

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.3208 of 2010

and

M.P.No.1 of 2010

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

.. Appellant/Respondent

Vs.

1.Rajathi
2.C.Krishnan
3.C.Subramani
4.C.Ponnusamy
5.C.Annamalai

.. Respondents/Applicants

PRAYER : Civil Miscellaneous Appeal is filed under Section 23 of Railway Claims Tribunal Act 54/1987, praying to set aside the order passed in O.A.No.37 of 2005, dated 27.06.2008, on the file of the Railway Claims Tribunal, Chennai.

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

For Respondents : No Appearance

J U D G M E N T

Appellant herein is the respondent in O.A.No.37 of 2005, dated 27.06.2008, filed by the respondents herein / applicants before the Railway Claims Tribunal, Chennai Bench. The applicants are the legal heirs of the deceased Chinnasamy. They filed the claim petition claiming compensation for the fatal death of deceased 'Chinnasamy', while he was travelling in the train between Dharmapuri and Palacode Railway station where he accidentally fallen down and died on 26.12.2004.

2. The Railway Authorities has contested the claim petition.

3. After full trial, the Railway Tribunal has not accepted the defence taken by the railway and awarded compensation in favour of the respondents / petitioners.

Aggrieved by the same, the Railway Authority has preferred this appeal before this Court.

4. The question of Law that arises for consideration is as to "whether the Tribunal erred in holding that the deceased 'Chinnasamy' was a bona fide passenger and sustained injuries by accidental fall from the train?".

5. Before the Tribunal, to prove their claim on the side of the respondents / applicants A.W.1 was examined and Exh.A-1 to Exh.A-7 were marked. On the side of the Railways, Station Manager/Dharmapuri was examined as R.W.1 and documents Ex.R.1 and Ex.R2 were marked.

6. At the time of arguments, the learned counsel for the appellants submitted that the victim, while crossing the unmanned level cross hit by train and sustained grievous injuries nearly by his residence. The victim did not travel in any of the train nor he sustained injuries by accidentally falling down from the train. But without appreciating this fact, the Tribunal erroneously awarded compensation of Rs.4,00,000/- in favour of the respondents. Hence, he prayed to allow this appeal.

7. By way of reply the learned counsel for the respondents submitted that before the Tribunal the claimant prima facie proved their claim by adducing oral and documentary evidence. On considering all the evidence and facts the learned trial Judge rightly awarded compensation of Rs.4,00,000/- in their favour. Hence he prayed to dismiss the appeal.

8. The learned counsel for the appellant argued that the Railway Key man at Dharmapuri Railway station noticed a male body, when he patrolled the track between Dharmapuri and Palacode, and conveyed the matter to the station master, and the Police registered the case. Thus the deceased did not travel in the train.

9. The Railway authorities contended that they found a male body near the track they claim that the deceased did not travel in the train, fell down and sustained injuries and died. But at the time of arguments, he raised another objection that while he was trespassing the unmanned level crossing he met with an accident and might have hit by the train and died.

10. But to prove this aspect there is no material evidence on the side of the Railway Authorities. But the inquest report marked as Ex.A.2 itself reveals that the deceased while travelling in a train from Palacode to Dharmapuri, either by sitting near the entrance, due to his negligence or carelessness, appear to have fallen down and sustained grievous

injuries. As per the final report Ex.A.6, the police have come to the conclusion that it is the case of accidental death due to fall from the train. With the help of these documents, the respondents / claimants proved that due to the accidental fall from the train the said Chinnasamy died and they are eligible to claim Compensation under Sections 123(c)(2) and 124-A and 125 of the Railway Act.

11. Now the burden shift on the Railways, to prove that the victim died on his own negligence. But as discussed above there is no material evidence on the side of the Railways to prove their defence with regard to the possession of the ticket. It is admitted fact that the body was lying down near the track. It is not possible to collect the ticket from such circumstance either from the spot or from the body. Therefore, the deceased did not possess valid ticket at the time of the accident could not be accepted.

12. Based upon all the facts and circumstances, the Tribunal has rightly awarded the compensation of Rs.4,00,000/- in favour of the respondents herein and the order passed by the Railway Claims Tribunal, Chennai Bench, is confirmed.

