

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 08-02-2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.3039 OF 2009

The Union of India owning
Southern Railways,
rep.by its General Manager,
Chennai-600 003.

... Appellant /Respondent

-vs-

1.D.Sharmila
2.D.Chandrasekar
3.D.Kamalesh
4.Gnanaram
5.G.Shanthi

... Respondents/Applicants

Respondents 2 and 3 are minors and represented
by their mother and natural guardian D.Sharimla
(1st respondent)

Appeal against the award, dated 31.07.2009, passed in
O.A.No.2008 00023 on the file of Railway Claims Tribunal,
Chennai Bench.

For appellant : Mrs.T.P.Savitha

For respondents : Mr.N.Elumalai for R1 to R4
dismissed as against R5 vide Order
dated 29/10/2012

JUDGMENT

This appeal is directed against the order passed by the
Railway Claims Tribunal, Chennai Bench, in O.A.No.2008 00023,
dated 31.07.2009.

2. The respondents are the legal heirs of one late C.Durairaj,
who suffered death in an untoward train accident, which happened
on 06.03.2007. To prove the claim, the first respondent examined
herself as A.W.1 and marked Exs.A-1 to A-9. On the side of the
appellant, report of the Divisional Railway Manager was marked
as Ex.R-1 and no witnesses were examined. On the basis of Ex.A-

1- F.I.R., Ex.A-3-Death Certificate, Ex.A-4-Death Report, Ex.A-6-Final Report in Crime No.164/2007, Ex.A-7-copy of post-mortem certificate, and, Ex.A-8-copy of inquest report, the untoward incident was found to have taken place on 06.03.2007 and the deceased suffered death consequent to the injuries on 09.03.2007. The Tribunal has found it an untoward incident and, on the basis of Ex.A-5-legal heir certificate, held that the respondents are entitled to compensation. Based on the finding, compensation of Rs.4,00,000/- was awarded.

3.. The appellant-railways has preferred this appeal, on the grounds that no opportunity was given to them to cross-examine the respondents-applicants, in order to establish that the deceased was not a bona fide passenger and they are entitled to claim exemption under Section 124-A of the Railway Act; and that the Tribunal went wrong in fastening the liability on the railways without valid reasons.

4. I have heard the rival contentions.

5. The admitted fact remains that late Durairaj was a passenger in Train No.6627 Chennai - Mangalore Express from Katpadi to Udipi and during the travel he had accidentally fallen down from the moving train between Vaniyambadi and Vinnamangalam on 06.03.2007 and sustained grievous injuries. It is also admitted that he was admitted in Government Hospital, Chennai, and was treated as in-patient till 09.03.2007 and thereafter he succumbed to injuries.

6. Whether the deceased was a bona fide passenger or not, is to be proved by the railways. As held by a Full Bench of Andhra Pradesh High Court in the judgment in Union of India v. Kurukundu Balakrishnaiah, 2004 ACJ 529, the doctrine of strict liability is applicable to the railways and the railways has the burden of disproving the case of the claimants. It is always probable that during the accident the tickets are lost or stolen from the passengers. The benefit of doubt is to be given to the passenger and he is presumed to be a bona fide passenger. The Tribunal has rightly come to the conclusion that the deceased was a bona fide passenger and based on the Railway Notification, has awarded a sum of Rs.4,00,000/- and apportioned it among the legal heirs of the deceased.

7. The wife of the deceased has spoken cogently before the Tribunal and the appellant could not elicit any contra evidence from the witness. Further, the appellant has not let in any evidence nor marked any document to prove that the deceased was not a bona fide passenger. In the absence of any contra evidence, the finding of the Tribunal is very much correct and legal. I do not find any infirmity to interfere with the order

passed by the Tribunal. Accordingly, the impugned order passed by the Tribunal, dated 31.07.2009, is confirmed.

8. Civil Miscellaneous Appeal is dismissed. No costs. Consequently the Connected M.P. No. 1 of 2009 is closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

dixit

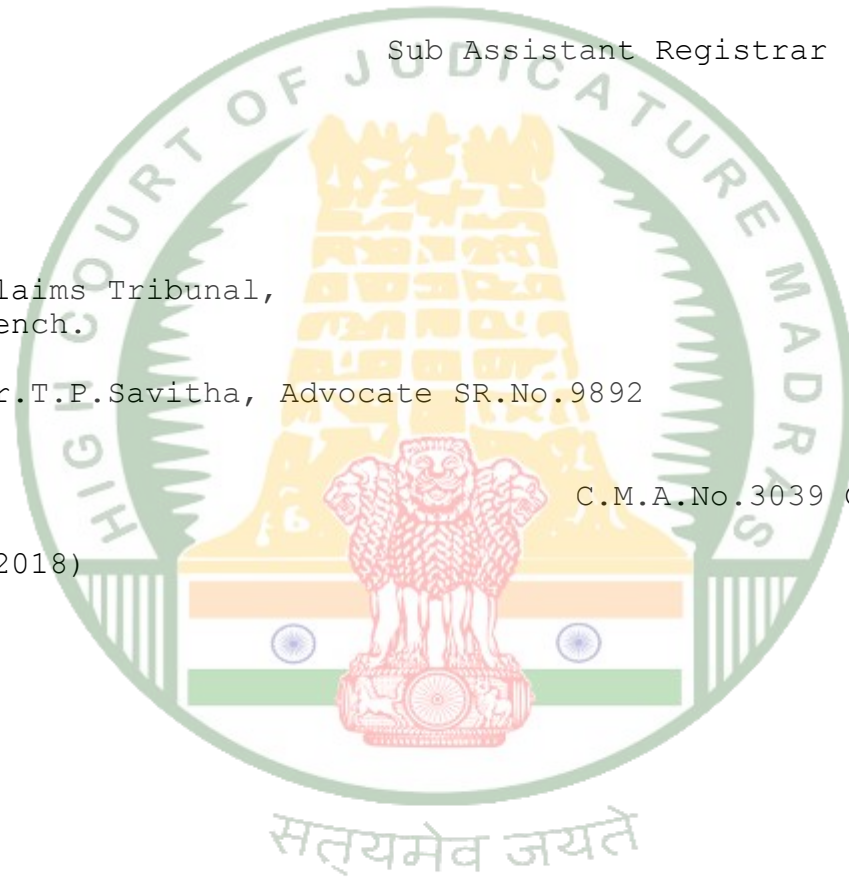
To

Railway Claims Tribunal,
Chennai Bench.

+1cc to Mr.T.P.Savitha, Advocate SR.No.9892

SSD(CO)
GN(02/05/2018)

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