

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.2502 of 2009
and M.P.Nos.1 and 2 of 2009

The Union of India Owning
Southern Railways,
Rep. by its General Manager,
Chennai. Appellant/Respondent
Vs.

1. C.Drowpathy
2. M.Vasanthy ... Respondents/Claimants

Prayer : Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987 against the order dated 06.07.2009 in O.A.No.2008 00146 passed by the Railway Claims Tribunal, Chennai Bench.

For Appellant : Ms.T.P.Savitha
Standing Counsel for Railways

For Respondents : Mr.T.S.Rajamohan

J U D G M E N T

Aggrieved over the award passed by the Railway Claims Tribunal, Chennai Bench, in O.A.No.2008 00146, dated 06.07.2009, the Railway has preferred this Civil Miscellaneous Appeal.

2. On death of the husband and the father of the applicants in an untoward incident on 28.05.2008, the applicants preferred an Application in O.A.No.2008 00146, for compensation. The Railway denied the claim on the ground that the deceased was not a bona fide passenger and he suffered grievous injuries and died due to his negligence.

3. Before the Tribunal, in support of the claim, the 1st respondent/1st applicant examined herself as A.W.1 and marked documents as Exs.A1 to A6. On the side of the appellant/respondent, Key man was examined as R.W.1 and no documents were marked.

4. Relying on Ex.A1 - First Information Report; Ex.A2 - Inquest Report; Ex.A3 - Postmortem Certificate; Ex.A4 - Final Report; Ex.A5 - Death Certificate; the Tribunal had come to the conclusion that it was an untoward incident and Ex.A6 - Legal heir Certificate, entitles the applicants to get the compensation.

5. Even though a specific plea was taken by the appellant/Railway that the deceased was not a bona fide passenger, they have not proved the same by sufficient evidence. The mandatory report to be filed by the Deputy Railway Manager was not filed along with the reply statement. The evidence of R.W.1, Key Man, is of little avail, as he was oblivious of the nature of the accident and other factual details of the same.

6. In the absence of any acceptable proof, the Tribunal has rightly rejected the contention of the Railway and awarded the compensation of Rs.4,00,000/-.

7. On perusing the materials on record, this Court does not find any material point to interfere with the award passed by the Tribunal. Though the learned counsel appearing for the appellant vehemently contested that the burden is on the applicants to prove that the deceased was a bona fide passenger as it is alleged that he purchased a ticket, it is not sustainable in view of various judgments of High Courts and Supreme Court.

8. The Tribunal has rightly relied on the judgment of this Court in the case of Union of India Vs. G.Loganayaki and others reported in 2008 (1) TCJ 108, wherein, it was held that the burden of proof is on the Railway and they are expected to let in evidence to substantiate the same.

9. In view of the above, the finding of the Tribunal is correct and in the absence of any evidence with regard to the negligent act of the deceased, the award passed by the Tribunal in O.A.No.2008 00146 dated 06.07.2009 is confirmed. It is submitted that the award amount has already been deposited in the bank and the applicants were permitted to withdraw 50% of the same. The learned counsel for the appellant would produce the deposit receipt in TDR No.TE/BTDN 0818369. Hence, the question of enhancement does not arise for consideration.

10. The respondents/applicants are permitted to withdraw the balance award amount. The Manager, Indian Bank, Madras High Court Branch, is directed to disburse the amount on identifying the parties.

11. With the above directions, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Railway Claims Tribunal, Chennai Bench.

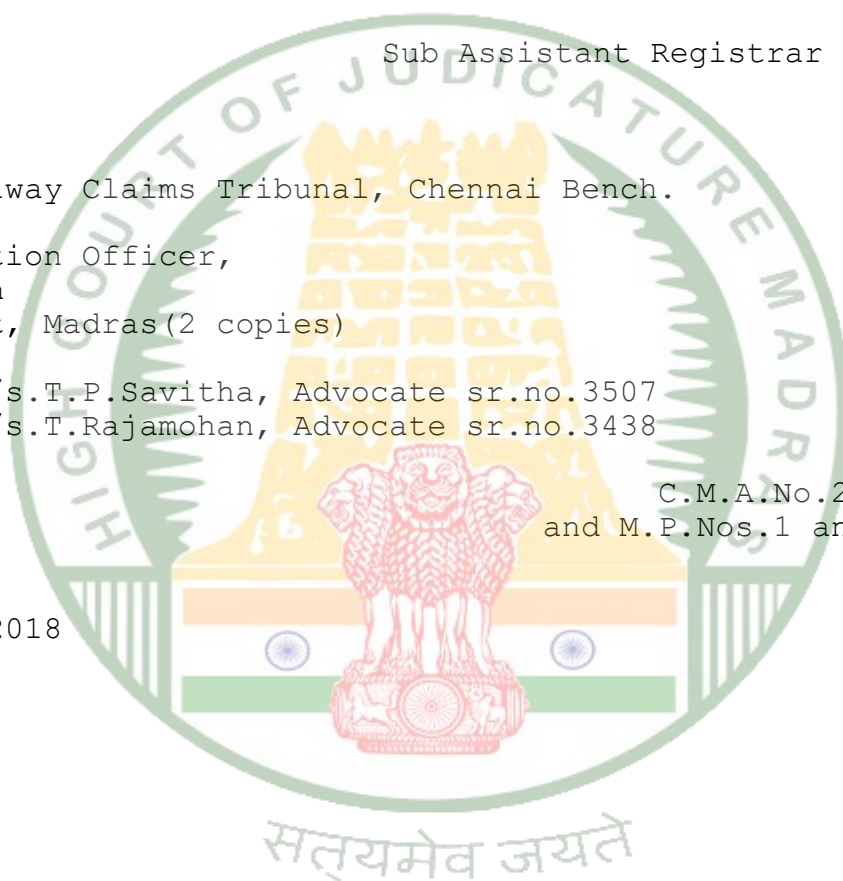
2.The Section Officer,
VR Section
High Court, Madras(2 copies)

+1cc to M/s.T.P.Savitha, Advocate sr.no.3507

+1cc to M/s.T.Rajamohan, Advocate sr.no.3438

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