

Before Railway Claims Tribunal, Ahmedabad Bench.

Coram: Shri. Mukesh Nigam, Vice-Chairman (Tech) North at
RCT/Allahabad
Shri. Vinay Goel, Member (Judicial), RCT/Ahmedabad

CASE No. **OA (IIu) ADI/ 2022/0101**

Date of Institution: 11.10.2022

Date of Decision: 03.05.2024

1. Solanki Meljibhai S/o Solanki Chhitubhai, Age 36 years.
(Son of the deceased)
Residing at: Rel, rel, Narmada, Gujarat-393140.
2. Solanki Shilaben W/o Solanki Rameshbhai, Age 45 years.
(Married daughter of the deceased)
Residing at: Jalaram Mandir Faliyu, Pancchiyapura,
Palej, Vadodara, Karjan, Gujarat-392220.
3. Solanki lalitaben W/o Girishbhai, Age 37 years.
(Married daughter of the deceased)
Residing at: 32, Colony Gat, Ankleshwar, Bharuch-393001.
4. Harijan Minaben W/o Harijan Shaileshkumar, Age 36 years.
(Married daughter of the deceased)
Residing at: 64, Mahivas, Bakrol Road, Vallabh
Vidhyanagar, Anand, Gujarat-388120. APPLICANTS

-VERSUS-

Union of India Through General Manager,
Western Railway, Church Gate, Mumbai.

.... RESPONDENT

Mr. N.R. Kapade, Ld. Counsel for the Applicants through virtual hearing.

Mr. J.H. Joshi, Ld. Counsel for the Respondent through virtual hearing.

CLAIM FOR Rs. 8,00,000/-

JUDGMENT

Matter heard through virtually and pronounced through virtual mode.

In this case Hon'ble Principal Bench/Delhi, vide its letter No. RCT/DLI/ADI/2017 dtd. 29.11.2023 constituted Double Bench to hear this matter through virtual Mode. Earlier when case was fixed for hearing two occasions, Sh. N.R.

Kapade was not available due to his personal reasons and he could not appear for hearing through virtual mode and on 01.05.2024 hearing was conducted.

2. Case in hand has been preferred before the Tribunal by son and three married daughters of the deceased under Section 16 of the Railway Claims Tribunal Act, 1987 read with section 124-A, 125 & 123 (c)(2) of the Railways Act, 1989 claiming compensation of Rs. 8,00,000/- together with interest on account of death of one Kamlaben W/o Chhitubhai alias Chittabhai Laljibhai Solanki, aged 52 years (hereinafter referred to as 'deceased') in an alleged untoward incident.

3. It is the case of the Applicants that on 02.09.2022 the deceased was coming from Ankleshwar to Palej station with general class journey ticket, by travelling in any DN passenger train. As the train reached at km.no. 332/8-10 between Chavaj and Nabipur stations, she accidentally fell down from running train. Due to which, she sustained multiple injuries resulting in her death on the spot. It is further averred that general class ticket from Ankleshwar to Palej was lost.

4. The Respondent Railway Administration has contested the claim of the Applicants by filing the written statement along with DRM Report, wherein apart from denying all the averments, it is contended; that the deceased was mentally ill, she left home before 2 days from the date of incident for going to her daughter's house; that no missing complaint to Police was lodged by her family members; that the deceased somehow came at Railway line after leaving home and died as a result of collide with any train; that no travelling authority was recovered from the deceased; that on 02.09.2022 at around 11:20 am, first informant saw body of the deceased lying on ballast near drainage no. 508 at km.no. 332/8-10; that in absence of eye witness to the incident, it cannot be said that how the incident actually happened; that train number or name is also not known to the Applicants; that the deceased did not inform to the Applicants about purchase of ticket and/or alleged journey by train. Therefore, the incident occurred with the deceased is not covered under Section 123 (c) (2) of the Railway Act, 1989 and the Applicants are not entitled to any compensation. On the

basis of these and other pleas, dismissal of the claim application has been sought by the Respondent.

