

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.689 of 2008

1. Gajendran

2. Revathy

..Appellants/Appellants

Vs.

Union of India,
Owning Southern Railway,
Represented by its General Manager,
Chennai - 600 003.

..Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 23(1) of the Railway Claim Tribunal, Act, 54 of 1987, against the order dated 26.02.2007 passed by the Railway Claims Tribunal, Chennai Bench, in O.A.No.17 of 2003.

For Appellants : Mr.T.Raja Mohan

For Respondent : Mr.M.Vijay Anand
Additional Standing Counsel

J U D G M E N T

Against the rejection of claim by the Railway Claims Tribunal, Chennai Bench, in O.A.No.17 of 2003, dated 26.02.2007, the claimants have preferred this Civil Miscellaneous Appeal.

2. According to the claimants/appellants, from Railway Police, they came to know that their son travelled in the metergauge train on 05.09.2002 prior to 0745 hours, and when the train was running between Thanjavur and Allakkudi Railway Station, he accidentally fell down from the train and succumbed to injuries on the spot, for that, they laid a claim petition.

3. Their entire case is based on inquest report filed by the Police and the Tribunal, considering the materials available before it, has found that the claimants have not proved that the deceased was a passenger and that he suffered death by falling down from the running train.

4. Since the entries made in the inquest report vide Ex.A2 were only presumptive in nature and without any supportive statements recorded by the Police under Section 161 clause (3) of Criminal Procedure Code, and without production of relevant records or eye witnesses or some affirmative statements that the deceased travelled by the train, the respondent/ Railway is not obligated to disprove their statement.

5. In the absence of any materials to show or establish or prove that the deceased died in an untoward incident, the claim petition was held to be not maintainable and was rejected.

6. The learned counsel appearing for the appellants would vehemently contend that in the claim petition, they have stated that on 04.09.2002 at about 20.00 hours in Tiruchy-Thanjavur passenger train, their son travelled and suddenly fell down from the running train and succumbed to the injuries on 05.09.2002.

7. On perused the proof affidavit filed in support of the claim, paragraph (2) of the proof affidavit reads as under:-

"2. I further submit that, I came to know from the Railway police, Thanjavur that, on 05.09.2002 prior to 0745 hours, my son Mathiazhagan travelled in a meterguage train when the train was running in between Thanjavur and Allakkudi railway station, my son Mathiazhagan accidentally fell down from the train and succumbed to injuries on the spot." Other than this, no other statement was made.

8. The learned counsel appearing for the appellants would further contend that during cross-examination the claimant had made a statement that the deceased used train to travel daily and that he travelled in meterguage train was not controverted. Therefore, it should be presumed that the deceased travelled by train.

9. Heard the rival contentions made by the learned counsel appearing for both parties.

10. It is well settled that the Railways Act is a beneficial piece of legislation as held by the Hon'ble Supreme Court in the case of Union of India Vs. Prabhakaran Vijaya Kumar & Others reported in (2008) 9 SCC 527 that liberal/purposive interpretation and not literal or strict interpretation is needed, while considering the claim

petition. But, while applying this beneficial legislation, one should also bear in mind that the claimants should come forward and raise an initial presumption that the deceased or the victim or the passenger falls within the definition of "passenger" and specific details about his travel and probability of death due to accidental fall.

11. In the present case, the entire evidence given by the claimants, who are the parents of the deceased that from the Railway Police, they came to know about the death of their son, while travelling in the train between Thanjavur and Allakkudi Railway Station. Other than this, the routine conduct of deceased as to whether he is employed the place of employment, reason for travel, when he left home, mode of his transport, the time of his departure, availability of train to the destination, time of train departure, his routine conduct regarding taking train ticket and loss or untraceability ticket for travelling are the essential requirements to prove that the victim is entitled for compensation.

12. In the absence of raising the initial presumptions that the deceased or injured travelled by train and he was a bona fide passenger and that he suffered injuries or death due to accidental fall, the Railway cannot be forced to prove the presumptive statements made in the inquest report. Without raising any initial presumption, it cannot be expected that the Railway is liable to pay compensation for each and every death pertaining to death near railways tracks.

