

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2021

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**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM**

**C.M.A.No.1377 of 2015**

1.Rajeswaramma

2.C.Rupa

.. Appellants

vs.

Union of India  
Owning South Central Railway  
Rep.by General Manager,  
Secundrabad

.. Respondents

**PRAYER :** Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987, against the order dated 24.02.2015, passed by the Railway Claims Tribunal, Chennai Bench in O.A(II-U) No.126 of 2014.

For Appellant : Mr.T.Rajamohan

For Respondents : Mr.M.Vijay Anand

## **ORDER**

The order dated 24.02.2015 passed in O.A(II-U) No.126 of 2014 is under challenge in the present Civil Miscellaneous Appeal.

2. The brief facts narrated in the application filed by the appellants reads as under:

*On 26.06.13, the deceased left for Chennai to purchase agricultural tools. As he did not return, along with the relatives, the applicants started searching for him. Through the daily news paper on 28.06.13, the applicants came to know about the train accidental death and when they approached the Gudur Railway Police, they came to know that the deceased, prior to 8.30 am of 27.06.13, while travelling from Chennai to Nellore by any one of the train, due to over crowd, speed, jerk and jolt of the train, accidentally fell down from the running train between Gudur and Manubolu Railway Stations, suffered 1) grievous injury on the forehead, 2) crush injury present on both hands, 3) brain matter noted outside skull and 4) multiple aberrations with oil & grease marks all over the legs and hands and died at the place of occurrence. It was an untoward incident. The II class*

*journey ticket, purchased by the deceased for his travel from Chennai to Nellore, was said to have been lost at the time of accident and the same could not be traced by the police authorities.*

3. The respondent/Railways contested the case by holding that the deceased was not possessing a valid travel ticket. Therefore, the compensation cannot be granted.

4. The Tribunal adjudicated the issues with reference to the documents and evidences and arrived a conclusion that the accident was established. However, the deceased was not holding a travel ticket and therefore, the claimants are disentitled for compensation. The F.I.R as well as the inquest report reveals that the accident occurred nearby the railway track. It is a case of falling down from the running train. Post-mortem report was also filed. A final report filed after investigation reveals that the deceased fell down from the running train and sustained fatal injuries and died. The Divisional Railway Manager report also reveals that a statutory enquiry was conducted into the incident and based on the statutory enquiry, the findings were

arrived by the Divisional Railway Manager. The said report reads as under:

*“During the enquiry, the key man stated that on 27.06.2013 at about 07.00 hours he noticed one male dead body lying at Km.No.137/12-14 between Gudur-Manubolu and informed the same to Dy.SS/GDR. On information GRP/GDR attended to the spot, conducted inquest and found no ticket was available with the deceased person. During the enquiries with SSE/P.Way/GDR, he stated that no Jerk/Jolt was experienced by any loco pilot at Km.No.137/12-4 between GDR-MBL Railway Stations on 26/27.06.2013. As the deceased person traveled without any travel authority and also there was no eye witness or any documentary evidence to prove that the deceased purchased a ticket, for his journey as stated by the petitioners. Hence, the railway administration has no fault/lapse in this incident.*

5. The Apex Court in its unambiguous terms held that once the factum regarding the accident was established and more specifically, the accident occurred due to falling down from the running train and the travel ticket was not retrieved nor made available, then the burden of proof is shifted on the Railways to establish that the deceased/injured was not a *bona fide*

passenger. The burden of proof to establish the *bona fide* passenger is to be shifted from the claimants to the Railways, if the factum regarding the accident was established through enquiry or investigation. In the present case, both the final report filed by the appellant as well as the Divisional Railway Manager Report filed based on the statutory enquiry reveals that the accident occurred and the deceased sustained fatal injuries on account of falling down from the running train and died subsequently. In this context, the findings of the Railway Tribunal reveals that the respondent/Railways have not established that the deceased was not a *bona fide* passenger. The Tribunal relied on the fact that the ticket was not retrieved nor available with the deceased and therefore, he is not a *bona fide* passenger. Thus, the Tribunal shifted the burden of proof on the claimants. Such a principle is not in consonance with the precedent laid down by the Apex Court in the case of ***Union of India Vs. Rina Devi in Civil Appeal No.4945 of 2015 dated 09.05.2018***. Once the accident is established and the ticket was not retrieved, then the burden of proof is to be shifted on the Indian Railways to establish that the deceased was not a *bona fide* passenger. This apart, such a benefit of doubt is also to be extended in favour of the claimants as the

