

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.1443 of 2015

1.T.Beeshmachari
2.Smt.B.Kalavathy

...Appellants

Vs.

Union of India
owning Southern Railway,
Rep.by its General Manager,
Chennai – 600 003.

..Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal, against the order dated 24.02.2015 passed by the Railway Claims Tribunal, Chennai Bench in OA(II-U) 337/2013.

For Appellants : Mr.T.Raja Mohan

For Respondent : Mr.M.Vijay Anand

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JUDGMENT

The order dated 24.02.2015 passed in OA(II-U) 337/2013 is under challenge in the present Civil Miscellaneous Appeal.

2. The claimants are the appellants and the Claim Petition under Section 16 of the Railways Act was filed based on the incident as narrated in the application which reads as under:

“The deceased was a resident of Ambatur in Vellore District. He was working as a casual labour in a private company at Ambur. On 24.11.2012, he left for Trichy to visit his grandmother. On 27.11.2012 over phone, he informed his father that in search of a job, he was going to Chennai and thereafter would come home back. The applicants came to know from the Jolarpettai Railway Police that the deceased, prior to 14.45 hrs of 28.11.12, while travelling in a train proceeding from Katpadi towards Jolarpettai, due to speed, jerk and jolt of the train, had accidentally fallen down from the running train, suffered grievous head injury causing skull broke open and the brain matter scattered, right jaw fractured, left hand elbow fractured, left amputated at thigh and ankle, right leg knee fractured and died at the place of occurrence. It was an untoward incident. The second class ticket purchased by the deceased for his travel from Chennai to Jolarpettai was lost at the time of accident and the same could not be traced by the Railway Police authorities.”

3. The F.I.R. was registered, Inquest Report filed and thereafter, Final Report filed. Based on the F.I.R and the Inquest Report, the learned counsel appearing on behalf of the appellants reiterated that the accident occurred due to fallen down from the running train. The deceased sustained fatal injuries and died. The Divisional Railway Managers' [DRM] Report was filed after a prolonged period and the learned counsel for the appellants made a submission that as per Rule 7 of Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003, the Divisional Railway Manager is bound to conduct statutory enquiry and submit his report within a period of 60 days. However, in the present case, the report was submitted after a lapse of about 2 years and therefore, the said report cannot be relied upon by the Tribunal for the purpose of rejecting the application.

4. The learned counsel for the appellant made a submission that the deceased was travelling in a train and the untoward incident was also established and he sustained injuries and died on account of falling down from a running train and therefore, the Tribunal ought to have considered and grant compensation. Contrarily, the Tribunal rejected the application on the ground that the appellants have not established that

the deceased was a bonafide passenger and further, the deceased was falling down from the running train was also not established.

5. The DRM's Report reveals that the deceased, who was a resident of local area while trespassing the railway line from east side to west side of the railway line as a short way to reach main road was run over and killed by a train. The commuters and public utilized the place as a passage to reach as a short way to catch buses or to reach the main road. The spot observation revealed that the deceased has trespassed the area as a result sustained injury, run over and killed by the train. The incident occurred due to the negligence / carelessness on the part of the deceased.

6. Though there was a delay on the part of the Divisional Railway Manager to conduct statutory enquiry and submit his report, the Divisional Railway Manager considered the information provided by the Track Man on 28.11.2012, which reveals that one male dead body was found lying on the Railway line @ KM 175/29-31 near Pachakupam and Ambur Railway Stations. The Jolarpettai Railway Police Station registered a case in Crime No.1027/12 under Section 174 Cr.P.C.

7. The very information itself reveals that no travel ticket was retrieved and further, there was no clue regarding fallen down of a person from the running train. In this context, the Divisional Railway Manager conducted the statutory enquiry. The Divisional Railway Manager found that the place in which the dead body was found, is the place, where the commuters and public utilized the same as a passage to reach as a short way to catch buses or to reach the main road. This spot observation was made by the Divisional Railway Manager. In the event of such observation in the report filed by the Divisional Railway Manager, it is an obligation on the part of the appellants/claimants to establish that the deceased died on account of falling down from a running train.