5. Crux of DRM Report: “1. मृतक महिला कमलाबेन मानसिक रूप से अस्वस्थ थी। वह घटना से 02 दिन पूर्व अपने घर से अपनी लड़की के गहर जाने हेतु निकल गयी थी किन्तु महिला के परिजनों द्वारा उनकी गुमशुदगी बाबत कोई पुलिस शिकायत दर्ज नहीं कराई गयी थी चूँकि मानसिक रूप से अस्वस्थ और मानसिक अशक्तता से ग्रस्त व्यक्तियों के साथ संवेदनशीलतापूर्वक देखरेख करने का दायित्व इनके पारिवारिक सदस्यों का भी होता है। 2. मृतक महिला घर से निकल कर किसी तरह रेलवे लाइन पर आई थी और किसी अज्ञात ट्रेन की चपेट में आने से दुर्घटना का शिकार हुई थी । 3. जांच के दौरान मृतक महिला के पास से रेल यात्रा से संबंधित कोई अधिकार पत्र व टिकट प्राप्त नहीं हुई थी और नाही मृतका के पुत्र द्वारा रेल यात्रा से संबंधित कोई अधिकार पत्र, टिकट प्रस्तुत की गई थी। जिससे उक्त मृतका रेल यात्री नहीं होने की पुष्टि होती है।”.

6. Based upon the pleadings of the parties and material made available on record, the following issues were framed:

ISSUES:

1. *Whether deceased was travelling on a valid Railway journey ticket and was a bonafide passenger of the train in question at the relevant time?*
2. *Whether the deceased met with an untoward incident due to fall from passenger carrying train, suffered injuries and died as a result thereof and the present case is covered under the definition of Section 123 (c)(2) of the Railways Act, 1989?*
3. *Whether the applicants are the sole dependents of the deceased and are entitled to compensation as claimed under Para-16 of the claim application?*
4. *To what Relief?*

7. Applicants' Evidence: Applicant no.2 has filed her own examination in-chief on affidavit as AW/1 and she was cross examined by the counsel for the Respondent.

8. Respondent's Evidence: The Respondent Railway has not adduced any oral evidence.

9. Documents filed by the parties:

- a. The Applicants filed certified copies of:

Memo at Exh.A/1; Inquest Panchnama at Exh.A/2; Panchnama of Place of Incident at Exh.A/3; Post Mortem report at Exh.A/4; Aadhar cards of the Applicants and the deceased at Exh.A/5-9; Pan card of Applicant no.2 at Exh.A/10; Ration card at Exh.A/11; Bank details of the Applicants at Exh.A/12-15.

- b. The Respondent has filed the statutory DRM report along with investigation report.

10. At the time of arguments, the Ld. Counsels for parties argued as under:

“Counsel for Applicants submitted that the deceased was travelling from Ankleshwar to Palej station on a valid ticket and during course of journey she accidentally fell down. He further submitted that in Railway records, there was GRP vardhi with reference of accidental fall from running train. Furthermore, cause of death of the deceased was injuries sustained by the deceased particularly head injuries. The deceased was bonafide passenger and died in an untoward incident hence, the son and three married daughters as the Applicants being dependent are entitled to compensation.

In the reply Counsel for the Respondent submitted; that as per statements given by the family members, the deceased was not mentally stable and in cross-examination of AW/1 she admitted that her mother left home on 31.08.2022; that station near to the home is Chavaj, where body was detected on 02.09.2022; that family members did not lodge any missing complaint; that in initial message the body was lying beside the track; that the Applicants have failed to prove their case and no ticket was recovered from the body of the deceased whereas ladies purse was recovered with money; that the deceased was not a bonafide passenger and was not travelling in a train.

In rebuttal counsel for the Applicant submitted; that there is contradiction between Telephonic Vardhi of GRP-Bharuch and Memo issued by Station Mater-Chavaj, so message which favours victim is to be believed; that the Respondent has failed to produce relevant witness and failed to contest the case.”

FINDINGS

- 11.** We have carefully gone through the pleadings of the parties, material made available on record evidence adduced by both the parties and heard the arguments

advanced on behalf of rival parties by their counsel. Our findings on the aforesaid issues are as under:-

Issue No. 1 and 2:

Both these issues are taken up for consideration simultaneously for sake of convenience and as also they are interrelated.

12. Admittedly in this case, there is no eye witness and this Tribunal is to bank upon circumstantial evidences. Admittedly body of the deceased was found near Railway track and there is dispute due to contradictory recitals made in Memo issued by Station Supdt.-Chavaj and Telephonic Vardhi received by Police Station Officer-Bharuch GRP. The recitals that whether body was found besides track or after fall of person from running train and her body was lying beside the track, would be immaterial at this stage particularly when there was no eye witness.

