

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.3485 of 2019

1.J.Priya

2.P.Sivaranjith (Minor)

3.P.Aiswarya (Minor)

4.K.Shanmugam

5.S.Kanagambal

Appellants 2 & 3 are rep.by their
mother & Guardian of first appellant .. Appellants

vs.

The Union of India owning
Southern Railway
rep.by General Manager,
Chennai-600 003. .. Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 23 of
the Railways Claims Tribunal Act, 1987, against the judgment
dated 12.07.2019 made in O.A.(II-U) MAS/25/2018 by the Railway
Claims Tribunal, Chennai Bench.

For Appellants : Mr.R.Sekaran

For Appellants : Mr.M.Vijay Anand

O R D E R

The judgment dated 12.07.2019 passed in O.A.(II-U) MAS/25/2018

is under challenge in the present Civil Miscellaneous Appeal.

2. The claimants are the appellants. The claim petition was filed on the following grounds:

"The deceased was a resident of Srirangam in Trichy. He was a cooli worker and used to go out of station by train. That on 31.05.2017 the deceased informed the first applicant that he was going to Virudhachalam for a job. After getting Rs.2000/- from his wife, he left for Virudhachalam. The applicants came to know from Virudhachalam Railway Police that the deceased by purchasing II Class Mail ticket bearing No.010508980 dated 31.05.2017 traveled from Srirangam to Virudhachalam. While traveling in any one of the train, prior to 09.00 hrs of 01.06.2017 near Nachiarpettai Railway Gate between Virudhachalam and Thazhanallur Railway Stations at KM 218/8, due to heavy rush, jerk and jolt of the train, the deceased, accidentally fell down, suffered crush injury on head, left shoulder fractured, left leg knee fractured and died at the place of occurrence. It was an untoward incident. Railway employee noticed the body and reported for further action."

3. The Railway Tribunal adjudicated the issues and formed an opinion that the claimants could not able to establish that the deceased was a bona fide passenger. Even the untoward incident was not established beyond doubt. On those grounds, the claim petition was rejected.

4. The learned counsel appearing for the appellant reiterated that the ticket was produced and the accident was established. Therefore, the claimants are entitled for compensation.

5. The learned counsel appearing for the respondent objected the said contention by stating that the Divisional Railway Manager's report clearly reveals that "the insertion of ticket number in the Observation Mahazar found to be afterthought one which creates serious doubt on the sanctity of the document". The report further states that the nature of the injuries as established in the post-mortem report, cannot be construed so as to arrive a conclusion that it is a case of fallen down from the running train. The Tribunal elaborately considered these facts. In this regard, it is relevant to consider the discussion and findings collected by the Railway Police Force which are all narrated in the Divisional Railway Manager's report and the same reads as under:

b) Discussion of evidence collected by RPF

1) The original application of the claimant categorically claiming under affirmation that the deceased has fallen down from the train and died at the spot due to heavy rush, Jerk & Jolt of the train is baseless without knowing the train which the deceased travelled. If the deceased travelled in heavy rush compartment of train, the passengers could know the fallen down, but no passenger intimated the incident. Vriddhachalam Railway Station Platform starting at KM 217/350 and the deceased found at 217/700-800 i.e approximately 400 meters away from station. VRI Rly. Station has scheduled stoppage for all train and speed of train would be marginally reduced to stop the train at VRI. All the UP line trains arriving from TPJ direction are being received only at Platform No.2 since 2016 whereas the victim was found lying near down line. Hence, travel by train arriving from TPJ side can be ruled out.

ii) All the witnesses in the Inquest report prepared by Shri.A.V.Thirumavalvan, RPSI/VRI from 10.30 hours to 13.00 hours on 01.06.2017 were turned hostile as well as the signatures of all witnesses differs from the original one and they were categorically denied the story of the Inquest report.

(iii) The insertion of ticket number in the Observation Mahazar found to be afterthought one which creates serious doubt on the sanctity of the document. Hence, it could say that no recovery of the Railway ticket from the corpse or nearby was made by RPSI/VRI in presence of proper prime witnesses to establish that the victim was a Railway Passenger.

(iv) Further it is clear from the statement of deceased brother Shri.Anunathan accepted by Smt.Priya that the deceased in deep mental depression for loss of Rs.27 lakhs which was spent for purchasing machineries.

(v) Shri.M.Periyasamy, Track Maintainer-III clearly stated that no travelling ticket available near the corpse of the deceased.

(vi) The nature of injuries as established in the Postmortem report that the Head, Face, neck of the deceased was completely crushed are evidence to prove that the victim had not fallen down from train.

Conclusion:

The records and evidence compiled in this subject case clearly established that the deceased was not a bona fide passenger. The claim of possessing a valid Railway Ticket No.310503980 in the original application by the claimant in order to establish the incident under the purview of Section 16 of Railway Claims Tribunal Act, 1987 read with Section 123(c)(2) and 124-A of Railways Act, 1989 has no merit in the absence of evidence and witnesses.

