

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26-03-2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.423 of 2017

1.Smt.Shamim Sultana

2.Rafeeq Ahmed

.. Appellants /Applicants

Vs.

Union of India Owing

Southern Western Railway rep. by

its General Manager,

Hubli.

.. Respondent/Respondent

Civil Miscellaneous Appeal is filed under Section 23 of the Railway Claims Tribunal Act, 1987 against the judgment and decree dated 13.7.2016 made in O.A. (II-U) No.4 of 2016 on the file of the Railway Claims Tribunal, Chennai Branch.

For Appellants : Mr.C.Prabakaran

For Respondent : Mr.M.Vijay Anand

JUDGMENT

The judgment dated 13.07.2016 passed by the Railway Claims Tribunal, Chennai Bench in OA (II-U) No.4 of 2016 is under challenge in the present Civil Miscellaneous Appeal.

2. The claimants are the appellants and the claim petition was filed based on the ground that on 16.01.2015 when the deceased was alive, for the purpose of going to Whitefield on duty, he had come to Bangalore East Railway Station at Platform No.2 and while he was trying to get into Marikuppam Passenger Train, the train started moving and due to heavy rush, sudden jerk and jolt, he lost his balance and fell down from the moving train and died.

3. The respondent-Railway contested the case by stating that the deceased died due to run over by train and not falling down from the train. The deceased committed suicide or while crossing the track, he was hit and run over by the train. But the death of the deceased was not due to fall down from the train.

4. The Railways after enquiry, filed counter, stating that the Inquest Column No.4 mentioned that on 16.01.2015 at 10.15 A.M., the deceased was lost seen by his Manager Sri S.Naveen Kumar in the Office, which means the deceased was in the Office upto 10.15 A.M., and whereas the applicants stated in para 6(b) of the application that the deceased went to Bangalore East Railway Station at Platform No.2 when he was trying to get into the Marikuppam Passenger Train lost his balance and fell down from the train. It is important to state that the Marikuppam Passenger Train No.56510 passes through the Bangalore East Station at 07.18 A.M., and the next Passenger Train to Marikuppam is Train No.66513 and passes through Bangalore East Station at 12.36 P.M. Therefore, the deceased was not at all travelling in the train and he committed suicide or while crossing the track, he was run over by the train.

5. Even the DRM Report filed suggest that the victim person is not a bona fide passenger, since he has no valid ticket proof for the bona fide passenger. There is no eye witness to prove that the deceased person had travelled in the train and fallen down from the train.

6. The learned counsel for the appellants states that the deceased was found at the end of the platform of the Railway Station and therefore, he travelled in the train.

7. This Court is of the considered opinion that if at all a passenger met with an accident by falling down from the running train in a platform and found at the end of the platform, certainly there is a possibility that the other passengers or the persons standing in the platform, would have noticed. However, there is no such evidence or witness made available to establish that the deceased had fallen down from a running train.

8. The Tribunal considered the facts and circumstances and the documents produced and made the following observations in paragraph-6.6 of its judgment, which reads as under:-

"(i) FIR detail (Exh.A-1) was registered by Police Sub-Inspector/Cantonment Railway Police Station, Bangalore based on message from SM/Bangalore Cantonment RS that a dead body of about 28 years old unknown male was found at the end of the East Railway Station at about KM 348/700-800 as reported by Sri V. Muniyappa/Keyman.

(ii) During Inquest vide Ex A-2 while the police recovered SIM cards, two mobile phones, purse with

rupee notes, an ATM card and some papers, there was no recovery of any journey ticket.

(iii) It is the case of the applicants that the deceased was trying to get into the crowded Passenger train at Bangalore East Railway Station at P.F 2, he fell down and died.

(iv) However, despite day time and the presence of large crowd, the alleged fall from a train and that too, close to Bangalore East station premises was not reported by any one and the dead body was only subsequently noticed by the keyman.

(v) The respondent in reply statement and statutory DRM report have refuted the claim of alleged fall from a train and have also contended that the deceased was not a bonafide passenger since there was recovery of a number of items and journey ticket alone was not recovered.

(vi) In this case, the Inquest was conducted at the scene of incident itself and as there was no shifting of the body to any hospital etc, the possibility of the loss of journey ticket in transit is also ruled out.

(vii) No doubt, Railways are expected to conduct ticket checking to apprehend ticketless travellers, and in case it is established that the deceased had travelled for a reasonable period of time, in the absence of any detection, the benefit of doubt could be extended to the deceased to be considered as a bona fide passenger. However, in this case, the applicants themselves aver that the deceased was 'trying to get into the train' at Bangalore East Station. As such, the Respondent Railways could not have had reasonable time to conduct ticket checking, and therefore the onus of establishing the bona fides of the deceased can not be shifted to Railways.