8. Once a doubt is created in a statutory report, then the burden lies on the claimants to establish the death. The initial onus of travel lies on the claimants, who filed the application. In the present case, except the dead body was found in a track, there was no clue regarding the travel by the deceased person or the accident occurred due to falling down from a running train. When none of these aspects are established, or some probabilities are established so as to arrive a conclusion, then

the Courts are expected to be slow in granting compensation. Undoubtedly, certain factual doubts, if arouse, the benefit can be extended to the claimant. However, a balanced approach is required, so as to avoid stale claims.

9. In the present case, the track man reported one male dead body was found lying on the railway line. The place of death is utilized by the commuters as a passage to reach as a short way to catch buses or to reach the main road. The deceased was residing in a nearby area. In such circumstances, the onus lies on the appellants / claimants to establish that the deceased had a valid travel ticket and he was a bonafide passenger and sustained injuries on account of falling down from the running train. None of these facts were established by the appellants before the Railway Tribunal. Contrarily, they have amended the application with reference to the place of travel. The findings of the Tribunal in Paragraph 5.7 reveals that the appellants had not approached the Tribunal with clean hands. The reasons stated in para 5.7 reads as under:

“5.7. In this case, the applicants have not produced the journey ticket and A.W.1 in the cross

examination has stated that he was not aware whether his son purchased the ticket or not and further, stated that he did not know whether he travelled with ticket or without ticket. The applicant in fact had not let in any evidence to infer that the victim had travelled from Chennai. It is pertinent to point out that at the time of filing of the application, the applicants averred that second class ticket purchased by the deceased for his travel from Trichy to Chennai was lost and later amended Col.No.6 and 7 to state that the ticket purchased for journey from Chennai to Jolarpettai was lost. On the proof affidavit, he had stated that the victim travelled in a train from Katpadi towards Jolarpettai. It is clear from the above that the applicants have not come with clean hands and the inference is that the applicants have not let in any credible evidence with regard to the purchase of a ticket or the performance of the journey.”

10. In view of the fact that the Railway Tribunal is unable to ascertain the fact regarding the cause of death and further, the appellants had not established that the deceased was a bonafide passenger, the application for grant of compensation was dismissed.

11. This Court is of the considered opinion that if other factors are dominant to establish that the accident occurred on account of falling from a running train and further, the deceased was a bonafide passenger and certain factual contradictions, which is negligible, may be considered for grant of compensation. In the absence of any such proof, the Tribunal is right in dismissing the Claim Petition and therefore, this Court do not find any perversity or infirmity as such.

12. Accordingly, the order dated 24.02.2015 passed in OA(II-U) 337/2013 stands confirmed and the Civil Miscellaneous Appeal in C.M.A.No.1443 of 2015 is dismissed. No costs.

