IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2018

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THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.M.A.No.3517 of 2013
and
MP.No.1 of 2013

The Union of India owning
Southern Railway
Rep.by Its General Manager
Chennai - 600 003. ...Appellant/Respondent

vs.

P.Rajendiran ... Respondent/Applicant

Civil Miscellaneous Appeal filed under Section 23 of Railway Tribunals Act, against the order passed by the Railway Claims Tribunal, Chennai Bench in OA(II-U) 52/2013, dated 30.8.2013.

For Appellant : Mr.M.Vijay Anand
Additional Standing Counsel Railway

For Respondent : Mr.s.Umapathy

J U D G M E N T

This appeal is preferred by Railways against the order passed by the Railway Claims Tribunal, Chennai Bench in OA(II-U) 52/2013 dated 30.08.2013.

2. For an untoward incident happened on 06.03.2012, compensation was awarded in favour of the respondents. The case of the respondent/claimant before the Tribunal was that his mother Kamalammal went to see her son and stayed with him for two days. Then on 06.03.2012 she came to Gudiyatham Railway Station by Auto along with her grand son Bhoopathy and informed him that she was going back by train. She boarded and traveled in train proceeding from Katpadi side to Jolarpettai side. While the train was passing between Melathur and Valathur Railway stations at KM 160/20-22 down line due to heavy rush, speed and jerk of the train, the deceased fell down from the running train and died on the spot due to head injury.

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3. The appellant filed a reply statement resisting the averments made in the claim petition that there was no de-railment or the alleged incident reported to the Driver, Guard or Station Master. Therefore, it would not fall under Section 123 (C)(2) and they are not liable to pay compensation amount under Section 124-A of the Railway Act, 1989. To prove the case, the respondent/applicant examined himself as AW1 and marked Exs.A1 to Ex.A6. On the side of the applicant/respondent report of the Divisional Railway Manager/Chennai Division dated 31.07.2013 has been filed. After going through the oral and documentary evidence in Ex.A5 & Ex.A6 inquest and final report the tribunal had held that it was a case of accidental fall from train and that the respondent/applicant has proved his claim. Even though the appellant Railways filed the report given by the Divisional Manager, they have not proved the case by producing the Driver or Guard of the train to speak about the same. In the absence of any evidence or proof on the side of the Railways the Tribunal had found that the respondent/applicant had proved his case and awarded compensation in his favour. On a reading of the inquest report and final report, it can be clearly inferred that it is a case of accidental fall from train. The applicant deposed cogently that his mother was dropped in Railway Station and she went into the Railway Station and boarded the train.

4. In such circumstances from mere filing of the report by the Divisional Railway Manager, it cannot be presumed that it is a case of run over. In the absence of any evidence it cannot also be presumed that the victim who lives 2 km away from the spot of accident came to the Railway track and tress passed. It is for the Railway to prove their case. The Tribunal has categorically found that the Railway has not proved their case. On the other hand the case of the applicant is proved. Such finding based on oral and documentary evidence and the reason stated by the Tribunal need not be interfered with. The order passed by the Tribunal is confirmed and the Civil Miscellaneous Appeal is dismissed. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-V)

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Sub Assistant Registrar

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To
1.The General Manager,
The Union of India owning,
Southern Railway, Chennai - 600 003.

2. The Railway Claims Tribunal,
Chennai Bench.

+1cc to Mr.M.VIJAY ANAND, Advocate, S.R.No. 12673

C.M.A.No.3517 of 2013
and MP.No.1 of 2013

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