(viii) Unlike Metro rail systems, where the entire network is insulated the Indian railway network is porous and any one can barge into railway premises/trains with out valid authority. It

is to be noted that Section 123 (c) of the Railways Act, dealing with 'untoward incident' makes a clear distinction between sub class (1) and sub class (2). While sub class (1) deals with acts of terrorism, violent attacks, robbery, rioting and arson, where even innocent bystanders can be victims, sub class (2) deals only with 'accidental falling of any passenger from a train carrying passengers'. Further, Section 124.A, dealing with compensation for untoward incident explicitly has an 'Explanation' clause, stipulating that "for the purposes of this section 'passenger' includes, a railway servant on duty and a person who has purchased a valid ticket"

9. Based on the observations, the Railway Claims Tribunal arrived a decision that the accidental falling of any person is not established and further, the deceased was not a bona fide passenger and accordingly, the claim petition was dismissed.

10. This Court is of the considered opinion that there is no material on record to establish that any untoward incident occurred due to falling down from a running train and contrarily, many of injuries were ascertained through Post-mortem Report reveals that there is a doubt regarding the cause of death and the authorities also conducted detailed enquiry and found that there is no evidence to establish that the deceased had fallen down from the running train.

11. This being the factum established, this Court do not find any perversity or infirmity, as such, in rejecting the claim petition. Accordingly, the judgment dated 13.07.2016 passed by the Railway Claims Tribunal, Chennai Bench in OA (II-U) No.4 of 2016 stands confirmed and consequently, CMA No.423 of 2020 is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS.III)

/True Copy/

Sub Assistant Registrar

To

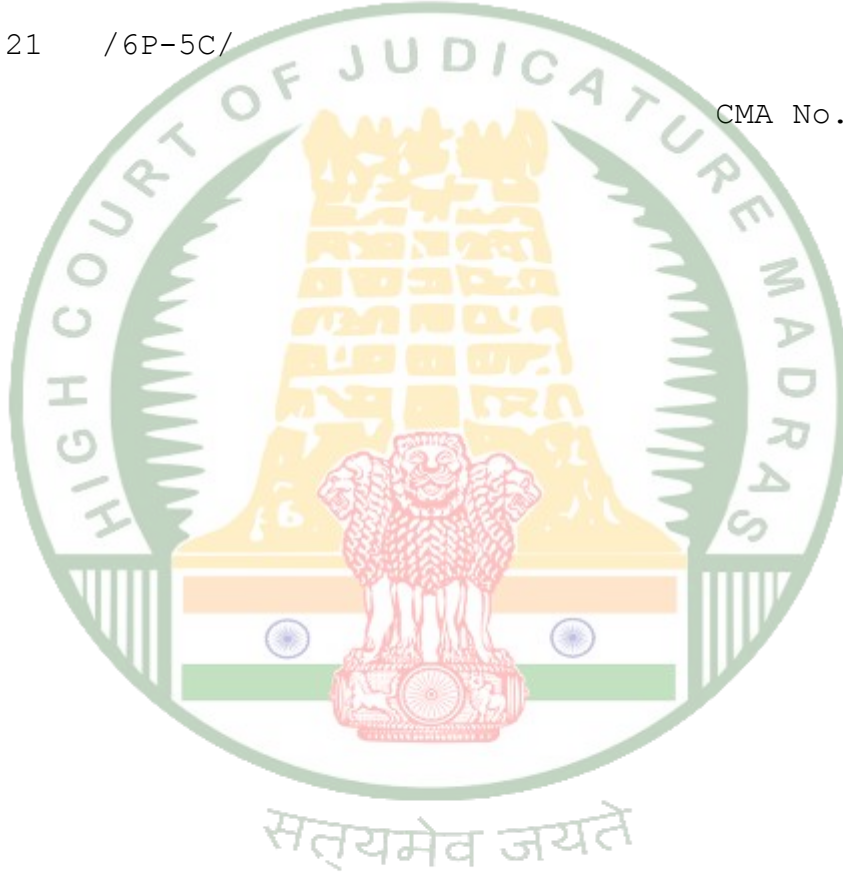
The Railway Claims Tribunal,
Chennai Bench.

Copy to : The Section Officer, V.R.Section,
High Court of Madras, Chennai.

+lcc to Mr.M.Vijay Anand, Advocate SR.No.20123
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AKM/30.04.21 /6P-5C/

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