

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2021

CORAM

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

C.M.A.No.393 of 2016

1.Smt.J.Bhuvaneshwari  
2.J.Rishikumar  
3.J.Karithick  
(A-2 & A-3 being minors rep.by mother &  
Natural Guardian A-1)  
4.P.Mohankumar  
5.Smt.M.Kalamani  
(wife & two minor sons & parents of deceased) ..Appellants

Vs.

The Union of India owning  
Southern Railways,  
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 08.10.2015 passed by the Railway Claims Tribunal, Chennai Bench in OA(II-U) 365/2014.

For Appellants : Mr.T.Raja Mohan

For Respondent : Mr.C.V.Ramachandramurthy

## **J U D G M E N T**

The order dated 08.10.2015 passed in OA(II-U) 365/2014 is under challenge in the present Civil Miscellaneous Appeal.

2. The claimants are the appellants and the application seeking compensation was filed under Section 16 of the Railways Act, based on the facts narrated in the application which reads as under:

*“The deceased was a resident of Chennai. That on 10.12.2013, the deceased left his house in order to go to Gudur on a personal work. The applicants came to know from the Gudur Railway Police that the deceased, while travelling in any one of the train proceeding towards Gudur, prior to 09.00 hrs on 10.12.2013, when the train was running between Arambakkam and Tada Railway Stations, due to over crowd, speed, jerk and jolt of the train, accidentally fell down from the running train, suffered (1) grievous head injury resulting to skull broken, 2) nose broken with bleeding injury, 3) left shoulder fractured and twisted, 4) left thigh fractured 5) right leg fractured near knee and died on the spot. It was an untoward incident. The second class ticket purchased by the deceased for his travel from Chennai*

*Central to Gudur was said to have been lost at the time accident and the saem could not be traced by the Railway authorities.”*

3. The First Information Report reveals that the accident occurred and the Inquest Report also endorses the same. The Final Report filed after investigation also states that the deceased sustained fatal injuries and died due to the untoward incident occurred by falling down from a running train. It is pertinent to note that the Divisional Railway Manager's [DRM] Report dated 24.03.2015 reveals that Sri.Nagaraju, gang man/TADA was enquired and his statement was recorded in which he stated that on 10.12.2013, while he was nominated for 07.30 hrs to 17.00 hrs duty as acting key man between KM 64/16-67/14 between TAD/AKM at about 09.00 hours, he noticed a male dead body aged about 45 yrs lying at KM 66/30-32 at the west side of down-line. The body was found with head and legs facing to south and north respectively with heavy bleeding injuries. The deceased seemed to have been fallen down from some running train. He had not seen any traveling ticket with the deceased.

4. The Tribunal adjudicated the issues with reference to the documents. Section 123 Sub Clause 2 of Railways Act states that “the accidental falling of any passenger from a train carrying passengers” is to be construed as 'Untoward incident'. Therefore, even in case of negligence on the part of the passenger, the same cannot be a ground to decline grant of compensation. Only if it is a criminal negligence, which is to be established, the application can be rejected and in all other cases, a mere negligence or carelessness cannot be a ground to deny compensation to the victim.

5. In the present case, the Divisional Railway Managers' [DRM] Report reveals that the deceased seemed to have falling down from the running train.

6. Probabilities regarding the accident was established and therefore, the burden of proof lies on the respondent/Railways to prove that the deceased was not a bonafide passenger. The initial onus lies on the appellants/claimants were discharged and the burden of proof lies on the Railways were not discharged by not proving the fact that the deceased was not a bonafide passenger.

7. The Railway Tribunal relied on the fact that the deceased was not possessing a valid ticket nor any such travel ticket was retrieved in the place of occurrence. Mere non-availability of a travel ticket is not a ground to reject the application. If the factum regarding the accident was established, and the DRM Report also reveals that the death occurred on account of falling down from a running train, then the burden of proof must be shifted on the Railways to establish that the deceased was not a bonafide passenger. It is possible that the tickets may not be available on account of the accident and in this context, it is a death and therefore, one cannot expect the claimants after a lapse of few days, would submit the travel ticket. This exactly the reason why the Apex Court also ruled that mere non-availability of travelling ticket is not a ground to decline compensation. Only if the facts and circumstances reveals that the untoward incident is not established, then alone the compensation may be denied and in all other circumstances, non-availability of ticket is not a ground unless the Railways prove that the deceased was not a bonafide passenger. Thus, the Tribunal has not appreciated the principles laid down in *Union of India Vs. Rina Devi in Civil Appeal No.4945 of 2015 dated 09.05.2018* by the Apex Court and contrarily, relied on the

judgment of the Delhi High Court which was over ruled by the Hon'ble Supreme Court of India.

