

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.4447 of 2019

1.R.Kumar

2.K.Muthulakshmi

..Appellants

Vs

The Union of India
Rep. by its General Manager,
Southern Railway, Chennai.

..Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987 against the order dated 11.10.2019 passed in O.A.No.(II-U/MAS/134 of 2018 by the Railway Claims Tribunal Chennai Bench.

For Appellants : Mr.T.Rajamohan

For Respondents: Mr.M.Vijay Anand

JUDGMENT

The judgment dated 11.10.2019 passed in O.A.No.(II-U/MAS/134 of 2018 is under challenge in the present civil miscellaneous appeal.

2. The claimants are the appellants. The claim petition is filed with reference to the untoward incident as narrated in the application, which reads as under:

"That on 08.08.2017 in the morning at about 08.00 hrs, the deceased informed his father and left for college. Along with his friend Narendran, the deceased travelled EMU train. The applicants came to know from the co-passenger and Perambur Railway Police that on 08.08.2017 the deceased and his friend while travelling in EMI train from Villivakkam Railway Station, prior to 09.10 hrs of 08.08.2017 when the train was proceeding near

Korattur Railway Station, due to over crowd, speed and jerk of the train, the deceased accidentally fell down from the running train, suffered grievous head injury with aberrations all over the body. He was shifted by the 108 ambulance to K.M.C Govt. Hospital and thereafter for further treatment he was admitted in Rajiv Gandhi Govt. Hospital. However, not responding to the treatment, he died on 16.08.2017 at 09.50 hrs. It was an untoward incident. The II class journey ticket purchased by the deceased for his travel from Villivakkam Railway Station was said to have lost at the time of shifting him to the hospital."

3. The Tribunal proceeded with the trial based on the evidences and document. The Tribunal found that the untoward incident was not established as defined under the Railways Act and further the deceased was not a bonafide passenger.

4. Learned counsel for the appellants contended that the untoward incident occurred on account of hit in a lamppost, the deceased sustained grievous injuries on the date of the accident on 08.08.2017 and subsequently died on 16.08.2017. When the untoward incident occurred due to a hit in a lamppost, it would not be a ground to decline the compensation to the victim. Thus, the Tribunal has committed an error in dismissing the application.

5. Learned counsel for the respondent/Railways disputed the said contentions by stating that the untoward incident itself was not established beyond doubt. However, neither travel ticket was produced nor retrieved from the deceased. Thus, the Tribunal is right in rejecting the application and there is no infirmity.

6. Beyond the facts and circumstances considered by the Tribunal, it is relevant to consider the DRM's report and in the concluding paragraph, the report categorically states that on 08.08.2017 at about 8.30 hrs, the deceased along with his friend Narendar were travelling by EMU train from VLK to AVD to attend their college. When the train was running near KOTR Railway station, the deceased who was travelling near the doorways of the compartment, fell off from the running train after being hit by the power post, in which he sustained grievous head injury and was rushed to the Govt. KMC hospital through 108 Ambulance and then referred to RGGGH, Chennai where he was admitted as inpatient but died on 16.08.2017 at 09.50 hrs. Based on the complaint lodged by Sri.Kumar, the father of the deceased, registered a case in Cr.No.86 of 2017

under Section 174 Cr.PC on 08.08.2017. The report concludes that the deceased had accidentally fallen down from the train near Korattur Railway station while travelling in an EMU train from VLK station towards AVD station. Further, the incident was not reported to Railways. The RPF and Railway officials were not aware of the incident happened on 08.08.2017.