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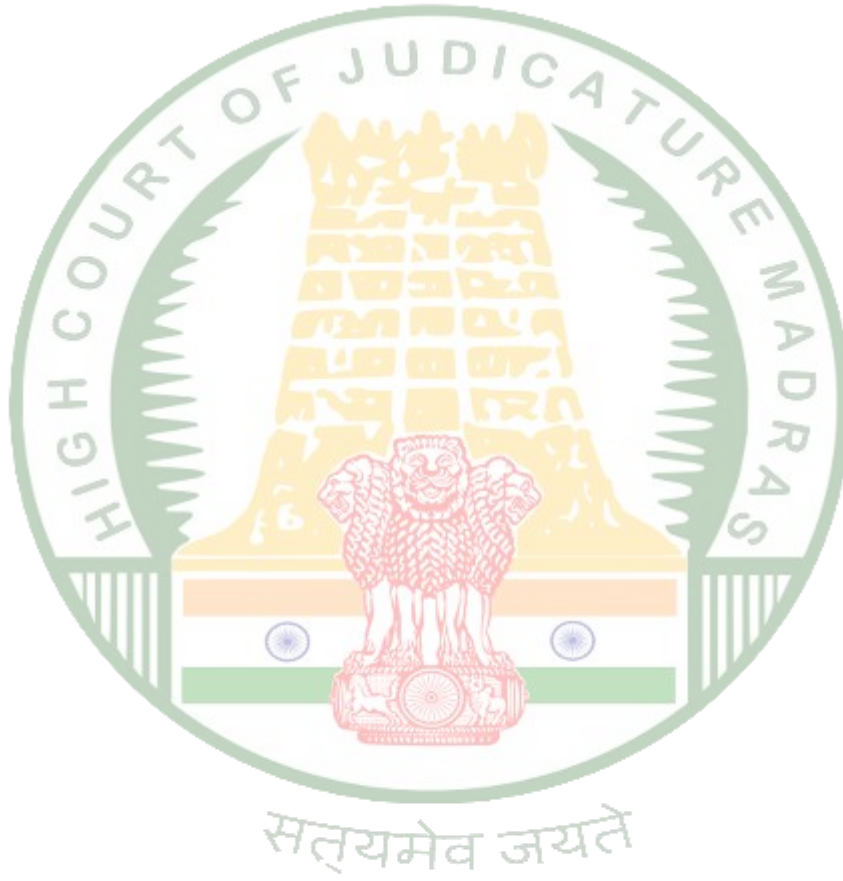
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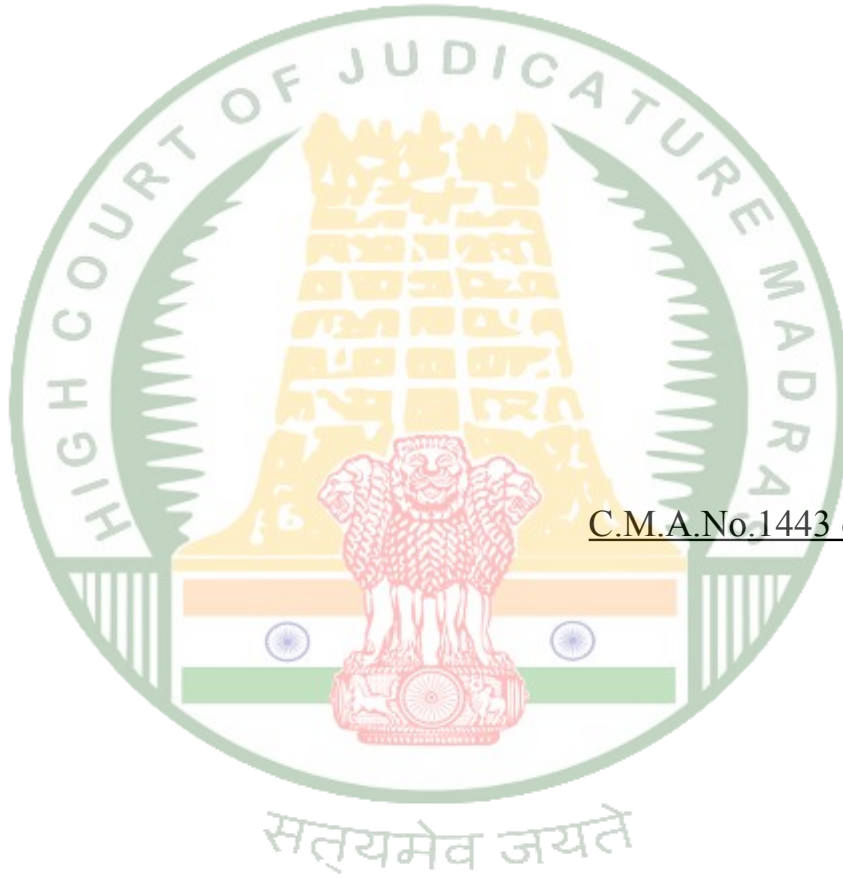
1. The Railway Claims Tribunal,
Chennai Bench.



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S.M.SUBRAMANIAM, J.
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