

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.03.2021
CORAM
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
C.M.A.No.3696 of 2019

1.Arkath Chengaiah

2.Arkath Adilakshmi

.. Appellants/Petitioners

vs.

The Union of India owning,
Southern Railway, Rep.by its
General Manager,
Chennai-600003.

.. Respondent/Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 23 of
Railway Claims Tribunal Act, 1987 against the judgment dated
11.02.2019 made in O.A.(II-U).No.58 of 2018 by the Railway
Claims Tribunal, Chennai Bench.

For Appellants : Mr.R.Sekaran

For Respondent : Mr.M.Vijay Anand

J U D G M E N T

The judgment and decree dated 11.02.2019 passed in
O.A.(II-U).No.58 of 2018 is under challenge in the present Civil
Miscellaneous Appeal.

2. The claimants are the appellants and the claim petition
was filed with reference to the untoward incident narrated in
the application which reads as under:

"The deceased was a resident of Sullurpet in
Nellore District of Andhra Pradesh State. He was a coolie
worker in a provision store at Sullurpet. That on
22.09.2014 after noon, the deceased informed his mother
that he was going to Chennai for personal work and left
the house. On the same day at night 10.00 pm, he
contacted his mother over phone and informed that he was
at Chennai Central Railway Station and would come home
by train in the night. The applicants came to know from
an unknown person that prior to 02.00 hrs of 23.09.2014,
the deceased, while travelling in a general compartment
of any one of the train, due to push and pull by the
other passengers accidentally fell down from the running
train near southern end of platform No.1 at Sullurpet
Railway Station, suffered grievous head injury. He was

shifted by the 108 ambulance to Sullurpet Govt. Hospital and thereafter for further treatment he was shifted and admitted in Rajiv Gandhi Govt. Gen. Hospital, Chennai. However, not responding to the treatment, he died on 27.09.2014. It was an untoward incident. The II Class ticket purchased by the deceased for his travel from Chennai Central to Sullurpet was said to have lost at the time of accident along with his belongings.

3. The Tribunal adjudicated the issues with reference to the documents and evidences. Ultimately, the Railway Tribunal found that absolutely none of the documents to establish that the untoward incident occurred and the deceased was a bona fide passenger, who traveled in the train. In the absence of any acceptable evidence, the Railway Tribunal rejected the claim petition.

4. The learned counsel appearing for the appellants mainly contended that both F.I.R as well as the inquest report reveals that an untoward incident occurred and the deceased sustained head injuries and was taken through 108 ambulance to hospital. When these factors were stated in the Inquest report, there is every reason to believe that an untoward incident occurred. Mere non-retrieval of travel ticket would not be a ground to deny the compensation. Therefore, in the present case, the Railway Tribunal has committed an error in rejecting the application.

5. The learned counsel appearing for the respondent/Railways disputed the contention by stating that the F.I.R as well as the Inquest report are prepared in a routine manner without conducting proper manner. Thus, the Divisional Railway Manager's report as well as the other evidence made available before the Tribunal were considered by the Railway Tribunal and there is no infirmity as such. Relying on the Divisional Railway Manager's report, the learned counsel for the respondent/Railways reiterated that absolutely there is no evidence to establish that the untoward incident occurred. Even the claimants could not able to establish that 108 ambulance came inside the Railway premises and the deceased was taken through ambulance for providing treatment in the hospital. When these basic factors are not established, the Tribunal arrived a conclusion that prima facie case has not been made out and accordingly, rejected the application. Thus, the appeal is to be dismissed.

6. This Court is of the considered opinion that the Divisional Railway Manager's report reveals that the deceased was not a bona fide passenger and was not possessing a valid travel ticket. The inquest report was prepared based on assumption. However, there is no eyewitness or circumstantial evidence to establish that the deceased sustained injuries due

to the fallen down from the running train. In the absence of any eye-witness and circumstantial evidence, the Divisional Railway Manager arrived a conclusion that " the train from which the deceased allegedly fallen down in neither known or brought out by any person. The Railway Officials are fully not aware of the alleged incident". Thus, it was strongly concluded that the deceased is not a bona fide passenger and the alleged incident does not fall within the ambit of term "untoward incident".