13. In the instant case, the body was found near Railway track and the inquest report presumes that the deceased ought to have traveled by a train running between Thanjavur and Tiruchy. But, there is no proof that he traveled in a passenger train and that there are trains running between Tiruchy and Thanjavur at the particular time.

14. In the absence of any affirmative statement or conclusive proof, that the deceased used to travel by train, one cannot even presume that the death was due to accidental fall from the train. Whether the deceased traveled by a passenger train or goods train or run over by a moving train or murdered and thrown from a train to appear like an accident are not known.

15. Therefore, the Tribunal has rightly found that in the absence of any material ascertaining that the deceased traveled by the passenger train and died in an untoward incident, the claim petition is not maintainable.

16. In such circumstances, this Court agreeing with the finding of the Railway Claims Tribunal, Chennai Bench, confirms the order dated 26.02.2007 in O.A.No.17 of 2003. Accordingly, this Civil Miscellaneous Appeal is dismissed with the above observations. No costs.

Sd/-
Assistant Registrar(CS-VIII)

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Sub Assistant Registrar

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To

1. The Railway Claims Tribunal,
Chennai Bench.

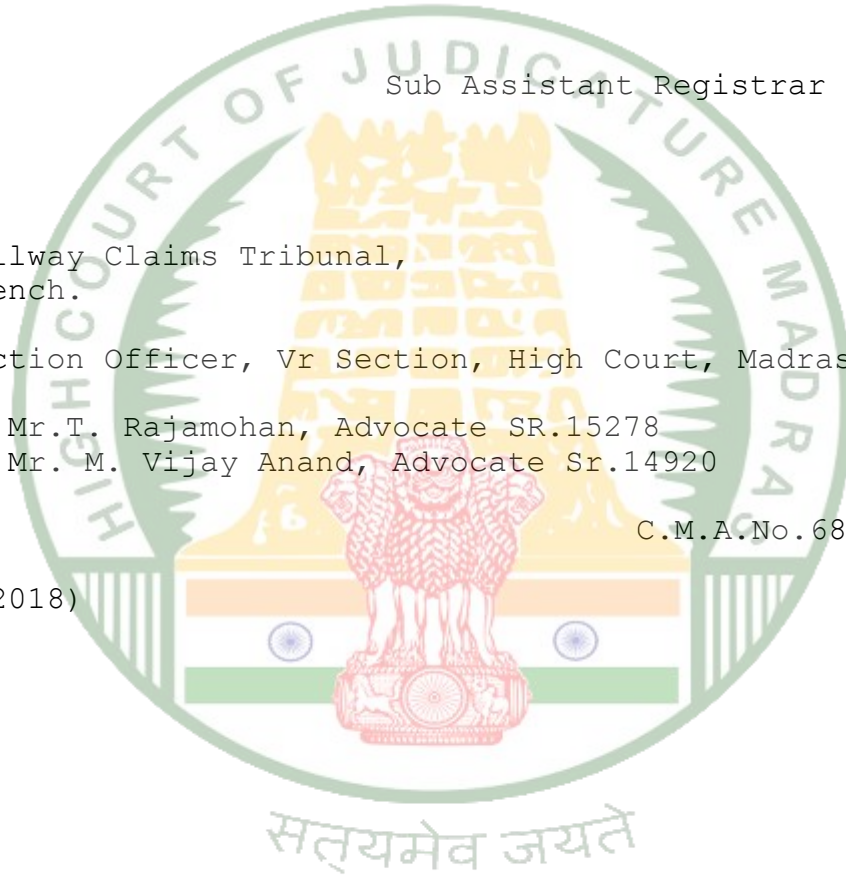
2. The Section Officer, Vr Section, High Court, Madras

+ 1 cc to Mr.T. Rajamohan, Advocate SR.15278

+ 1 cc to Mr. M. Vijay Anand, Advocate Sr.14920

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EU(28/04/2018)



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