

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 12-01-2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.3050 OF 2009

1.A.Venkateswarlu
2.A.Adilakshmi

...Appellants

-VS-

Union of India,
owning Southern Railway
rep.by General Manager,
Chennai-600 003.

...Respondent

Appeal against the judgment and decree, dated 03.07.2009, passed in O.A.No.109 of 2008, by the Railway Claims Tribunal, Chennai Bench.

For appellants : Mr.T.Raja Mohan
For respondent : Mr.M.Vijay Anand

JUDGMENT

Aggrieved over the dismissal of the claim petition for the death of their son, the claimants have preferred this appeal.

2. The case of the claimants is that their son travelled from Gudur to Chennai by Charminar Express in Train No.2760 on 16.10.2007 along with one Raghavulu, who is a friend and relative. The said Raghavulu requested their son to accompany him to Chennai for personal work and he purchased tickets for both of them. Later, on information from Railway Police, the claimants came to know of the death of their son, due to an untoward incident. Following the death, they filed the claim petition before the Tribunal.

3. Respondent-Railways denied the averments made in the claim petition and also denying the averment that the deceased was a bona fide passenger, and stating that the deceased was holding a season ticket bearing No.100247988 from Gudur to Sullurpet, whereas the accident had taken place at Gummidipoondi, which is beyond Sullurpet and, therefore, the presumption should be that the deceased was a ticketless traveller.

4. To prove their claim, the second claimant was examined herself as A.W.1 and Exs.A-1 to A-8 were marked. On the side of respondent-railways, Station Superintendent was examined as R.W.1 and no documents were marked.

5. The Tribunal framed the following issues for determination :

1. Was the deceased a bona fide passenger by the train, as alleged ?

2. Was there an untoward incident - involving the deceased - envisaged under Section 123 (c) (2) of the Railways Act,1989, as alleged ?

3. Whether all the applicants are the only dependants of the deceased as alleged as per Section 123 (b) (i) to (iv) of the Railways Act,1989 ?

4. Whether all the applicant (s) are entitled to any compensation as per Section 123 (b) of the Railways Act,1989, and if so, the quantum for each ?

5. Whether the applicants are entitled to the interest claimed?

6. To what other relief, if any ?

6. The travel made by the deceased in the train Charminar Express and the untoward incident were held proved by the Tribunal by way of documents. However, on the first issue as to whether the deceased was a bona fide passenger or not, the Tribunal has answered in the negative and the reason stated therefor was, that the claimants have failed to produce the material witness, namely, Raghavulu, who is said to have purchased the ticket for the deceased also, and it was fatal to the case of the claimants. Hence, the Tribunal dismissed the claim petition.

7. I have gone through the material on record.

8. Learned counsel for the appellants has drawn my attention to the evidence of A.W.1 and R.W.1. From a perusal of the chief-examination of the appellant, it is seen that she has spoken about the purchase of ticket and about the travel of her son on the fateful day, on information from somebody else. This factum was not objected to or discredited by the railways. Not even an attempt was made to suggest the statements as false. The cross-examination of A.W.1 is as follows :

"My son travelled from Gudur to Chennai by Charminar Express. The police informed that my son died. I do not know how he died."

9. On the side of respondent-Railways, the Station Superintendent let in evidence, stating that the deceased was travelling in the said train and he died in an untoward incident. In the cross-examination, he would affirm that the deceased was not run over by train and it was informed by the driver of the said Charminar Express also. No other witness was examined on the aspect as to 'bona fide passenger', as stated in the reply statement. Therefore, it can be inferred that there is some evidence on the side of the claimants that the deceased had travelled in the train with ticket. This statement was not controverted to by the railways, which amounts to admission of the fact. In such circumstances, there is no necessity for the claimants to adduce further evidence to prove an admitted fact. Therefore, the Tribunal ought not to have rejected the claim on the point of non-examination of co-passenger as a witness to prove that the deceased was a bona fide passenger.

10. I am of the view that the claimants have proved by evidence that the deceased had suffered death due to the untoward incident, while travelling in the train on 16.10.2007 and he shall be presumed to be a bona fide passenger, in the absence of any evidence on the contra. Accordingly, the order passed by the Railway Claims Tribunal in O.A.No.109 of 2008, dated 03.07.2009 is set aside and this Civil Miscellaneous Appeal is allowed. As per Rule 3 in the Schedule to the Notification issued by the Ministry of Railways in G.S.R.No.1165 (E), dated 22.12.2016, the amount of compensation for death is Rs.8,00,000/-. Since the issue is finally decided today, I grant the sum of Rs.8,00,000/- (Rupees Eight Lakhs only) along with interest at the rate of 12% per annum from the date of petition till the date of deposit. The respondent-Railways shall deposit the said amount within a period of six weeks from the date of receipt of a copy of this judgment and, on such deposit, the appellants are permitted to withdraw the same. No order as to costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar

dixit

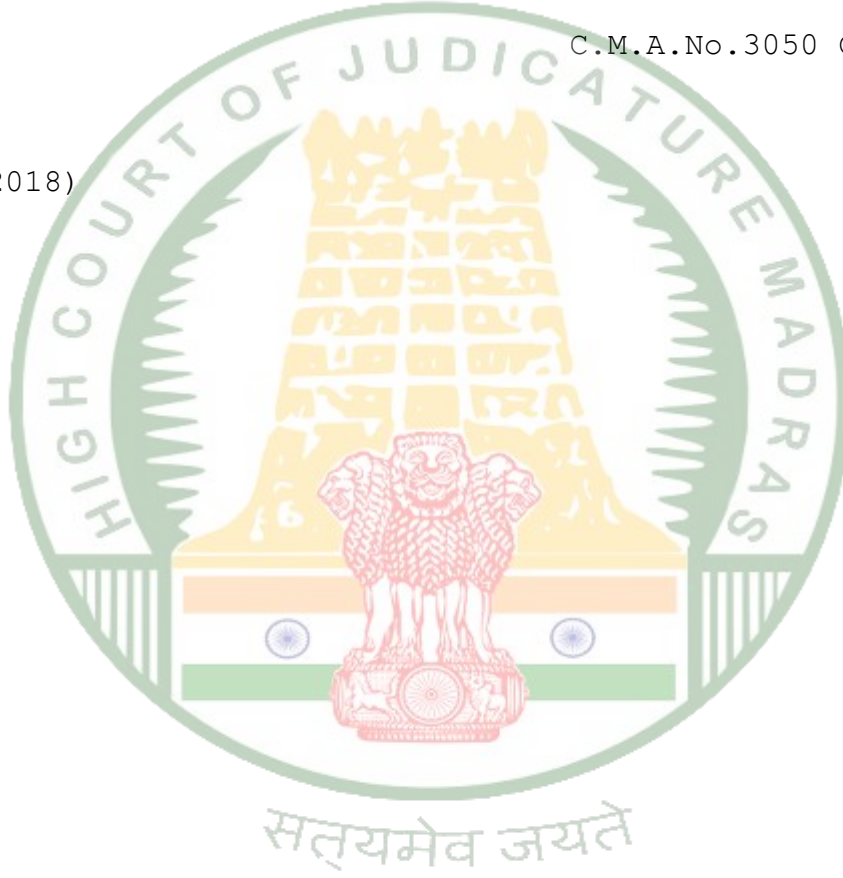
To

Railway Claims Tribunal,
Chennai.

+ 1 cc to M/s. T. Raja Mohan, Advocate SR.3063

C.M.A.No.3050 OF 2009

NRL (CO)
EU (17/04/2018)



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