

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.3290 of 2017

1.P.Valliammal
2.Utchimahali

..Appellants/Appellants

Vs.

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

..Respondent/Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 23 of Railway Claims Tribunal Act 54 of 1987 praying to set aside the order dated 14.07.2017, passed in O.A. (II-U).No.101 of 2016 on the file of Railway Claims Tribunal, Chennai Bench.

For Appellants : M/s.T.Raja Mohan
For Respondent : M/s.T.P.Savitha

J U D G M E N T

The order dated 14.07.2017 passed in O.A.(II-U).No.101 of 2016 is under challenge in the present Civil Miscellaneous Appeal.

2. The claimants are the appellants. The claim petition is filed under Section 16 of the Railways Act with reference to the facts narrated in the claim petition which reads as under:

"The deceased was a resident of Tirunelveli. On 07.09.2015 in the morning, the deceased reached his sister's house at Trichy. On the same day in the night, along with his sister and her son & daughter in law, he left for Chennai by Pandian Express. The applicants came to know from the co-passenger and Virudhachalam Railway Police that on 08.09.2015 at about 02.20 AM the deceased, while traveling in a general compartment of Pandian Express train, due to heavy rush, speed and jerk of the train, accidentally fell down from the running train between Ulundurpet and Parikkal Railway Stations, suffered grievous head injury with bleeding through ears and aberrations on forehead. The train was stopped by chain pulling and the deceased found dead lying amid bushes at the place of occurrence. It was an untoward incident. The second class ticket purchased by the deceased for his travel from Trichy to Chennai Beach was said to have lost at the time of

accident."

3. The respondent/railways contested the case and the appellants could not establish that the deceased was a passenger and while he was traveling in the train fallen down from a running train and sustained grievous injuries and died. The F.I.R as well as the inquest report also enumerates the said accident. The DRM report reveals that Smt.N.Nallatchi, who is none other than the sister of the deceased had made a statement that her brother Pitchaiya was an addict of liquor adding that even before boarding the train he consumed liquor of Rs.100/-. Despite her advice Pitchaiya did not refrain from consuming liquor. The sister of the deceased Smt. N.Nallatchi, was also traveling along with the deceased. Thus, her statement cannot be disbelieved. The Tribunal further considered the statement of the said Smt.N.Nallatchi and in clear terms she expressed that she was traveling along with her deceased brother and the brother consumed alcohol and was sitting nearby the door of a running train. When the fact regarding consumption of liquor was established, the Tribunal by invoking the Exclusion Clause under Section 124-A under the Railways Act dismissed the application.

Section 124-A (d) contemplates "any act committed by him in a state of intoxication or insanity;"

4. In the present case, when the co-passenger who is the sister of the deceased herself deposed that the deceased consumed liquor before boarding the train, there is no reason to disbelieve the statement of the witness. This Court is of an opinion that the appellants are not entitled for compensation, in view of the Exclusion Clause as stated above. The Tribunal also based on the said statement rejected the application.

5. Thus, this Court do not find any infirmity or perversity as such. Accordingly, the order dated 14.07.2017 passed in O.A.(II-U) No.101 of 2016 stands confirmed. Consequently, Civil Miscellaneous Appeal No. 3290 of 2017 stands dismissed. No costs.

Sd/-

Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

Pns

To

1.The General Manager,
Union of India owning,
Southern Central Railway,
Chennai - 600 003.

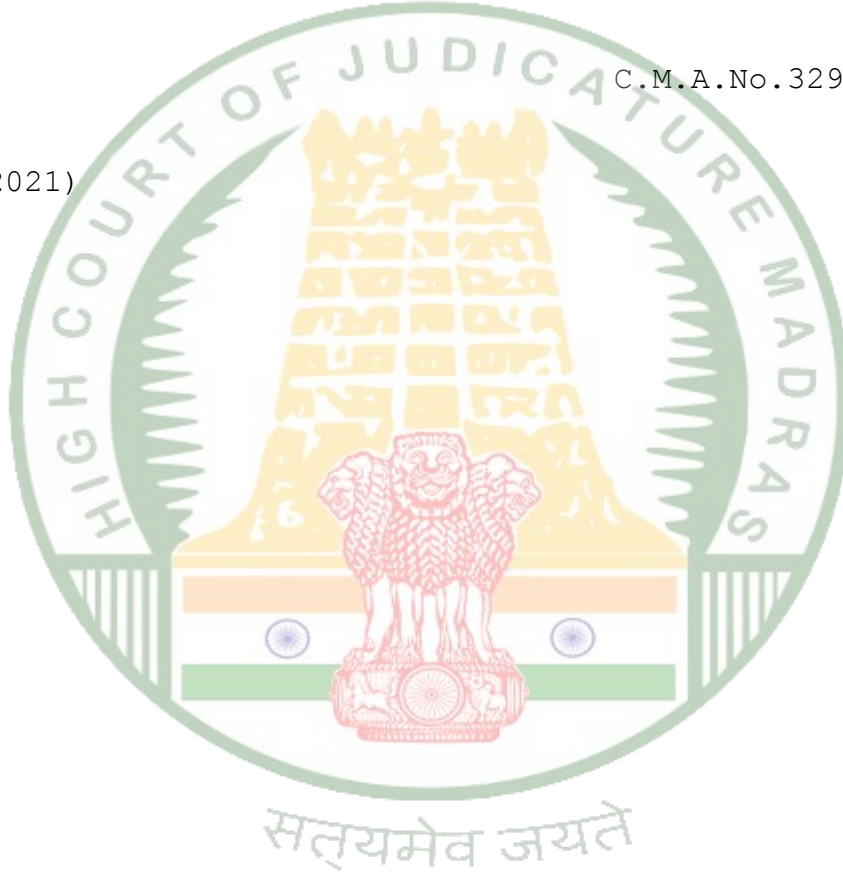
2.The Registrar, Railway Claims Tribunal,
Chennai Bench.

+lcc to Mr.Savitha, Advocate, S.R.No. 10660

+lcc to Mr.Raja Mohan, Advocate, S.R.No. 10788

C.M.A.No.3290 of 2017

MG(CO)
GN(18/03/2021)



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