compensation is a welfare legislation. This being the principles to be followed, the Tribunal has committed an error in shifting the burden of proof on the claimants to establish that the deceased was a *bona fide* passenger. Admittedly, the ticket was not retrieved. Thus, the burden of proof ought to have been shifted on the Railway to establish that the deceased was not a *bona fide* passenger which they have not been proved. Therefore, the Railways have to establish that the deceased was not a *bona fide* passenger. Thus, the benefit of doubt is to be extended to the claimants. Accordingly, the order dated 24.02.2015 passed in O.A(II-U).No.126 of 2014 is set aside and the Civil Miscellaneous Appeal stands allowed.

6. The appellants are entitled for a total compensation of Rs.8,00,000/- (Rupees Eight Lakhs Only) along with interest at the rate of 6% per annum from the date of passing of the award. Both the appellants are entitled for each 50% of the compensation. The respondent/Railway is directed to deposit a sum of Rs.8,00,000/- (Rupees Eight Lakhs Only) along with accrued interest at the rate of 6% per annum within a period of 12 weeks from the date of receipt of a copy of this order and on such deposit, the

appellants/claimants are permitted to withdraw the entire award amount by filing an appropriate application and the payments are to be made through RTGS. No costs.

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Index: Yes/No

Internet: Yes/No

Speaking order/Non-Speaking Order



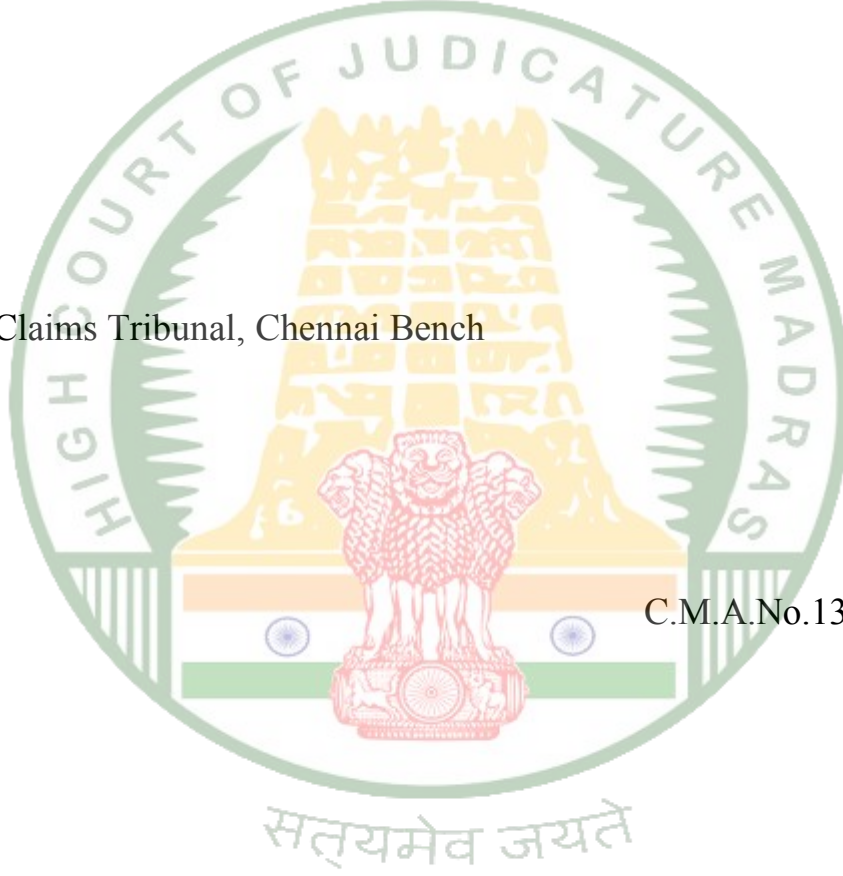
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**S.M.SUBRAMANIAM, J.**

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To

Railway Claims Tribunal, Chennai Bench



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