13. As per the notification dated 22.12.2016 published in the Gazette of India, Extraordinary - Ministry of Railways (Railway) amendments were brought to Rule 3 of the Railway Accident and Untoward Incidents (Compensation Rules) 1990 by inserting Sub-rule (2). As per the amendment, the second proviso to Sub-rule (3) was amended by substituting the words "Four Lakhs" into "Eight Lakhs". Thus as per the amendment a Victim of Untoward Railway accident is entitled for compensation of Rs.8,00,000/- (Rupees Eight Lakhs only) from 01.01.2017. In this case the accident occurred before 01.01.2017 and therefore, the respondents / claimants are entitled for a total compensation of Rs.8,00,000/- along with interest at the rate of 9% per annum from the date of petition.

(i) the 1st respondent/ Daughter of the deceased is entitled for a compensation of Rs.1,60,000/- (Rupees one lakh sixty thousand only).

(ii) the respondents 2 to 5 / sons of the deceased are entitled for a compensation of Rs.1,60,000/- (Rupees one lakh sixty thousand only) each.

14. The appellants are permitted to withdraw their respective portion of the compensation by filing an appropriate application and the payments are to be made through RTGS.

15. Accordingly, the Civil Miscellaneous Appeal

is dismissed. The respondent/Railway is directed to deposit the award amount of Rs.8,00,000/- (Rupees Eight Lakh Only) with accrued interest within a period of 12 weeks from the date of receipt of a copy of the judgment. Consequently connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-VII)

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Sub Assistant Registrar

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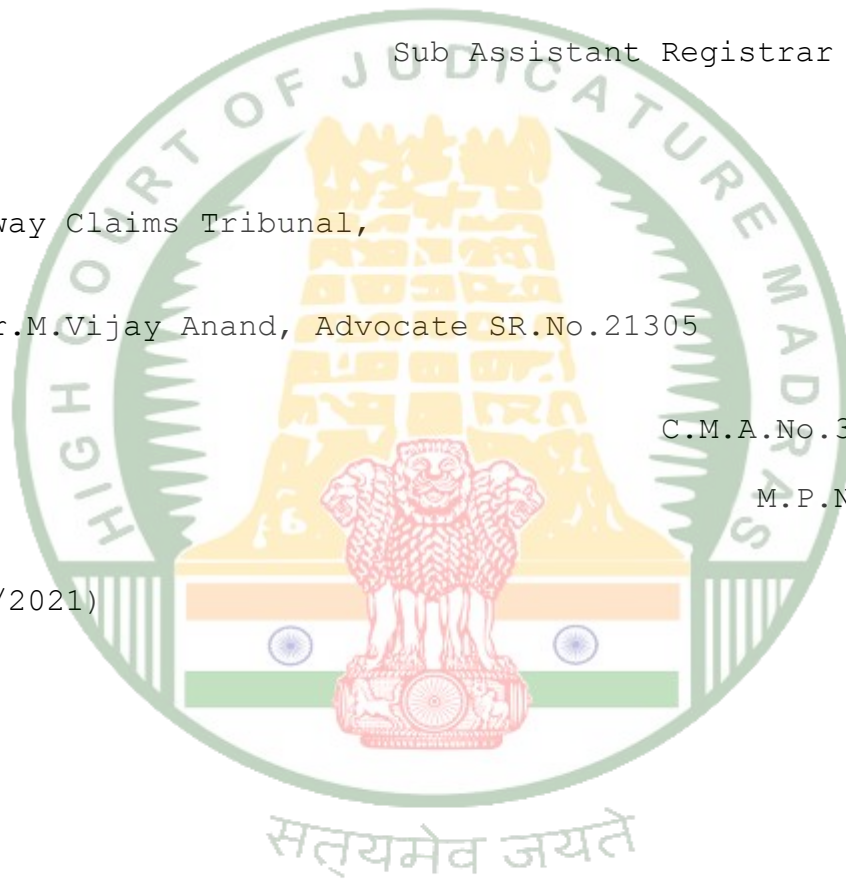
To

The Railway Claims Tribunal,
Chennai

+1cc to Mr.M.Vijay Anand, Advocate SR.No.21305

C.M.A.No.3208 of 2010
and
M.P.No.1 of 2010

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