

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.3753 of 2019

1.K.Tejavathi

2.K.Jagath (Minor)

3.K.Gowtham (Minor)

4.Krishnaveni

Appellants 2 and 3 are rep.by their
mother and next friend/the 1st appellant ... Appellants

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

vs.

.. Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 23(1) of
Railway Claims Tribunal Act, against the order passed by the Railway
Claims Tribunal, Chennai in O.A.(II-U)/MAS/17/2019 dated 05.08.2019.

For Appellants : Mr.S.Parthasarathy
For Respondent : Mr.M.Vijay Anand

ORDER

The order dated 05.08.2019 passed in O.A.(II-U)/MAS.No.17/2019 is under challenge in the present Civil Miscellaneous Appeal.

2. The facts as stated are that *“on 14.02.2018, the deceased along with his friends went Sainagar Shiridi Temble after completion of God dharshan, on 16.02.2018, the deceased along with his friends came to Manthralyam Road Ragavendra Temble stay overnight there, after seen God that on next day 17.02.2018, the deceased along with his friends came to Manthralayam Road Railway Station purchased 2nd class combined Ticket No.E72427098 for travel from Manthralyam Road to Tiruttani all are boarded Train No.11027 (Mumbai to Chennai Mail) from Manthralayam Road in order to proceed to Tiruttani, the applicants came*

to know from the Police, that on 17.02.2018, the deceased along with his friends boarded Train No.11027 (Mumbai to Chennai Mail) while the train running in between Muddanur R.S. And Mangapatnam R.S. At Km.327/3-4 posts/7-9 poles, on up line the deceased accidentally fell down from the train due to speed and jerk of the train and who died on the spot due to heavy discharge of blood the body was noticed on next day (18.02.2018) morning at about 9.00 a.m. by gang man while he was no duty.

The FIR was lodged by the Station Master/Yerraguntala, and a case was registered at Yerraguntla Railway Police Station in crime No.4/2018 dt.18.02.2018. The inquest was conducted by the Sub-Inspector of Police, Yerraguntla Railway Police and the Panchayatars have unanimously held that the deceased had died due to the injuries suffered in the accidental fall from the train.”

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3. The Railway Tribunal adjudicated the issues. The respondent/Railway contested the case mainly on the ground that the deceased was not a *bona*

fide passenger as no travel ticket was furnished nor retrieved. The Railway Tribunal also arrived a conclusion that the genuinity of the travel ticket was unable to be established by the claimants. Therefore, the deceased was not a *bona fide* passenger. Accordingly, the claim petition was dismissed. The findings of the Tribunal reveals that “the deceased was a member of the same group of four passengers who traveled together even for their onward journey on a combined Tatkal ticket”. Therefore, the unreserved ticket produced later to the Investigating Officer cannot be trusted upon. Accordingly, the Tribunal arrived a conclusion that the deceased was not a *bona fide* passenger.

4. Even in such cases, where the travel ticket was unable to be established or not retrieved during the investigation, and if the accident was established in the railway premises and the facts and circumstances also reveals that there is a possibility of such untoward incident in the Railway Premises, then the burden of proof must be shifted on the Railway to establish that the victim was not a *bona fide* passenger. In such circumstances, where the travel tickets are not available nor retrieved by the Investigating Officers, the

burden lies on the Railways to establish that the victim was not a *bona fide* passenger. However, in a case, where the untoward incident was established with sufficient evidence and the victim sustained fatal injuries and died and even during the investigation conducted by the Railway Authorities, they are unable to arrive a definite conclusion, then the benefit of doubt is extended to the victim for the purpose of grant of compensation. If the benefit of doubt is not extended in favour of the victim, this Court is of the considered opinion that the very purpose and object of the reasons for enactment is defeated. If the Railway Authorities are able to establish that the case definitely falls under the exclusion clause contemplated under Section 124(A) of the Railways Act, then alone, the claim petition is to be rejected. When there is a doubt even in the investigation conducted by the Railway Authorities, the benefit of doubt should be extended in favour of the claimants instead of dismissing the petition merely on the ground that the tickets were not retrieved. Therefore, the victim is not a *bona fide* passenger. On perusal of the Railway enquiry report, it reveals that there is no witness to show that the deceased person fallen down from the running train. Therefore, the deceased was not a *bona fide* passenger. The factual

inference drawn by the Railway Authorities is undoubtedly, in order to support the case of the Railways. Such factual inference cannot be relied upon for the purpose of grant of compensation in favour of the claimants. The factual inference if at all to be drawn must be based on certain reasonable evidences. In the present case, when there is no eyewitness and there is no proof to establish that the deceased was not a *bona fide* passenger, then the factual inference drawn by the Railways cannot be accepted for the purpose of invoking the exclusion clause contemplated under Section 124(A) of the Railways Act. This being the principles to be followed, in the present case, the factum regarding the accident was established. Admittedly, the victim sustained fatal injuries on account of train traffic accident and therefore, the claimants are entitled for compensation.

