

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.3253 of 2017

1.M.Neelakandan
2.Mrs.N.Selvi
3.Mrs.P.Kalaiselvi

..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 17.08.2017 passed by the Railway Claims Tribunal, Chennai Bench in OA(II-U) 17/2017.

For Appellants : Mr.T.Raja Mohan

For Respondent : Mr.M.Vijay Anand

JUDGMENT

The order dated 17.08.2017 passed in OA(II-U) 17/2017 is under challenge in the present Civil Miscellaneous Appeal.

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

“The deceased was a resident of Salaiyur Village in Maduranthagam Taluk. He was a construction cooli worker and stayed at Chennai in connection with his cooli job. The applicants came to know from the Chengalpet Railway Police that prior to 00.30 hrs of 07.02.2016 the deceased, while standing near the door to get down from the general compartment of Tr.No.12631 Nellai Exp., at Melmaruvattur, due to push and pull by the other passengers, accidentally fell down from the running train at platform No.3 at Melmaruvattur Railway Station, suffered grievous crush injury on both legs below knee and right hand fractured and died at the place of occurrence. It was an untoward incident. The II Class ticket purchased by the deceased for his travel from Chennai Egmore to Melmaruvatur was said to have lost at the time of accident along with his belongings.”

3. The First Information Report as well as the Inquest Report reveals that it was a case of fallen down from a running train. The Travel

ticket was not retrieved. However, the Investigation conducted by the Police reveals that the deceased died on account of fatal injuries and by falling from a running train. The Divisional Railway Manager's [DRM] Report dated 28.05.2017 also concludes that the deceased was not a genuine passenger, who had fallen down from a running train No.12631 Ex.MS-TEN, while detraining from the train when the train was entering on PF.3 @ MLMR Railway Station resulting in sustained injury and died on the spot. The death caused due to his carelessness and self inflicted one.

4. The question arises whether the negligence and carelessness can be construed as a self-inflicted injury within the meaning of Section 124A of Railways Act. Undoubtedly, self-inflicted injury is a clause, where the claimants are not entitled for compensation. However, mere negligence or carelessness cannot be construed as self-inflicted injury. For self-infliction, *mens rea* is required. In other words, an intention on the part of the passenger is required to establish self-inflicted injuries. If any untoward incident occurs due to carelessness or negligence, the same cannot be converted as self-inflicted, so as to decline grant of

compensation. Accidents are mostly happening on account of certain carelessness or negligence. In the event of the refusal of compensation merely on the ground of negligence and carelessness, then compensation cannot be granted in any case. Every accident happens sometimes on account of carelessness or due to negligence. In such circumstances, the Courts are bound to adopt a pragmatic approach and more specifically, the contributory negligence on the part of the other side is also to be construed. Overcrowding in a running train are mostly due to issuance of innumerable tickets without ascertaining the capacity of coaches, more specifically, in Unreserved compartments. Railway Police as well as the authorities competent, who all are to duty bound to control the crowd in running trains, are also not efficient enough to implement the Railway Rules. Undoubtedly, due to huge population and travellers, it may not be possible for the authorities to control effectively. However, when an accident occurs, the Railway authorities cannot simply say that a passenger fell down due to his own negligence. One could able to visualize that the passengers are travelling even by standing nearby the doors in Express trains in Unreserved compartments. Large number of crowd are travelling over and above the coach capacity. The Railway

authorities are simply witnessing the same and not initiating any steps to control the crowd in coaches. Thus, it is to be construed as contributory on the part of the Railways. When many passengers are allowed to stand nearby the doors and the accident falls from a running train cannot be attributed only against the passenger and such an untoward incident happening on account of carelessness, cannot be construed as self-inflicted. This being the possible interpretation and further, as far as the welfare legislations are concerned, Courts are bound to interpret the provisions liberally. Such exclusion clause on self-inflicted injury cannot be applied as far as the cases of mere negligence or carelessness. Only if the Railways are able to establish that the injury was inflicted intentionally by the passenger, then alone, the Claim Petition can be rejected and not otherwise.

5. In the present case, the DRM Report admits the fact that the deceased died on the spot due to the fatal injuries sustained by fallen down from a running train. Further, it was admitted that the deceased was travelling in train No.12631 Ex.MS-TEN. The only findings of the DRM in his report is that the death caused due to the carelessness and

self-inflicted one, this Court is of an opinion that self-inflicted was not established by the Railway authorities before the Tribunal also. The Tribunal proceeded on the basis that the deceased was not possessing a valid travel ticket and further, he was not holding a valid travel ticket and therefore, the claimants have not established that the deceased was a bonafide passenger.

6. As far as the Bonafide passenger is concerned, once the untoward incident was established and the Railway authorities, more specifically, DRM Report reveals that the deceased travelled in the train and sustained injuries due to fallen down from a running train, then the burden of proof is shifted on the Railways to establish that the deceased was not a bonafide passenger.

7. In the present case, the respondent / Railways could not able to establish that the deceased was not a bonafide passenger. This being the factum, the Tribunal has committed an error in rejecting an application merely on the ground that the deceased was not holding a valid travel ticket and he was not a bonafide passenger. The onus lies on the

claimants at the first instance and they have established that there was an untoward incident. The said untoward incident was admitted even in the DRM Report. The Final Report by the Police also reveals that the death occurred due to fatal injuries on account of falling down from a running train. Therefore, the burden of proof lies on the Railways to establish that the deceased was not a bonafide passenger. However, they failed to discharge their burden and therefore, the benefit of doubt should go to the claimants. This being the principles to be followed, the order dated 17.08.2017 passed in OA(II-U) 17/2017 is set aside.