7. The above portion of the DRMs report reveal that there is discrepancy even in the registration of the complaint. The alleged untoward incident occurred on 08.08.2017 but the father of the deceased had given a complaint by stating that the deceased was admitted as in-patient on 16.08.2017. When the father of the deceased has stated that the deceased died on 16.08.2017, the very complaint was registered on 08.08.2017 is improbable and appears to be unbelievable. Thus, the very complaint registered, cannot be trusted upon. In the subsequent sentence, the inquest report reveals that the incident was not reported to the Railways. The Railway officials were aware of the incident happened on 08.08.2017 when the father of the deceased has stated in his complaint that the deceased died on account of untoward incident occurred due to hit in a lamp post and 108 Ambulance came and he was admitted. It is not possible that the Railway Authorities as well as the railway police were not aware of the incident. If at all, Ambulance came into the railway premises and the injured was taken for treatment to the hospital, certainly, some officials or some passenger would have informed the Station Master or to the authority concerned and no such things are made available either in the report or in the other documents. Thus, the very untoward incident seems to be highly suspicious and the manner in which the criminal complaint registered is also unbelievable. Under these circumstances, this Court is of the opinion that the Tribunal has rightly arrived at a conclusion in rejecting the application and thus there is no infirmity in the findings as such.

8. In view of the above, the order dated 11.10.2019 passed in O.A.No. 134 of 2018 stands confirmed and the civil miscellaneous appeal stands dismissed. No costs.

Sd/-
Assistant Registrar (IV)

//True copy//

Sub Assistant Registrar

ssm

To

1.The Presiding Officer,
Railway Claims Tribunal, Chennai.

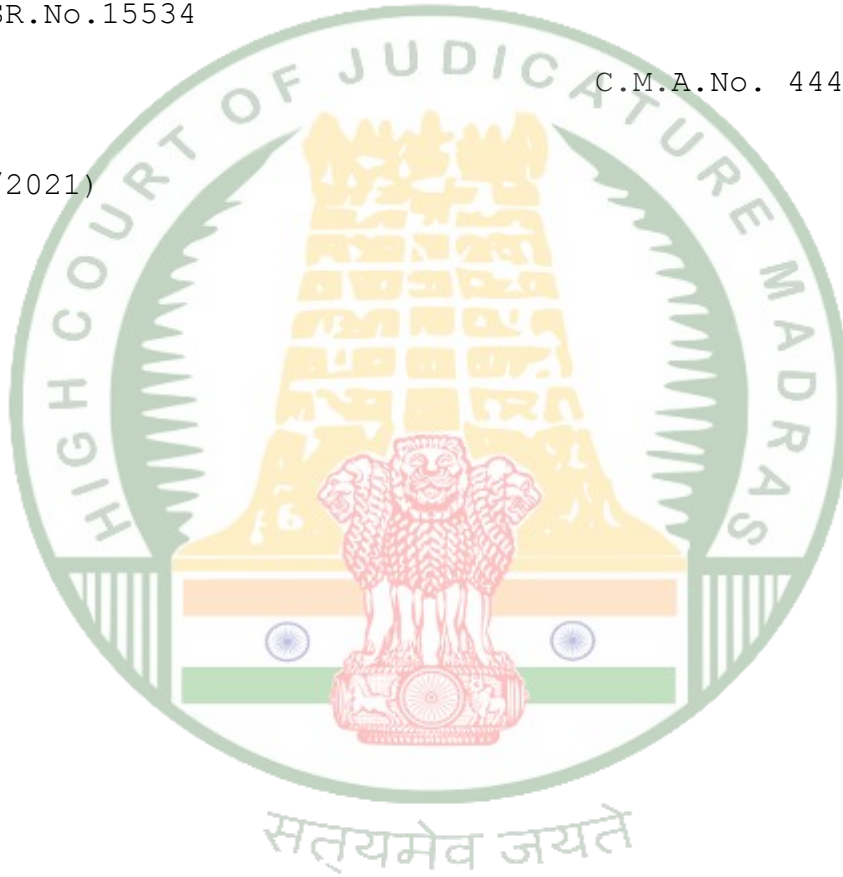
2.The General Manager,
Southern Railway, Chennai.

+1cc to Mr.T.Rajamohan, Advocate SR.No.15520

+1cc to Mr.M.Vijay Anand, Advocate (Addl. Standing Counsel for
Railways SR.No.15534

C.M.A.No. 4447 of 2019

MGR(CO)
GMY(15/04/2021)



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