

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 12-01-2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.4181 OF 2008

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

-vs-

Smt.K.Pottukanni. Respondent

Appeal against the award, dated 02.07.2008, passed in
O.A.No.101 of 2007, on the file of Railway Claims Tribunal,
Chennai Bench.

For appellant : Mr.M.Vijay Anand

For respondent : Mr.T.Raja Mohan

JUDGMENT

Aggrieved over the award passed by the Railway Claims Tribunal, awarding a compensation of Rs.4.00 lakhs for the death of one Ranjeeth, son of the respondent, the Railway has filed this appeal.

2. According to the respondent, on 24.12.2006, while he was travelling from Kodambakam to Park Railway Station, he had accidentally fallen down from an EMU train near Chetpet, and, due to the untoward incident, he suffered serious injuries and was admitted to Government General Hospital, Chennai, where, he, without responding to the treatment, died at 18.55 hours. Based on the death, the respondent had laid a claim before the Tribunal for compensation against the Railway. The Railway denied the averments made in the claim petition and took a plea

that the incident had taken place due to carelessness and negligence on the part of the deceased, which did not fall within the meaning of 'untoward incident' under Section 123 (c) (2) of the Railways Act, 1989, and, also on a plea that the deceased was not a bona fide passenger.

3. The Tribunal has framed appropriate issues and held that the ticket purchased by the injured appeared to have lost and was not retrieved by the police and there is no mention about the same in the inquest report as well as in the DRM's report and, therefore, no conclusion would be drawn as to whether the deceased was a bona fide passenger or not; but, on the presumption, giving benefit of doubt to the deceased, it held that he was a bona fide passenger. On the basis of Exs.A-1 to A-10, such as, F.I.R., Inquest Report, 161 Cr.P.C. Statements of the Station Master, and the Post-mortem Certificate, the Tribunal has held that the untoward incident has occurred and there is no evidence to show that the incident was due to negligence on the part of the deceased.

4. Learned counsel for the appellant would vehemently argue that in the absence of any documentary evidence, the Tribunal ought not to have held that the deceased sustained injuries in an untoward incident while travelling in an EMU train and, instead, it should have held that he has fallen down from the train due to carelessness and negligence on his part.

5. From a perusal of the material available on record, it could be elicited that the respondent, to prove her case, has marked Exs.A-1 to A-10. Ex.A-1 is the F.I.R., and Ex.A-2 is the Inquest Report, which would clearly go to show that the death was caused due to the accidental fall and it is substantiated by Ex.A-10, Post-mortem Certificate. On the other hand, the appellant has not let in evidence nor marked any documents to prove their statement. In the absence of any evidence to show that the deceased was indulged in some negligent act and had inflicted injuries on himself, it cannot be said that this case will not fall under Section 123 (c) (2) of the Railways Act, 1989. I do not find any substantial evidence to vary with the finding rendered by the Tribunal and, therefore, the order passed by the Tribunal is confirmed.

6. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected M.P.No.1 of 2008 is closed.

7. Learned counsel for the appellant would submit that they have already deposited the awarded amount and the respondent has withdrawn 50% of the same. In view of the dismissal of this appeal, the respondent is entitled to withdraw

the balance amount. Since the amount has already been deposited by the Railway, C.M.P.No.1294 of 2017, filed by the respondent for enhancement of compensation, is not sustainable, and it is dismissed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

dixit

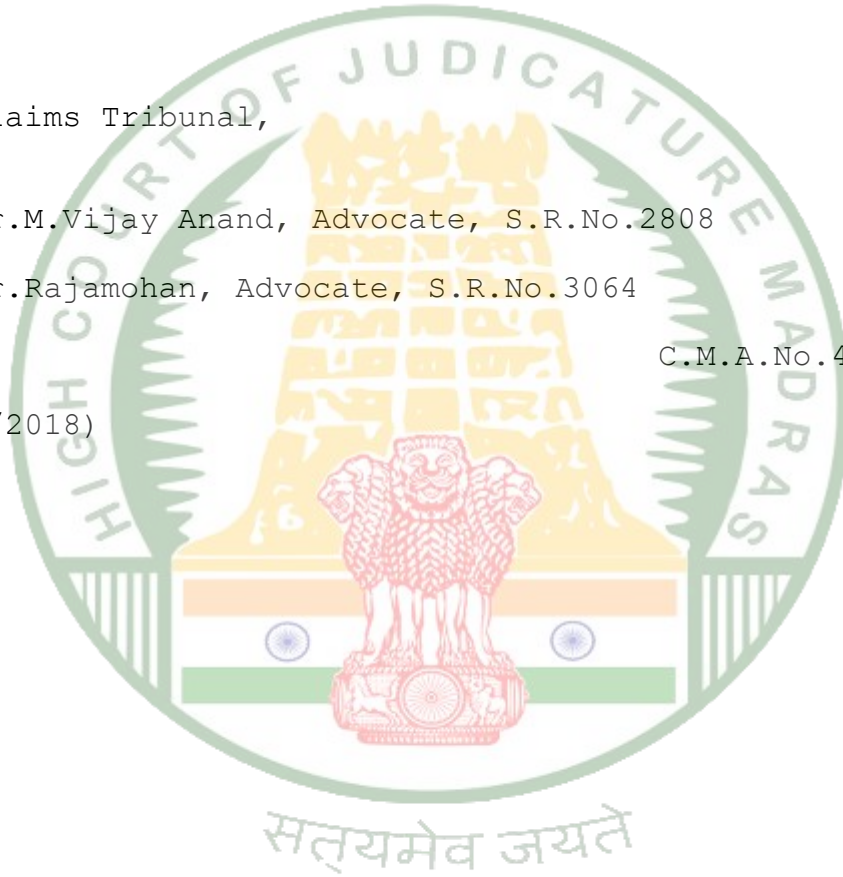
To
Railway Claims Tribunal,
Chennai.

+1cc to Mr.M.Vijay Anand, Advocate, S.R.No.2808

+1cc to Mr.Rajamohan, Advocate, S.R.No.3064

C.M.A.No.4181 OF 2008

MRK(CO)
RRK(21/02/2018)



WEB COPY