

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.12.2017

CORAM

THE HON'BLE MR. JUSTICE M.DURAISWAMY
C.M.A.No.361 of 2016

1.S.Pothum Selvam
2.P.Bhuvaneshwari

... Appellants

v.

The Union of India
Owning Southern Railway
Rep. by its General Manager
Chennai - 600 003.

... Respondent

Civil Miscellaneous Appeal filed under Section 23 of Railway Tribunal Act 54 of 1987 against the order dated 08.09.2015 in OA (II-U) 208/2014 passed by the Railway Claims Tribunal, Chennai Bench.

For Appellants : Mr.T.Raja Mohan
For Respondent : Dr.S.R.Sundaram, Standing Counsel

J U D G M E N T

Challenging the order passed in OA (II-U) 208/2014 on the file of Railway Claims Tribunal, Chennai Bench, the claimants, who are the parents of the deceased S.Arun Kumar, have filed the above Civil Miscellaneous Appeal.

2.According to the appellants, the deceased for a student studying Plus-one in a School at Ariyalur. He was staying with his grand-father at Ariyalur. On weekends and holidays, he used to visit his parents at Srirangam. On 27.01.2014, after visiting his parents for weekend, he left Srirangam informing the 1st appellant that he was proceeding to his School at Ariyalur by Train. He used to travel by purchasing Second Class ticket. The appellants came to know from the police authorities that when the Train was proceeding between Kallagam and Sillakudi Railway Station, due to such, speed and jerk of the Train, he accidentally fell down and suffered grievous injuries and died at the place of occurrence. The 1st appellant was informed by seeing the Adhar Card of the deceased and he was identified by him. FIR was lodged by the 1st appellant and a case was registered at Virudhachalam Railway Police Station in Crime No.7/2014 dated 28.01.2014. The inquest was conducted by the Sub Inspector of Police, Ariyalur and the Panchayatars have unanimously held that the deceased had died due to the injuries suffered in the accidental fall from the Train.

3.The appellants filed the Claim Petition claiming a compensation of Rs.4,00,000/- for the death of Arun Kumar. The

Tribunal dismissed the petition finding that the deceased was not a bonafide passenger, since he has not produced the Railway Ticket.

4. Heard Mr.T.Raja Mohan, learned counsel appearing for the appellants and Dr.S.R.Sundaram, learned standing counsel appearing for the respondent.

5. Mr.T.Raja Mohan, learned counsel appearing for the appellants-claimants submitted that non-production of the train ticket is not fatal to the case of the claimants and that the burden of proof lies on the respondent-Railway to establish that the victim was not a bona fide passenger. Further, the learned counsel submitted that the issue involved in the present appeal is whether the non-production of the Railway ticket is fatal to the case of the claimants or not. In support of his contentions, the learned counsel relied upon the following judgements:-

(i) 2008 (4) MLJ 323 [Union of India v. Prabhakaran Vijayakumar and others], wherein, the Hon'ble Supreme Court, in paragraph Nos. 12 to 15 held as follows:-

"12. 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 vide Alembic Chemical Works Co. Ltd. vs. The Workmen AIR 1961 SC 647 (para 7), Jeewanlal Ltd. vs. Appellate Authority AIR 1984 SC 1842 (para 11), Lalappa Lingappa and others vs. Laxmi Vishnu Textile Mills Ltd. AIR 1981 SC 852 (para 13), S. M. Nilajkar vs. Telecom Distt. Manager (2003) 4 SCC 27 (para 12) etc.

13. In Hindustan Lever Ltd. vs. Ashok Vishnu Kate and others 1995 (6) SCC 326 this Court observed:

"In this connection, we may usefully turn to the decision of this Court in Workmen vs. American Express International Banking Corporation wherein Chinnappa Reddy, J. in para 4 of the Report has made the following observations:

The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put

in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds*). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surender Kumar Verma v. Central Govt. Industrial Tribunal-cum- Labour Court* we had occasion to say:

"Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions."

Francis Bennion in his *Statutory Interpretation Second Edn.*, has dealt with the Functional Construction Rule in Part XV of his book. The nature of purposive construction is dealt with in Part XX at p. 659 thus:

"A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive and strained construction).

"

At p. 661 of the same book, the author has considered the topic of "Purposive Construction" in contrast with literal construction. The learned author has observed as under:

"Contrast with literal construction - Although the term 'purposive construction' is not new, its entry into fashion betokens a swing by the appellate courts away from literal construction. Lord Diplock said in 1975: 'If one looks back to the actual decisions of the [House of Lords] on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions'. The matter was summed up by Lord Diplock in this way -

...I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it."

