

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.3419 of 2017

B.Muneeswari

..Appellant

Vs.

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

..Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 23 of Railway Claims Tribunal Act 54 of 1987 praying to set aside the order dated 30.06.2017, passed in O.A. (II-U).No.129 of 2016 on the file of Railway Claims Tribunal, Chennai Bench.

For Appellant : M/s.T.Raja Mohan

For Respondent : M/s.T.P.Savitha

J U D G M E N T

The order dated 30.06.2017 passed in O.A.(II-U).No.129 of 2016 is under challenge in the present Civil Miscellaneous Appeal.

2. The claimant is the appellant. The wife of the deceased filed an application under Section 16 of the Railways Act, seeking compensation on the ground that the deceased was a resident of Srivilliputhur of Virudhunagar District. He was working with a private company at Ambattur, Chennai. That on 14.01.2016 in the morning the deceased informed his mother that he would come home by train for pongal holidays. The applicant came to know from the Trichy Railway Police that on 14.01.2016 the deceased by purchasing II class Mail/Exp ticket bearing No.42508558 for travel from Chennai Egmore to Madurai, while traveling in general compartment of any one of the train, due to heavy rush, speed, jerk and jolt of the train, accidentally fell down from the said train between Kulathur and Samudram Railway Stations, suffered grievous head injury with aberrations all over the body and died at the place of occurrence. It was an untoward incident.

3. The respondent / railways disputed the claim petition mainly on the ground that the deceased was not a bonafide passenger, since the ticket produced by the applicant is inconsistent and not correlated with the other documentary evidences. As per the F.I.R the deceased had started his travel from Chennai on 14.01.2016 morning to reach his native place for pongal festival. As per the inquest report, the body was found by the key man near the track at 7 am on 14.01.2016 at KM 365/700-800. The time of purchase of ticket is 06.25 am, then how it could have been used by the deceased when his body was found at 7 am at km 365/700 - 800. The deceased could not reach the place of occurrence 365 km with 35 minutes from Chennai. Hence the applicant has approached the Tribunal with false case.

4. This Court has examined the xerox copy of the journey ticket and there is no time of issuance of ticket is mentioned. However, in the inquest report it is stated "Saminathan, S/o.Murugesan, Keyman first noticed the death on 14.01.2016 in the morning at 7.00 hours at KM 365/700-800 between Kulathur and Smudram railway stations and reported.

5. This apart, the DRM report also enumerates that there was no valid train journey ticket found from the passenger. Thus the deceased was no way considered to be a bonafide passenger.

6. The Tribunal adjudicated the issues with reference to the evidences and documents. Though the contradiction in this basic factors are spelt out in the affidavit filed by the respondent / railways, the said submission was not in dispute by the appellant / claimant before the Railway Claims Tribunal. Thus, the Railway Claims Tribunal examined the documents and made a finding as under:

"6. On other hand, contesting averments made in OA, respondent in their reply denied that deceased was a bonafide passenger as ticket produced by applicant is inconsistent and not correlated with other documentary evidence. The ticket was purchased at 06.25 a.m. on 14.01.2016. As per inquest report para 3, the body was found by Keyman at 7.00 a.m. on 14.01.2016 at KM 365/700-800. The deceased could not have reached the place of occurrence i.e. KM 365 within 35 meters from Chennai. Further, on Seeing the nature of injuries and place of incident, the alleged incident is other than fall from train and hence it will not come under the definition of "untoward incident" within the meaning of Section 123 (c) (2) of the Railways Act 1989."

7. When a specific ground has been raised by the respondent/railways regarding the contradictions in basic factor with reference to the travel ticket as well as the inquest report and the identification of body and the times thereon. Then, it is to be considered as if the untoward incident was not established so also the deceased cannot be construed as a bonafide passenger. The onus lies on the claimant to establish the untoward incident at the first instance. The claimant is bound to establish that the deceased was a bonafide passenger. Once the factum regarding the untoward incident was established with relevant records then alone the burden of proof would be shifted on the railways. When the passenger is not a bonafide passenger regarding the untoward incident, then the claim petition cannot be entertained at all.

