

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2019

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

CMA.No.476 of 2011
and
MP.No.1 of 2011

The Union of India Owning
Southern Railways,
Rep.by its General Manager,
Chennai.

... Appellant /Respondent

Vs.

K.Indira

... Respondent/Applicant

PRAYER: Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987 to set aside the final order passed in OA.No.125/2010 dated 19.01.2011 by the Railway Claims Tribunal.

For Appellant : Mr.M.Vijay Anand
For Respondent : Mr.T.Rajamohan

J U D G M E N T

This appeal has been filed by the Appellant seeking to set aside the final order passed in OA.No.125/2010 dated 19.01.2011 by the Railway Claims Tribunal.

2. Aggrieved over the award passed by the Railway Claims Tribunal, the Southern Railways preferred this appeal. The ground raised in the appeal is that the Tribunal has failed to give ample opportunity for the Railways to cross-examine the witness produced by the appellant as well as did not allow the Railway to produce any witness and substantiate their case. He would rely on the Divisional Railway Manager's report which is a crucial document and that the Railway Claims Tribunal has not considered the said document. According to the railways incident will not fall under the 123 (c) (2) of Railways Act and therefore, the award passed by the Railway Claims Tribunal is liable to be set aside.

3. Per contra, the learned counsel appearing for the respondent contended that the respondent appeared before the Tribunal and examined as AW1 and marked Exhibits - A1 to A6 and

she was eventually cross-examined. Hence the contention that opportunity was not granted for letting evidence is absolutely false and untenable.

4. It is further contended that the appellant even though filed the Divisional Railway Manager's Report has not chosen to mark the same as an exhibit and to let in evidence to substantiate the same. Since the appellant has failed to produce oral and documentary evidence, the Tribunal drawn has an adverse inference against the appellant and found in favour of the respondent. Even though it is stated by the appellant that no opportunity was given, I do not find any material to substantiate the same. Even now the appellant has not come out with the specific details as to documents and list of witness but would raise OMNIBUS allegations. In fact the respondent had let in evidence and marked documents and the appellant had cross examined the claimants witness. Hence the allegation proved to be false. In the absence of any proof that opportunity was denied to the appellant, the contention raised by the appellant cannot be accepted. The Tribunal has found its decision on valid and sound reasons and I do not find any infirmity in the same. It was an untoward incident and the deceased was a bonafide passenger and the same has been proved by ample evidence.

5. In such circumstances, the order passed by the Tribunal is affirmed and in result the appeal is dismissed.

6. The Tribunal has awarded Rs.4,00,000/- as per the notification of the Government. The money has not been deposited so far. As per the judgment of The Hon'ble Supreme Court reported in 2018 AIR (SC) 2362, [Union of India Vs. Rina Devi], the claimant is entitled to interest from the date of accident or claim petition with interest. In so far as the award as per notification prior to amendment, the claimant is entitled to receive Rs.4,00,000/- with interest from the date of claim. As per the amended notification the compensation is Rs.8,00,000/- with effect from 01.01.2017. The claimant is entitled to get the compensation in any of the above two methods, which ever is higher. The Railway is directed to deposit the appropriate amount within a period of six weeks. On such deposit the claimant is entitled to withdraw the same on production of proper identification. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Insp Cell)

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Sub Assistant Registrar

bri

To

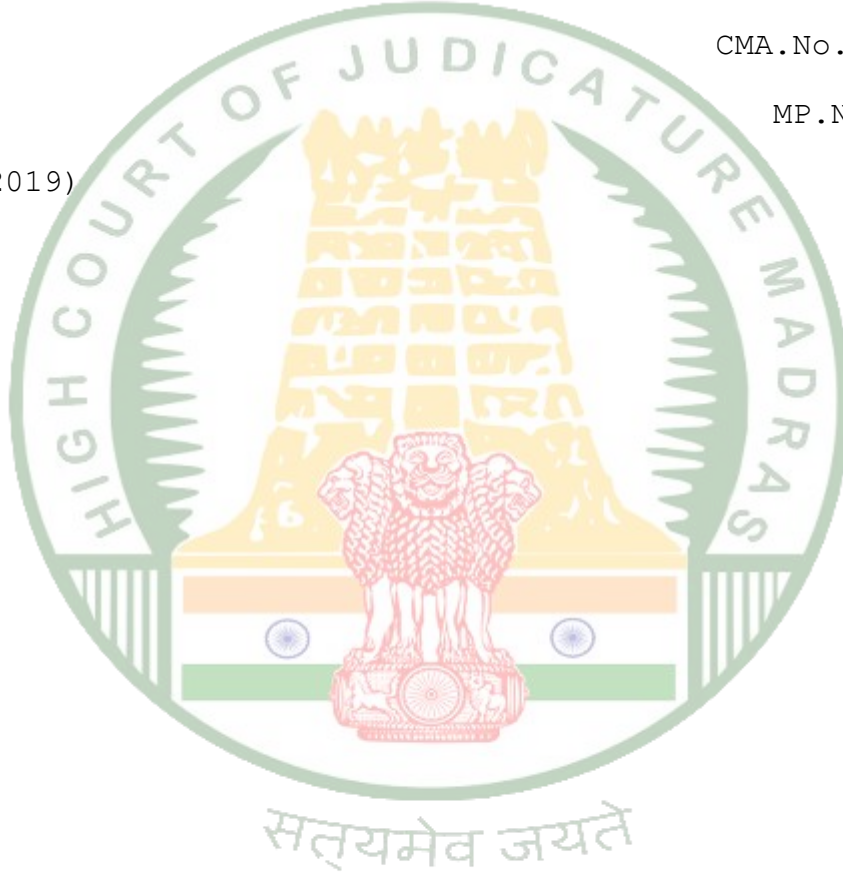
1.The Railway Claims Tribunal,
Chennai.

2.The General Manager,
The Union of Indian,
D Wing, Southern Railway,
Chennai-3

+2cc to Mr.T.Rajamohan, Advocate, S.R.No. 14938

CMA.No.476 of 2011
and
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