8. This being the facts and circumstances, the order dated 08.10.2015 passed in OA(II-U) 365/2014 is set aside and the Civil miscellaneous Appeal in C.M.A.No.393 of 2016 stands allowed. The appellants are entitled for a total sum of Rs.8,00,000/-(Rupees Eight Lakhs only) along with the interest at the rate of 6% per annum from the date of passing of the award. The compensation is to be apportioned as under:

(i) The 1<sup>st</sup> appellant/wife is entitled for a sum of Rs.3,00,000/- (Rupees Three Lakhs only).

(ii) The appellants 2 and 3, who are minors, are entitled for a sum of Rs.1,50,000/- each (Rupees One Lakh Fifty Thousand only Each).

(iii) The appellants 4 and 5 / parents of the deceased are entitled for a sum of Rs.1,00,000/- each (Rupees One Lakh only each)

9. The respondent / Railways is directed to deposit the compensation amount of Rs.8,00,000/-(Rupees Eight Lakhs only) along with the accrued interest at the rate of 6% per annum before the Railway

Tribunal concerned within a period of 12 weeks from the date of receipt of a copy of this judgment and on such deposit, the major claimants are permitted to withdraw their respective portion of the award amount with accrued interest by filing an appropriate application before the Tribunal and the payments are to be made through RTGS. As far as the minors share of compensation is concerned, the same is to be deposited in any one of the Nationalized Bank in an interest bearing deposit scheme and the same is to be renewed periodically till the minors attained the age of majority. No costs.

22.02.2021

*kak*

Index: Yes/No

Internet: Yes/Non-Speaking order

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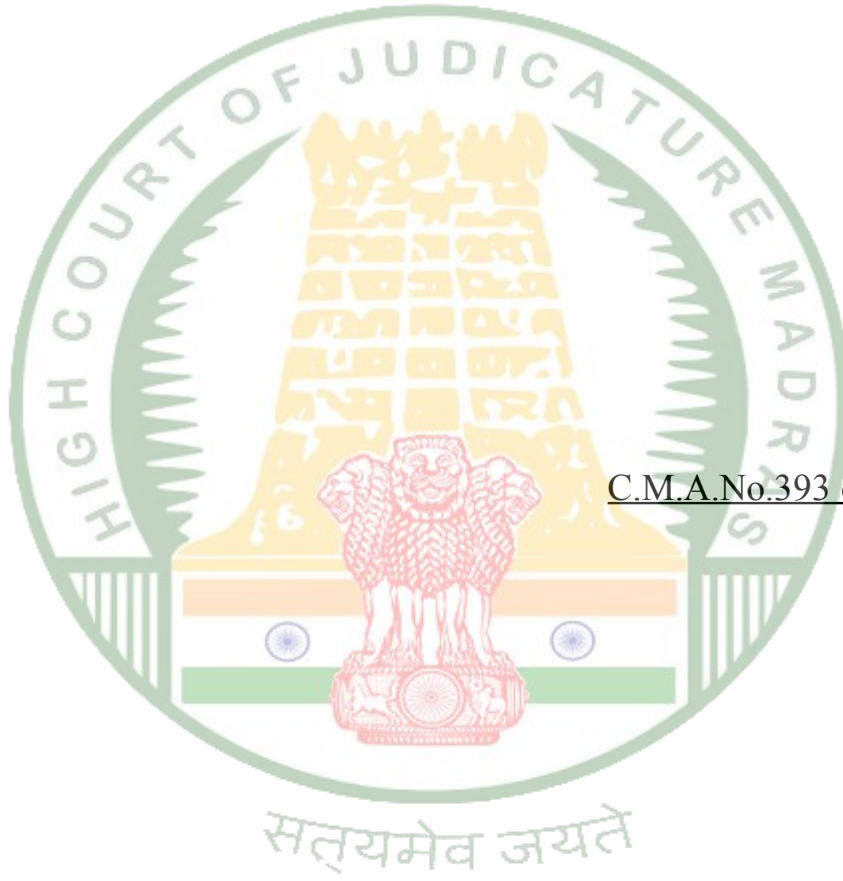
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1. The Railway Claims Tribunal,  
Chennai Bench.

C.M.A.No.393 of 2016

S.M.SUBRAMANIAM, J.  
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