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 traveling 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 traveling 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. Section 2 (29) of the Railways Act defines 'passenger' to mean a person traveling with a valid pass or ticket. Section 123(c) of the Railways Act defines 'untoward incident' to include the accidental falling of any passenger from a train carrying passengers. Section 124A of the Railways Act with which we are concerned states :

"124 A. Compensation on account of untoward incident. - 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 dependant 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 purposes of this section, "passenger" includes -

- (i) a railway servant on duty; and
- (ii) a person who has purchased a valid ticket for traveling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident".

(ii) 2012 (3) CTC (Civil) 741 [The Union of India owning Southern Railway by its General Manager, Chennai v. Secy to Govt. of India and others] wherein, this Court, in paragraph

Nos.13 and 17, held as follows:-

"13. The further dispute of the Appellant is based on the plea that the deceased was not a bona fide passenger. The only ground, on which the contention is based, is that the train ticket was not produced in evidence and no ticket was found in possession of the deceased. The claimants had a specific case pleaded that the deceased was holding a journey ticket, but the same was lost in the accident. The burden is on the Railways to prove that the deceased is not a bona fide passenger. The normal presumption is that a passenger in a train holds a valid ticket.

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 providing 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. Therefore, the Tribunal is perfectly justified in rejecting the contention of the Appellant that the deceased was not a bona fide passenger. The Tribunal is perfectly justified in holding that the deceased died on account of the accidental falling from the train and therefore, I do not find any warrant for interference with the said findings.

(iii) An unreported judgment of this Court made in C.M.A. No.2049 of 2008 [P. Rosi v. Union of India, Owing Southern Railway, Rep. by General Manager, Chennai - 600 003], dated 01.02.2013, wherein this Court, in paragraph No. 19

held as follows:-

"19. As per the above decisions, the burden lies upon the Railway Authorities to prove that the deceased is not a bonafide passenger. Now this Court has to decide whether the Respondent/Railway Administration has proved that the deceased is not a bonafide passenger. Perusal of Ex.A.2-inquest report reveals that nothing has been seized from the body of the deceased Rajan. It is pertinent to note that there is no contra evidence on the part of the respondent. This Court has already discarded Ex.R.1-attendance Register, since it is not a genuine document. It is not the case of the respondent that the belongings of the deceased has been recovered, except the ticket and pass. Hence the decision of this Court rendered on 13.8.2012 in CMA.No. 1685 of 2009 (The Union of India V. The Addl. Registrar, Railway Claims and another), is squarely applicable to the facts of the present case."

(iv) 2010 (5) MLJ 676 [General Manager, Union of India owning Southern Railway, owning South Central Railway Secunderabad v. V.Lakshmana Rao and others] wherein, this Court, held as follows:-

"As per Section 124-A of the Railways Act, 1989, a passenger to be treated as a bona fide passenger need not possess a valid ticket for the same train in which he had an accidental fall. therefore, the liability to pay compensation by the Railways in case of an untoward accident cannot be disputed in such case and the dependants of the victim are entitled to compensation."

(v) 2016 (6) CTC 820 [A.Thanikachalam and others v. The Union Of India, owning Southern Railway, Rep. by its General Manager, Chennai] wherein, this Court, in paragraph Nos. 13 to 16 held as follows:-

"13. 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.

14. 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.

15. 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.

16. 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."

(vi) AIR 2009 Kerala 134 [Union Of India, v. Leelamma & Ors] wherein Kerala High Court, in paragraph No.9 held as follows:-

"9. The question mooted for consideration is whether due to mere non-production of the ticket, an adverse inference can be drawn by the Tribunal that the person got injured and succumbed to death was travelling without a valid journey ticket and that he was not a bona fide passenger. According to the claimants the deceased was holding journey ticket and the same was lost in the accident. The normal presumption is that a passenger in a Railway holds a valid ticket. When the appellant/respondent contends that the deceased was a passenger who fell down while attempting to board a train, the burden is heavily upon them to prove that he attempted such Journey without purchasing a ticket. Since that burden is not discharged by the Railway, the Tribunal is perfectly justified in rejecting the contention that the deceased was not a bona fide passenger. The Railway Tribunal in such cases are perfectly Justified in drawing a presumption that the person concerned was travelling or attempting to travel with a valid ticket and in such case the passenger cannot be termed as "not a bona fide passenger".

