

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

CMA NO.2600 OF 2017

Podeswari Bora

... Appellant/Petitioner

Vs.

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

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 23 of Indian Railways Claims Tribunal Act, 1987 against the judgment dated 08.09.2015 made in O.A.(II-U) 348/2013 on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellant : Mr.M.Selvam  
For Respondent : Mr.T.P.Savitha

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant against the judgment dated 08.09.2015 passed in O.A.(II-U) 348/2013 by the Railway Claims Tribunal, Chennai Bench.

2. The claimant is the appellant. The deceased Ranju Bora who died on 13.02.2013 was the son of the claimant. The claimant averred that her son was employed as Machine Operator in a factory at Gummidipoondi. While travelling in a train from Gummidipoondi to Chennai, he fell down from the running train between Athipattu and Minjur Railway Stations and sustained grievous injuries and died on the spot. The journey ticket was lost in the incident. The mother of the deceased laid a claim before the Railway Claims Tribunal on the basis of the untoward incident happened on 13.02.2013.

3. In order to prove the claim, the appellant examined herself as A.W.1 and marked Exs.A1 to A7. On the side of the respondent, the Investigation Officer was examined as R.W.1 and

marked the DRM's report as Ex.R1. The Railway Claims Tribunal after going through the evidence, had found that no ticket was recovered from the deceased and that the purchase of the ticket was not proved by producing any cogent material that the deceased had travelled with a valid pass or ticket, held that the deceased cannot be treated even as a bonafide passenger. Since the deceased was not a bonafide passenger, the claimant is not entitled to compensation and dismissed the claim petition. Aggrieved over the same, the claimant had preferred the above Civil Miscellaneous Appeal.

4. I have given my anxious consideration to the documents marked before the Tribunal as well as the rival submissions made by the learned counsel on either side before this Court.

5. Admittedly, the appellant marked Ex.A1 - First Information Report, registered by RPSI/KOK, Korukkupettai Railway Police Station dated 13.02.2013; inquest report vide Ex.A5; post-mortem report vide Ex.A4 and other documents as exhibits. The evidence of the Investigation Officer and Ex.A5 clearly goes to show that the deceased fell down from a running train during his travel from Gummidipoondi to Chennai. The Investigation Officer would further state that a co-passenger informed that the deceased fell down from the train. There is no contra evidence to show that the deceased was not a bonafide passenger and suffered death due to some other accident. The DRM report marked through the Investigation Officer contains the inquest report and the final report. It is clearly stated in the inquest report as well as in the final report that the deceased had fallen down from the running train. Therefore, the conclusion that it is an untoward incident cannot be denied and stands proved. It only remains to account for the ticket. Nowhere in the inquest report and in the final report or in the DRM report, it was stated that there was recovery of materials or that the ticket was not found from the body of the deceased. On the other hand, in the reply statement, the respondent had denied the loss of ticket during journey as averred in the application and contended that the deceased is not a bonafide passenger. Since averments are made in the sworn statement by the claimant that journey ticket was lost in the accident and it was denied by the respondent, the burden of proof shifts to the shoulders of the respondents. It is the duty of the respondent to prove that the deceased was not a bonafide passenger.

6. From the evidence, it is seen that the Investigation Officer had not deposed that the deceased was not a bonafide passenger at all. Further, he has not spoken anything about the recovery much less to the fact that ticket was not found from the deceased or at the scene of occurrence. Curiously, during the cross examination of A.W.1, the claimant herein has not even

given a suggestion was put to her that the deceased was not a bonafide passenger.

7. The Trial Court, however, given a finding that it is not in dispute that no ticket was recovered from the deceased, without any material or legal evidence before it. When a statement is made in the claim petition that the journey ticket is lost, it leads to an interference that the journey ticket was purchased and lost during the incident. In that event, it should be construed that the deceased was a bonafide passenger. When it is specifically denied by the Railways, as discussed above, the burden shall be discharged by the Railways. In the absence of any contra proof, the finding of the Tribunal is erroneous.