5. In view of facts and circumstances, this Court is of the opinion that the findings of the Tribunal is not in consonance with established principles and the Tribunal has rejected the claim petition merely on the ground that the victim was not a *bona fide* passenger as the ticket was not retrieved.

However, the fact remains that the Railway Authorities are unable to establish that the deceased was not a *bona fide* passenger. Thus, the order dated 05.08.2019 passed in O.A.(II-U)/MAS.No.17/2019 is set aside and the Civil Miscellaneous Appeal stands allowed. No costs.

6. The appellants/claimants are entitled for a total compensation of Rs.8,00,000/- (Rupees Eight Lakhs Only) along with accrued interest at the rate of 6% per annum from the date of award. The respondent/Railway is directed to deposit the entire award amount along with interest within a period of 12 weeks from the date of receipt of a copy of this order. The appellants/claimants are permitted to withdraw the amount as apportioned hereunder:

(i) The first appellant/wife of the deceased is entitled for a sum of Rs.4,00,000/- (Rupees Four Lakhs Only)

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

(iii) The 4th appellant/mother of the deceased is entitled for a sum of Rs.1,00,000/- (Rupees One Lakh Only).

7. The appellants 1 and 4 are permitted to withdraw the award amount with accrued interest by filing an appropriate application before the Railway Tribunal concerned. As far as the second and the third appellants are concerned, their respective portion of the award amount is directed to be deposited in any one of the Nationalised Bank in an interest bearing deposit scheme till they attain the age of majority.

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ssb

Index: Yes/No

Internet: Yes/No

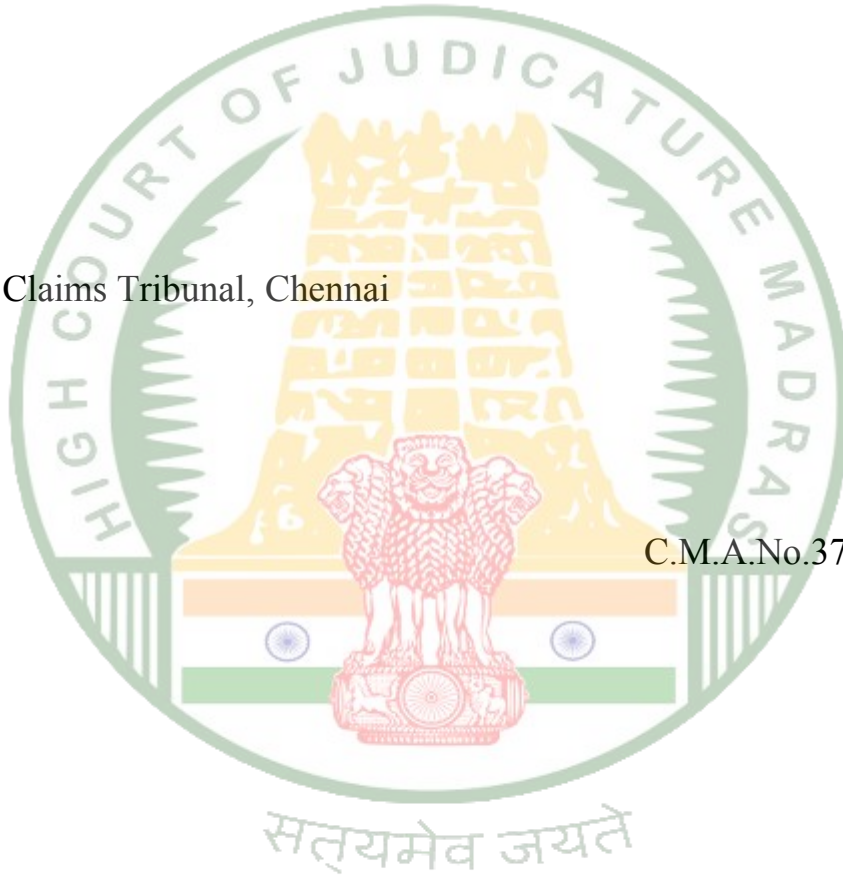
Speaking order/Non-Speaking Order

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S.M.SUBRAMANIAM, J.

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To
Railway Claims Tribunal, Chennai



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