13. The initial burden to prove bonafide passenger status and occurrence of untoward incident is upon the Applicants. Now let us see whether the Applicants have discharged said burden or not. Before proceedings further we would like to reproduce cross-examination of AW/1 herein as under:

“ यह घटना दिनांक 02.09 को हुई थी। मैं वर्ष नहीं समझती हूँ। यह कहना सही है कि दिनांक 31.08 को मेरी माँ अपने घर अंकलेशवर से पालेज जाने के लिए निकली थी, मैं तो पाछियापूरा, पालेज में रहती हूँ। मेरी माँ ने मुझे अपने घर से निकलने से एक दिन पहले मुझे बताया था कि मैं कल पालेज आऊँगी। यह कहना सही है कि मेरी माँ रेलगाम में रहती थी। यह कहना सही है कि रेलगाम से सबसे नजदीक का रेलवे स्टेशन चावज है। इस दुर्घटना के संबंध में पुलिस ने मेरा कोई बयान रिकॉर्ड नहीं किया। यह बात सही है कि 31.08 को घर से निकलने के बाद जब 02.09 तक मेरी माँ पालेज नहीं पहुंची तब भी मैंने पुलिस में गुमशुदगी की रिपोर्ट दर्ज नहीं करवाई। मेरी माँ किस ट्रेन से यात्रा कर रही थी, मुझे पता नहीं। मैंने, मेरी माँ को टिकट खरीदते व ट्रेन में सफर करते नहीं देखा। ”

14. In the cross-examination, AW/1 categorically deposed that her mother left the home on 31.08.2022 and admittedly in the OA the Applicants are claiming travel on 02.09.2022. There was no eye witness to purchase of ticket and boarding of train. In

the cross-examination witness admitted that Chavaj Railway station is nearby to the village Rel, where the deceased was living during her lifetime. Applicant no.1 is residing in Rel village and as per pleadings the deceased was residing in Rel village with her son.

15. The son has not come forward as witness before the Tribunal. Even AW/1 answered that she did nothing to search her mother from 31.08.2022 to 02.09.2022. There was no police complaint, the distance between place of originating station and place of incident is about 16-17 kilometers. So, it was approximately 30 minutes travel. As per Post Mortem report *Rigor Mortis* had been developed on the body. So, the time period between death and Post Mortem would have been approximately 07 to 08 hours. So, there was no possibility of travel and incident on 31.08.2022.

16. The unexplained period of 31.08.2022 to 02.09.2022 would be a negative factor to the alleged case of travel on 02.09.2022. The Applicants should have come with specific pleadings. The defence of unstable mental condition of the deceased has not been proved on record by the Respondent. But certainly, the Applicants have failed to discharge their initial burden about purchase of ticket, travel and occurrence of incident.

Though there is no evidence from the Respondent, but initial burden lies upon the Applicants and as such the Applicants are to stand on their own legs and they cannot be allow to take advantage of weakness of the Respondent.

17. According to Inquest Panchnama, one ladies purse consisting cash was recovered from the body of the deceased. Once purse with cash was recovered, how and under what circumstances alleged ticket was lost, has not been explained by counsel for the Applicants. Normally, female wearing saree ~~and the saree~~ would not have any pocket, so female would keep her things in her purse. But in the purse though some money was recovered but no ticket was recovered from the body of the deceased or from her purse. So, recovery of purse in fact with no recovery of ticket would negate the claim of purchase and loss of alleged ticket as alleged in the OA.

18. Once Station Supdt.-Chavaj issued Memo that an unknown dead body was lying beside the track, how could GRP-Bharuch add word *fallen down from train* in their Telephonic Vardhi. The said addition as done by the GRP, has not been explained from which source the GRP received said information, whether there was any eye witness or not. So, improvement made by the GRP in Telephonic Vardhi dtd. 02.09.2022 referred by counsel for the Applicants during course of arguments would not have any bearings on the merits of this case.