6. With reference to the said findings of the report, the Railway Tribunal also considered and analysed the deposition of A.W.1 who had stated that the deceased said to have suffered loss to the tune of Rs.27 lakhs and he was depressed and there was a total disfigurement of head and face on the body of the deceased. The possibility of untoward incident with reference to the documents was well considered by the Railway Tribunal in paragraph No.10 and 12 of the Judgment which reads as under:

10. According to applicants, the deceased fell down from the train due to heavy rush in the compartment. Drawing attention to the Track diagram of Vridhachalam Railway Station and the rough sketch of the incident spot, attached with the Observation Mahazar, Presenting Officer for Respondent submitted that the place of incident is before diverging area of Railway Tracks towards Platform Nos.3 &4 and just 400 metres before the beginning of Vridhachalam Railway Station platforms 2 & 4. Any train approaching the platform would be slowing down the speed and the passengers, who are getting down at the station, would be alert. In such circumstances, if any person falls down due to rush, definitely it would have been noticed by the other passengers standing near the door and would have pulled the Alarm chain to stop the train and even if they could not do so, information of such a fall would have been definitely passed on to the Railway Authorities in the station. Respondent pointed out that in the instant case, no such developments have taken place only because no such fall has taken place. It was reiterated that no such incident could take place at the place of incident while travelling from Srirangam towards Vridhachalam as the track was leading from Platform No.3 is Down line and trains from Vridhachalam towards Srirangam are only pass through that line. All the trains coming from Srirangam towards Vridhachalam Statoin pass through the UP line, which is the other parallel track, and arrives at Platform No.2 only and if a person falls down from such

a train, the body would have been available close to the UP line only and not near Down line. The possibility of body being thrown out to a distance due to speed of the train is also ruled out since the train would be moving very slowly only while nearing the Railway Station where it has a scheduled stoppage. If the deceased had fallen down from a train, it could have only been from a train going from Vridhachalam towards Srirangam only. But, in such circumstances, the deceased would not be a bonafide passenger and it is not the case of the applicants also that he was undertaking such a journey.

12. When all these facts emerging are analysed, it is seen that there are inherent contradictions in different versions of the incident narrated by the applicants at different situations, leading to raise doubts whether the deceased had undertaken the alleged journey from Srirangam to Vridhachalam at all. According to A.W.1, deceased said to have suffered loss to the tune of Rs.27 lakhs and he was depressed. Deceased suffered severe crush injuries on the upper part of the body and total disfigurement of head and face, on the body of the deceased. A fall from a train approaching or leaving station at a slow speed may result in death of a person but, it would not definitely result in such a severe nature of crush injuries. Per contra, if a person is hit by a train, while he was on the tracks, these types of crush injuries are possible. Statements of witnesses to the preparation of Observation Mahazar and Inquest report indicate that these documents were not prepared properly and hence cannot be relied upon. Insertion of a line indicating recovery of the ticket in the Observation Mahazar gives more credence to such a conclusion. Further, the body of the deceased was found near a track by which the train in which he could have travelled will not go only leads to the inference that the deceased has not undertaken the alleged journey, for which the a ticket was produced, even though veracity of claim of recovery of such a ticket cannot be relied upon.

7. In view of the facts and circumstances, the appellants could not able to establish the untoward incident as defined under the Railways Act as well as that the deceased was a bona fide passenger within the meaning of Section 2(29) of the Railways Act. Thus, this Court is not inclined to interfere with the findings of the Railway Tribunal and consequently, the order dated 12.07.2019 passed in O.A.(II-U) MAS/25/2018 stands

confirmed and the Civil Miscellaneous Appeal in C.M.A.No.3485 of 2019 stands dismissed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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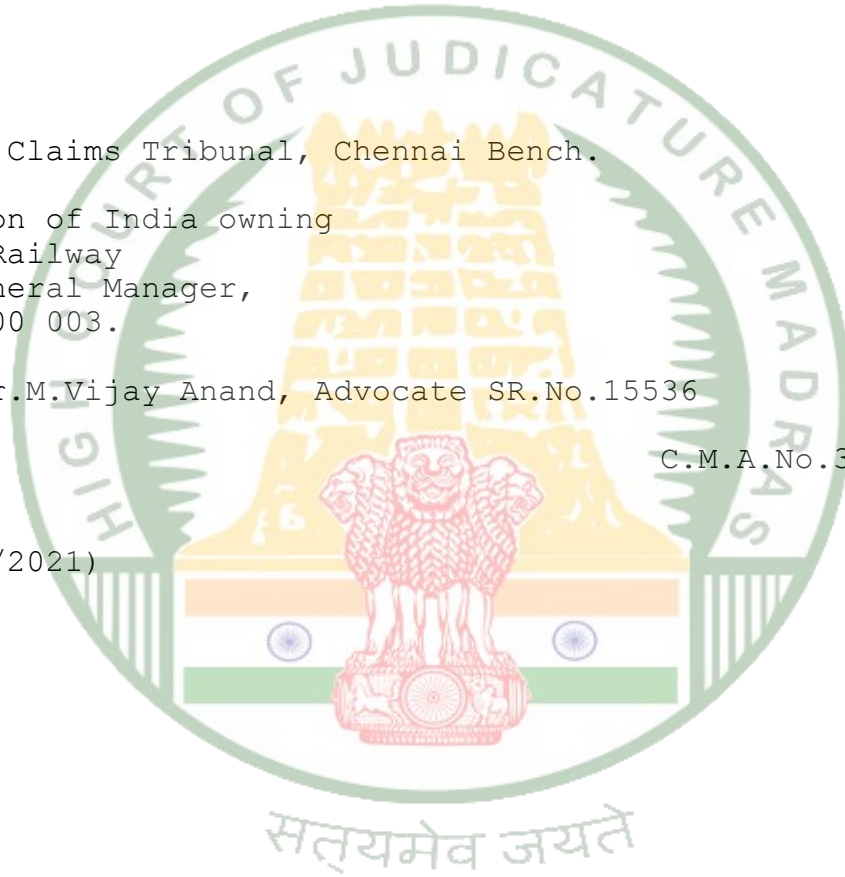
1.Railway Claims Tribunal, Chennai Bench.

2.The Union of India owning
Southern Railway
rep.by General Manager,
Chennai-600 003.

+1cc to Mr.M.Vijay Anand, Advocate SR.No.15536

C.M.A.No.3485 of 2019

MGR(CO)
GMY(15/04/2021)



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