7. The Railway Tribunal also considered the circumstances so as to cull out the truth behind the facts narrated in the claim petition. Paragraph No.5.10 of the order reads as under:

5.10. Sullurpet is around 80 kms away from Chennai Central and it would take around a 1 ½ hrs to 2 hrs for a train to reach Sullurpet from Chennai Central. Had the deceased travelled, as alleged, he would have reached Sullurpet around 12.00 at midnight and at that time the station premises would be deserted and any incident of fall would have been noticed by the Railway officials in the Station. Further, if the deceased was taken by 108 ambulance, as claimed by the applicants, the arrival of ambulance and siren blaring would not have gone unnoticed by any person within a radius of 100 to 200 metres and as such every person, whether it is Railway Officials or public, would have noticed it. Further, if such a fall happened in the Railway premises or nearby tracks, the public who noticed such an incident, would have definitely informed about it to the Railway officials. But, in the present case, there is no record of such an untoward incident. If the fall had taken place at the south end of Sullurpet Railway station, Guard of the train would have definitely noticed the incident but in the present case, there is no such report from the Guard of any train.

8. The Tribunal, during consideration, found that even the details regarding 108 ambulance were not made available and the Railway Officials or the public had not noticed any such arrival of ambulance or about the accident. If the fall had taken place at the south end of Sullurpet Railway station, Guard of the train would have definitely noticed the incident. But, in the present case, there is no such report from the Guard of any train. Thus, the Tribunal elaborately considered the facts and circumstances as well as evidence made available and arrived a conclusion that the claimant could not able to establish any untoward incident or prove that the deceased was a bona fide passenger within the provisions of the Railways Act. Therefore, this Court is not inclined to interfere with the findings arrived by the Railways Claims Tribunal. Thus, the judgment

dated 11.02.2019 passed in O.A.(II-U).No.58 of 2018 stands confirmed and the Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar

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Sub-Assistant Registrar

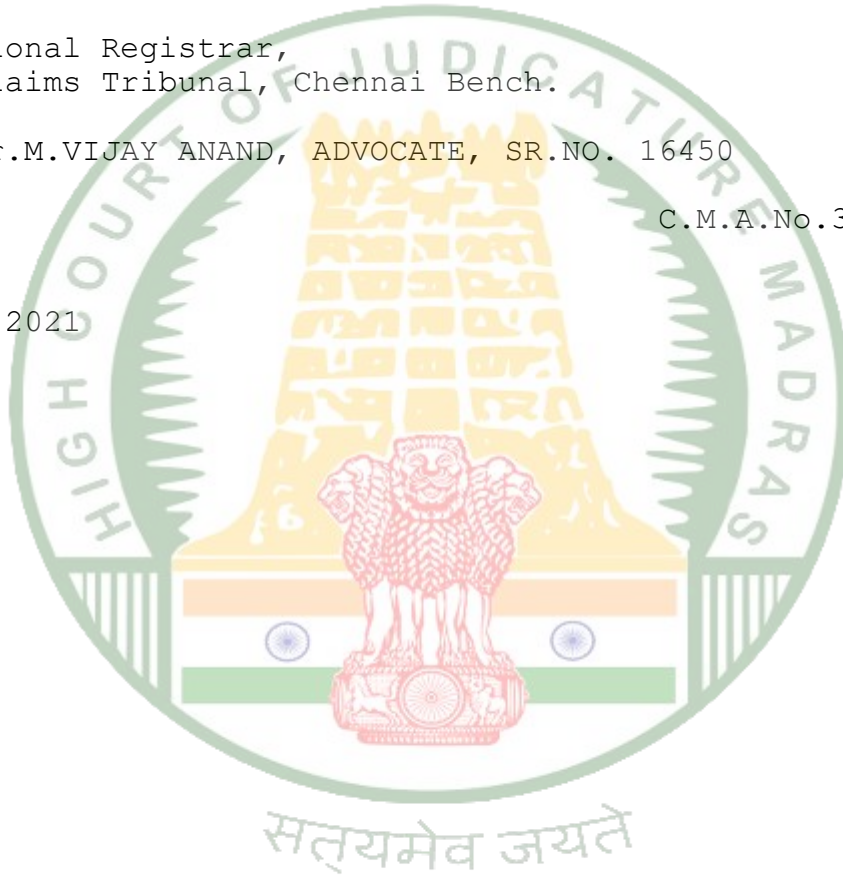
ssb

To
The Additional Registrar,
Railway Claims Tribunal, Chennai Bench.

+1cc to Mr.M.VIJAY ANAND, ADVOCATE, SR.NO. 16450

C.M.A.No.3696 of 2019

BS (CO)
KKN 17.04.2021



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