19. At this stage we would like to refer landmark case of *Union of India vs. Rina Devi*, read as under:

*“mere absence of ticket with such injured or deceased will not negative the claim that he was a bonafide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and **the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found**”.*

20. So, in the absence of discharge of initial burden merely a body was found besides the Railway track would not in itself be a sufficient proof and evidence that said person had fallen down from running train or there was any untoward incident. The Applicants were required to prove their own case and the Applicants cannot take benefit of weakness of defence as pointed out supra. The Applicants have failed to prove any travel and boarding of train as alleged in the OA. If the deceased left home on 31.08.2022 for specific travel, why she did not travel on that day and who prevented her to board train on that day? where she had gone since she left home and her dead body was recovered near track? are vital questions and it was for the Applicants to explain all such facts. But the Applicants remained silent on all these vital aspects of the case. There is lack of synchronization between pleadings made, material available on record and admission made by AW/1 during her cross-examination. Further non-appearance of Applicant no.1 who might have last attended his mother at his home on 31.08.2022, is also adversely affecting story of alleged travel as claimed in the OA.

No doubt Railway has failed to adduce any oral evidence, but in the absense of cogent and convincing evidence to discharge initial burden about bonafide passenger status and untoward incident, we find no legal impediment to say that the Applicants have failed to prove on record any travel, purchase of ticket and occurrence of untoward incident.

21. In this case this Tribunal is to decide a case under chapter XIII of the Railways Act, 1989, which is a piece of welfare legislation and if a person succeeds in its case, the Tribunal is to award compensation, which is to be paid from the public exchequer, a custodian of tax payer's money. So, this Tribunal would be well within in its jurisdiction and domain to keep watch upon real and correct facts despite admission made by the Respondent. Hence, it is worthwhile to reproduce a judgment of Hon'ble Supreme Court in case of Chandi Prasad Uniyal and Ors. v. State of Uttarakhand & Ors., (2012) 8 SCC 417, as under:

"14. We are concerned with the excess payment of public money which is often described as "taxpayers' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see whey the concept of fraud or misrepresentation is being brought in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reason like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment."

22. So, in the light of discussion made above, it appears that the Applicants have not come with clean hand and have tried to put some document which was not recovered from the body of the deceased. We can rely on the judgment of Hon'ble

Supreme court in the case of *V. Chandrasekaran v. Administrative Officer* reported in 2012(4) R.C.R.(Civil) 588 is fully applicable to present case.

34. The appellants have not approached the court with clean hands, and are therefore, not entitled for any relief. Whenever a person approaches a Court of Equity, in the exercise of its extraordinary jurisdiction, it is expected that he will approach the said court not only with clean hands but also with a clean mind, a clean heart and clean objectives. Thus, he who seeks equity must do equity. The legal maxim "Jure Naturae Aequum Est Neminem cum Alterius Detrimento Et Injuria Fieri Locupletiore", means that it is a law of nature that one should not be enriched by causing loss or injury to another.

23. In view of the above and under the facts and circumstances of this particular case, it is held that the deceased was not a bonafide passenger and the incident is not covered the definition of sec 123 (c)(2) of the Railways Act, 1989. Accordingly, issue No.1 and 2 are decided against the Applicants.

Reasoning of Issue No. 3 for the judgment:

24. There is no dispute that the Applicants are son and married daughters of the deceased and would come with the definition of the Dependent as per sec. 123 (b) of the Railways Act, 1989. Hence, the issue is answered accordingly.

Reasoning of Issue No. 4 for the judgment:

25. In view of our findings on main issue no. 1 & 2 which have been decided against the Applicants, it is held that Applicants are not entitled to any relief or compensation as prayed for. Accordingly, we pass the following order:

ORDER

26. In view of the negative finding on issue no. 1 and 2, the claim application stands dismissed on merits.

27. The Registry is directed to send a free certified copy of this judgment directly to the Respondent and the Applicant(s) at his/her/their postal address mentioned in the

claim application by Register A.D. in view of Rule 34(3) of the Railway Claims Tribunal (Procedure) Rules, 1989.

In terms of the above, the present claim application is disposed of. Let this case file be consigned to the Records Room. No order as to costs.

Given under our hands on seal of this Tribunal. Order pronounced through virtual mode on 03.05.2024. Dictated on 03.05.2024. Order firstly signed at Allahabad in circulation.

This case was heard through hybrid Court; pronounced through hybrid Court;
Corrected and signed by us in circulation.

[Vinay Goel]
Member (Judicial)/RCT-ADI

[Mukesh Nigam]
Vice-Chairman (Technical) North/RCT-Allahabad