8. The Hon'ble Supreme Court in UNION OF INDIA VS. RINA DEVI [2018 AIR (SC) 2362] has held that mere absence of ticket with such injured or deceased will not negative the claim that he was a bonafide passenger. Initial burden will be on the claimants which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances.

9. In the present case, as discussed above, the Railways has not taken any attempt to prove that the deceased was not a bonafide passenger by producing the recovery mahazar or some evidence that no ticket was recovered from the body or the vicinity. In such circumstances, the facts of the case leads us to conclude that the deceased was a bonafide passenger and the claimant is entitled to compensation. The finding of the Tribunal, without any legal evidence, is perverse and is liable to be set aside.

10. Accordingly, the judgment dated 08.09.2015 passed in O.A.(II-U) 348/2013 by the Railway Claims Tribunal, Chennai Bench is set aside and the claimant is entitled to compensation. As per the latest Notification of the Ministry of Railways (Railway Board) dated 22.12.2016, the claimant is entitled to get compensation of Rs.8,00,000/- with interest from the date of the petition.

11. Therefore, the respondent/Railways is directed to deposit a sum of Rs.8,00,000/- (Rupees Eight Lakhs only) with interest at the rate of 6% per annum from the date of petition, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the same by producing appropriate identification / documents.

12. With the above observations and directions, this Civil Miscellaneous Appeal is allowed. No costs.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

TK

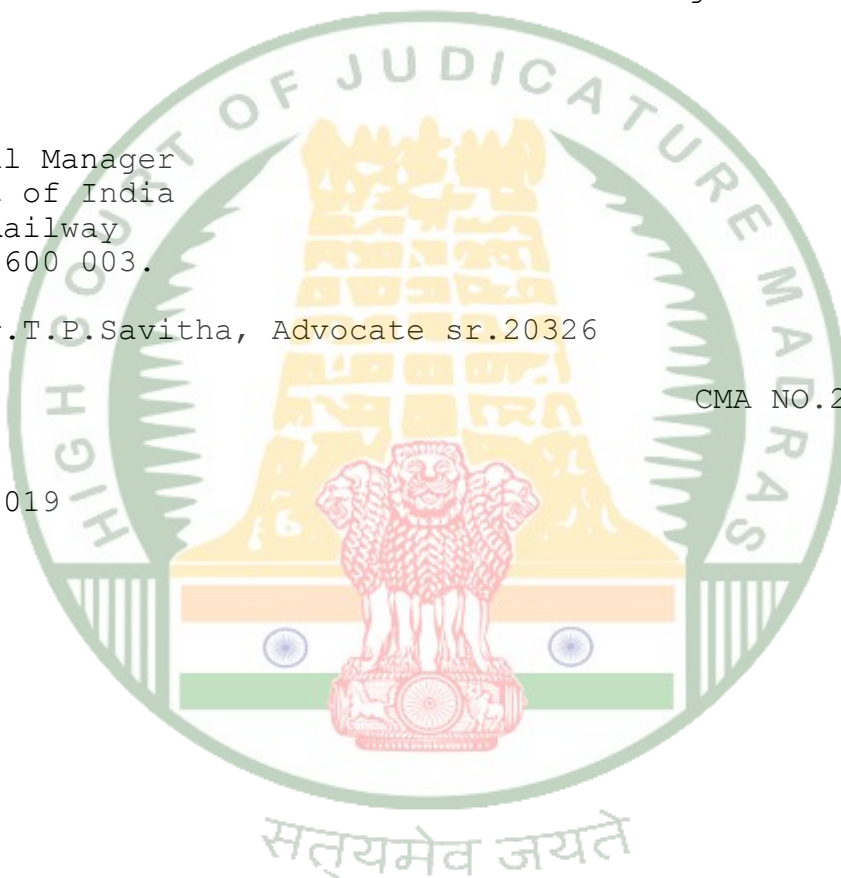
To

The General Manager  
Government of India  
Southern Railway  
Chennai - 600 003.

+1cc to Mr.T.P.Savitha, Advocate sr.20326

CMA NO.2600 OF 2017

cp(co)  
nr 27/08/2019



WEB COPY