of the opinion that there is no just reason to discard the evidence of the Claimants...."

16. In the light of the above, since the issue squarely falls within the definition of "untoward accident" under Section 123(c) (2) of the Railways Act, 1989 and that the appellants/claimants in each case are entitled to the compensation as provided in the Schedule to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, the impugned orders dated 10.9.2008 & 29.4.2008 passed in O.A.Nos.51 & 121 of 2006 by the Railway Claims Tribunal are set aside and both the civil miscellaneous appeals are allowed. The appellants/applicants in each case are entitled to the compensation of Rs. 4,00,000/- (Rupees four lakhs only) with interest at the rate of 6% per annum from the date of petition till the date of award and thereafter at the rate of 9% per annum till the date of realisation.

The respondent is directed to deposit the entire compensation amount along with interest in each case to the credit of the O.A.Nos.51 & 121 of 2006 on the file of the Railway Claims Tribunal, Chennai Bench within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellants are permitted to withdraw the entire compensation amount. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

ss

To

1. The Railway Claims Tribunal
Chennai Bench

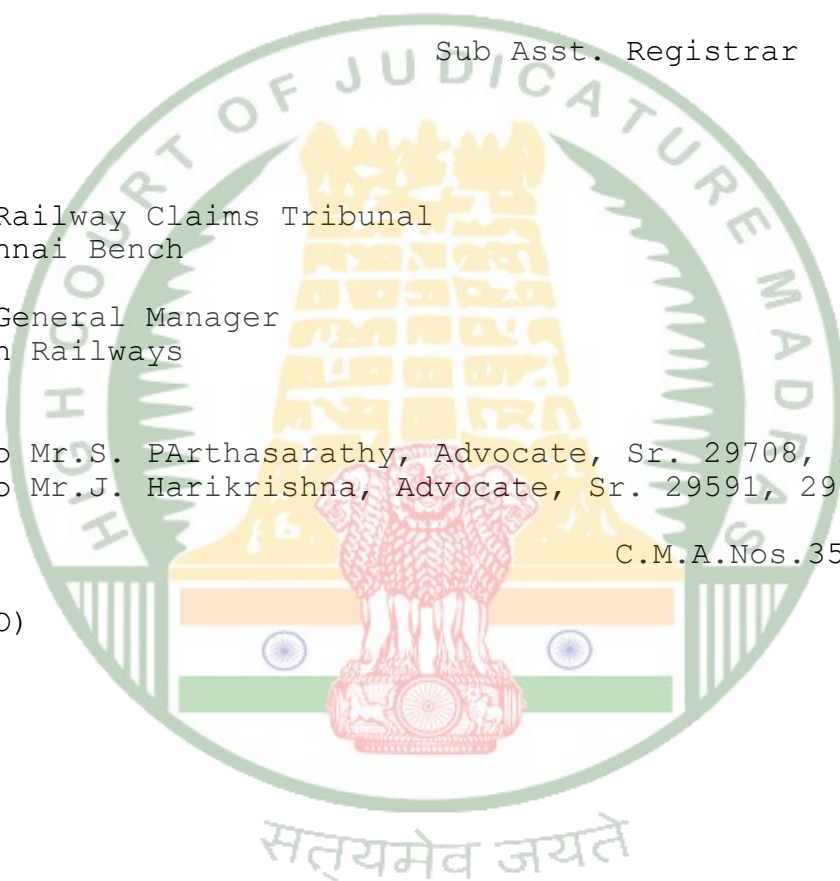
2. The General Manager
Southern Railways
Chennai

2 ccs to Mr.S. Parthasarathy, Advocate, Sr. 29708, 29709

2 ccs to Mr.J. Harikrishna, Advocate, Sr. 29591, 29592

C.M.A.Nos.3508 & 2787 of 2008

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