6. Countering the submissions made by the learned counsel appearing for the appellants, Dr.S.R.Sundaram, learned Standing Counsel appearing for the respondent submitted that the only issue involved in the present appeal is whether the non-production of the ticket by the claimant is fatal to their case. In support of his contention, the learned counsel relied upon a judgment of the Karnataka High Court reported in 2014 ACJ 2505 [Union of India v. Lakshmi and others] wherein, in paragraph No.6, the Karnataka High Court held as follows:-

"6. The relevant provisions of Railways Act are very clear, in that, if a person suffers injury or death in an untoward incident as contemplated under section 123(c)(2) of the Railways Act, 1989, he/his family members is/are entitled to seek compensation provided he is a bona fide passenger with valid ticket. That means, either on his body or in his possession such ticket should be found at the time of accident, which is valid for journey in that particular train for that particular day. If that is not found, then the reasonable presumption is that he was travelling without valid ticket. Assuming for a moment, he has travelled with other passengers and if a valid ticket is produced from the possession of another person travelling along with him also would suffice to show that he was a bona fide passenger with valid ticket."

Further, the learned Standing Counsel appearing for the respondent submitted that since the claimants have not produced the train ticket of the deceased, the Tribunal has rightly dismissed their claim petition.

7. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the claimants have filed the claim petition without producing the ticket purchased by the victim. In the judgments relied upon by the learned counsel appearing for the appellants it has been held that it is not possible for the legal representatives to produce the ticket or valid authority, who travelled in the train, and the burden of proving that the deceased-victim was not a bona fide passenger is on the Railways and not on the claimants.

8. The Apex Court as well as this Court had repeatedly held that the burden of proving that the victim is not a bona fide passenger lies on the Railways and that non-production of Railway ticket is not fatal to the case of the claimants. Therefore, the Tribunal should not have dismissed the petition on that ground.

9. The judgments relied upon by the learned counsel appearing for the appellants squarely applies to the facts and circumstances of the present case.

10. In these circumstances, the order passed by the Railway Claims Tribunal, Chennai Bench, in OA (II-U) 208/2014, is set aside and the matter is remitted back to the Tribunal for reconsideration. The Tribunal is directed to decide

the quantum of compensation payable to the claimants afresh and pass orders, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this judgment.

With these observations, the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

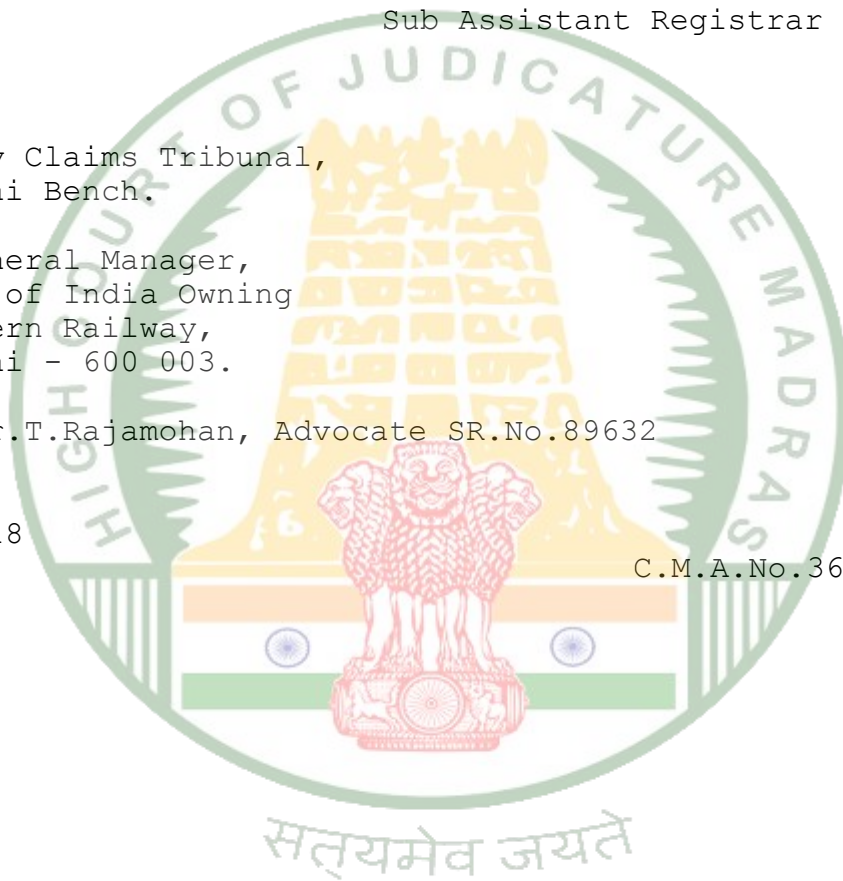
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To

1. Railway Claims Tribunal,
Chennai Bench.
2. The General Manager,
Union of India Owning
Southern Railway,
Chennai - 600 003.

+1cc to Mr.T.Rajamohan, Advocate SR.No.89632

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