8. The Railway Claims Tribunal considered the contradictions regarding the facts and circumstances, when the Southern Railway raised a ground regarding the accident and the same was not disputed by the claimant, this Court do not find any perversity with the findings and more specifically, the findings in Paragraph No.11 of judgment of the Railway Claims Tribunal:

"11. We have given our thoughtful and anxious consideration to various facets of case and arguments advanced by both sides. On careful analysis of same we are of the considered view that no unjust leniency can be shown to such person, and grant relief as prayed for. Facts which have vital bearing on the outcome of present OA and which have not been disputed are that journey ticket placed on record was issued on 14.01.2016 for a journey of 497 KM. Neither FIR, inquest report nor final report submitted by Police made reference to Ticket Number not any other material aspects. Further Sri M.Saminathan (Keyman/SMDM) noticed deceased dead body on 14.01.2016 at about 15.30 hours at KM No.365/600-800. His identification was made based on Mobile Number recovered from his dead body. FIR was lodged based on applicant's written complaint. No details of train were ever mentioned in any of the document. Thus the respondent apprehended and contended that said Train Ticket was implanted for making wrongful gain and wrongful loss to Railways. Another aspect which needs to be noticed is that DRM report which noted all these material and factual aspect, was served upon applicant's counsel prior to date applicant deposed on 27.06.2017, yet no steps were taken by applicants to disbelieve the same. Taking any other view in the given circumstance would tantamount to give premium to those who don't approach this Tribunal with clean hands, vitiate and spoil atmosphere in the society. Thus despite the above material was made

available to applicants, no reasonable steps were taken to ignore said documents.”

9. In view of the facts and circumstances, this Court do not find any infirmity or perversity as such. Accordingly, the order dated 30.06.2017 passed in O.A (II-U) No.129 of 2016 stands confirmed and C.M.A.No.3419 of 2017 stands dismissed. No costs.

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Assistant Registra

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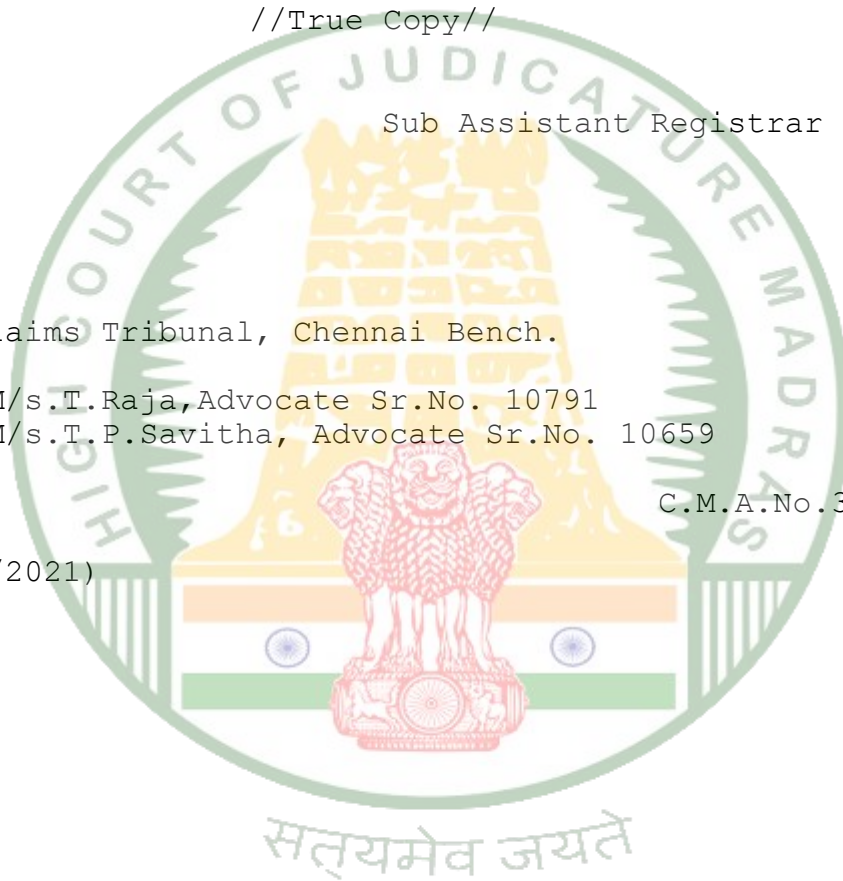
Railway Claims Tribunal, Chennai Bench.

+1 cc to M/s.T.Raja, Advocate Sr.No. 10791

+1 cc to M/s.T.P.Savitha, Advocate Sr.No. 10659

C.M.A.No.3419 of 2017

SMI (CO)
RMP (17/03/2021)



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