

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.1798 of 2013

1.S.R.Vijayakumar

2.Smt.V.Santhi ... Appellants/Applicants

vs.

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

... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 123 of the Indian Railways Act, against the order dated 14.09.2010 made in O.A. No.13 of 2010 on the file of the Railway Claims Tribunal, Chennai Bench and set aside the same.

For Appellant : Mr.M.Selvam

For Respondent : Ms.T.P.Savitha

J U D G M E N T

The appellant has come forward with the present appeal challenging the order of the Railway Claims Tribunal, Chennai Bench dated 14.09.2010 made in O.A. No.13 of 2010, wherein the claim was rejected.

2. Though the fact of the appellant travelling in the train was disputed by the Railways, which fact has been accepted by the Tribunal, the appellant wanted to impress the court, based on the communication dated 19.06.2010 that the deceased has travelled on the doorways of the train and due to negligence and carelessness, he might have fell down on the track, which caused his death and that no ticket was recovered.

3. The learned counsel for the respondent/Railways, would submit that the Railways have not admitted that the deceased has travelled and the word used is "deceased might have travelled".

4. According to the appellant, one Singaravelan, who has purchased the ticket, handed over the same to the deceased, to enable him to travel in the train and left the station after giving the ticket to the deceased. In the cross-examination, he has categorically stated that he has not purchased any ticket and given the same to the deceased, to enable him to travel. Even assuming for the sake of argument that the appellant has not travelled, the reliance placed by the appellant with regard to the decision of the Hon'ble Apex Court in Union of India vs. Rina Devi reported in (2019) 3 SCC 572 may not be applicable to the facts this case. The appellant relied upon paragraph No.29 of the said decision, which is extracted below:

"29. We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant 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. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly."

Paragraph 29 of the judgment cannot also be lost sight of.

5. Firstly, the onus is on the injured or the legal representatives/heirs, to prove the person was a bona fide passenger and only then the burden will be shifted on the Railways to establish the negative. Paragraph 29 of the decision clearly states that, facts of each case, has got to be looked into, before a decision is rendered. In this case, the Railways have stated that the deceased might have travelled. Secondly, one Singaravelan is said to have purchased the ticket and handed over to the deceased, has given a different version in the cross examination, which is not the case of the appellant. Finally, as per Section 2(29) of the Indian Railways Act, 1989, a "passenger" means a person travelling with a valid pass or ticket. In this case, even assuming that the deceased travelled, he did not have a valid ticket. I find no reasons to interfere with the order of the Railway Claims Tribunal, Chennai Bench dated 14.9.2010 made in O.A. No.13 of 2010 and that the relief sought for by the appellant cannot be granted.

6. Accordingly, the civil miscellaneous appeal is dismissed.
However, there shall be no order as to cost.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

Asr

To

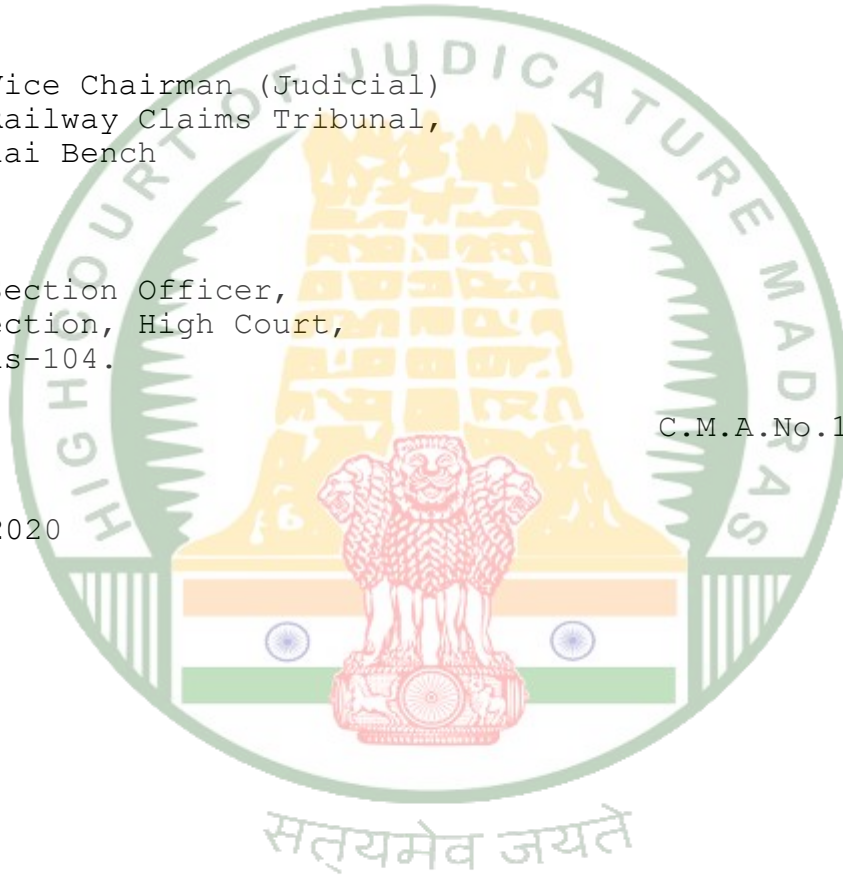
The Vice Chairman (Judicial)
The Railway Claims Tribunal,
Chennai Bench

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The Section Officer,
VR Section, High Court,
Madras-104.

C.M.A.No.1798 of 2013

VGI (CO)
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