8. The appellants / claimants are entitled for a 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 passing of the award. The compensation is to be apportioned as detailed hereunder:

(i) The wife/3rd appellant/Kalaiselvi is entitled for a sum of Rs.4,00,000/-(Rupees Four Lakhs only). The appellants 1 and 2/Parents of the deceased are entitled for a sum of Rs.2,00,000/- each (Rupees Two Lakhs Each).

9. Accordingly, the Civil Miscellaneous Appeal in C.M.A.No.3253 of 2017 stands allowed. 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 appellants / 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. No costs.

22.02.2021

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Index: Yes/No

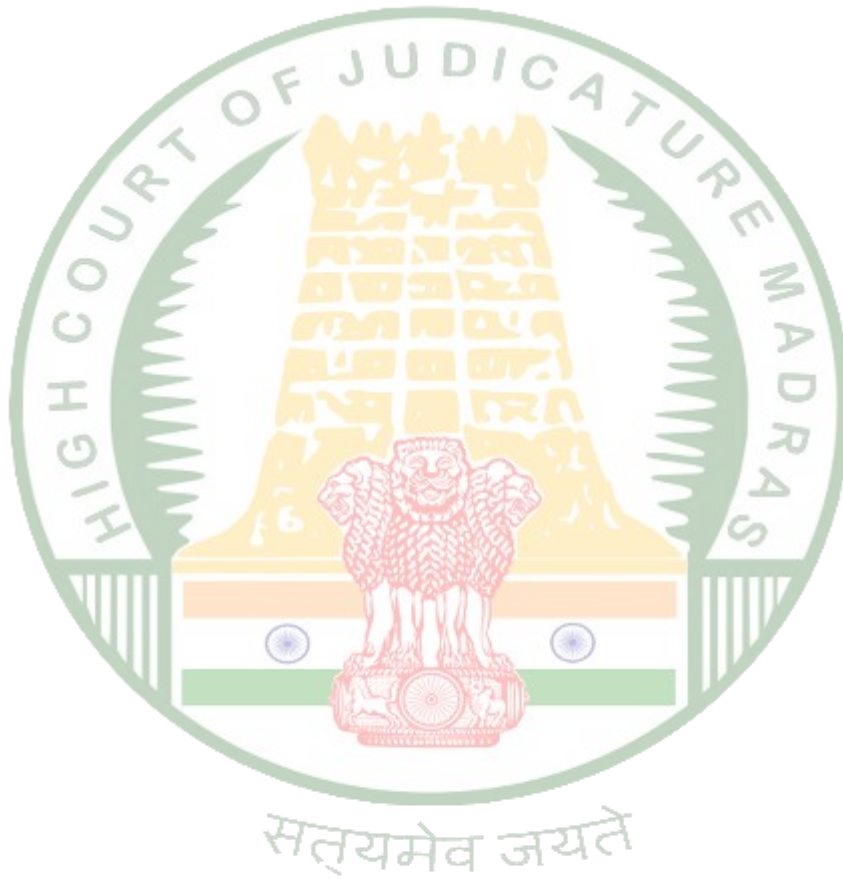
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Speaking/Non-Speaking order

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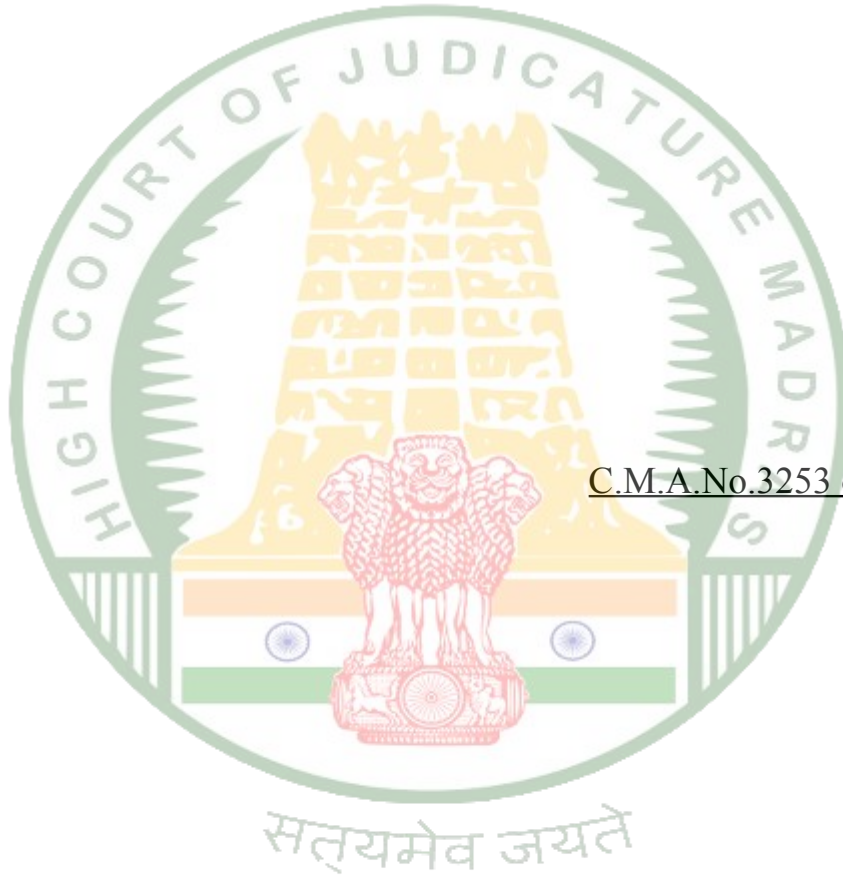
1. The Railway Claims Tribunal,
Chennai Bench.



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C.M.A.No.3253 of 2017

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C.M.A.No.3253 of 2017

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