

Before Railway Claims Tribunal, Ahmedabad Bench.

Coram: Shri. Vinay Goel, Member (Judicial)
Shri. Raj Kumar Manocha, Member (Technical)

CASE No. OA(IIu)/ADI/ 2022/0116

Date of Institution: 27.12.2022

Date of Decision: 19.04.2024

1. Patil Pushpa Nandlal, Aged 45 yrs.
(Wife of the deceased)

2. Patil Sagar Nandlal, Aged 25 yrs.
(Son of the deceased)

Both are residing at: 189, Trikam Nagar, Nilgiri,
Limbayat, Surat-394210, Gujarat.

3. Pooja Vijay Borse, Aged 27 yrs.
(Married daughter of the deceased)

Residing at: 328-A, Priyanka Society-1,
Dindoli, Surat-394210, Gujarat.

.....Applicants

VERSUS

Union of India Through General Manager,
Western Railway, Churchgate, Mumbai.

..... Respondent

Mr. N.R. Kapade, through mobile video call, Mr. K.M. Shah is present, Ld. Counsel
for the Applicants.

Ms. Alka Vaniya, Ld. Counsel for the Respondent.

CLAIM FOR Rs. 8,00,000/-

Judgment

Through this judgment an Application, has been filed by wife, son and married daughter under section 16 of the Railway Claims Tribunal Act, 1987 read with section 124-A, 135 and 123 (c)(2) of the Railways Act, 1989 would be adjudicated the Applicants pray for an amount of Rs. 8,00,000/- as compensation on account of alleged death of Nandubhai alias Nandlal Ramdasbhai alias Ramdas Patil, aged-not defined (hereinafter referred to as 'deceased') in an alleged untoward incident during alleged train journey, on the ground that they are the dependents of the deceased.

2. It is the case of Applicants that, on 04.07.2022 the deceased was travelling from Udhana to Nardana station in train no. 19105 Udhana-Paldhi Yoga Express with a Railway ticket. He accidentally fell down from the running train near LC gate No. 74 on down main line at km.no. 114/28-30. Due to which he sustained multiple injuries on his whole body and died while undergoing treatment. It is further pleaded that the said ticket was lost during the incident. In this consequence, the deceased was a bonafide passenger and he met with untoward incident during journey hence, the Applicants are entitled to get compensation from the Respondent Railway.

3. The Respondent Railway Administration has contested the claim of the Applicants by filing the written statement along with the DRM Report, wherein apart from denying all the averments, it is contended that the deceased was travelling without ticket and voluntarily standing at step of the train and fell down from the train and both of his legs are gone under the wheels and he was runover by the train. Therefore, it is submitted that this act of the deceased is shown gross negligence and the incident comes under the purview of "*Self-inflicted injury and his own criminal act*" and for that the Applicants are not entitled the compensation and the claim may be dismissed.

4. **Crux of DRM Report:** "स्टेशन मास्टर चिंचपाड़ा को समय 15.44 बजे पॉइंट्स में रवीन्द्र शर्मा ने बताया कि LC-74 गेट km no 114/28-30 पर एक व्यक्ति ट्रेन नं. 19015 से गिरकर रन ओवर होना दर्शाया है।"

5. Based upon the pleadings of the parties and material made available on record, following issues were framed on 15.03.2023.

ISSUES:

1. *Whether the 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 Applicant(s) is/are the sole dependent(s) of the deceased and is/are entitled to compensation as claimed, as per Section 123 (b) of the Railways Act, 1989?

4. To what Relief ?

6. **Applicant's Evidence:** Applicant No.1 Patil Pushpa Nandlal has filed her own examination-in-chief on affidavit as AW/1 and she was cross examined by the Counsel for the Respondent as under:

“दुर्घटना के दिन मेरे पति उधना से नर्दाना जा रहे थे। शपथपत्र के मद सं 1 में 'A-B' हिस्सा सही अंकित किया है। मेरा यह कहना कि मेरे पति उधना से नर्दाना जा रहे थे, यह बात भी सही है। मेरे पति, दुर्घटना के दिन घर से कितने बजे निकले थे, यह मुझे पता नहीं क्योंकि मैं तो अपने गाँव में थी। मुझे दुर्घटना के बाद यह पता चला कि मेरे पति ट्रेन से यात्रा कर रहे थे। शपथपत्र के मद सं 2 में मेरे पति द्वारा उधना से नर्दाना की टिकट खरीदने की बात मैंने इसलिए लिखी है क्योंकि मेरे पति कभी भी बिना टिकट यात्रा नहीं करते थे। यह कहना सही है कि दुर्घटना के दिन मेरे पति ने टिकट खरीदी या नहीं खरीदी यह मैं नहीं बता सकती, क्योंकि मैं उस दिन गाँव में थी। मेरे पति के साथ दुर्घटना लगभग 03:00 - 03:30 बजे दोपहर में हुई थी। मुझे इस दुर्घटना के बारे में मेरे भतीजे महेंद्र पाटिल ने मेरे दामाद विजय सूरज बोरसे को बताया था, जिसने मुझे शाम के 05:30 बजे बताया था। यह कहना सही है कि मेरे पति के साथ यह दुर्घटना किस प्रकार घटित हुई, यह मुझे नहीं पता।”

7. **Respondent Evidence:** The Respondent did not adduce any oral evidence.

8. **Documents filed by the parties:**

a. The Applicants filed certified copies of:

Memo at Exh.A/1; Inquest Panchnama at Exh.A/2; Death Information (Public Report) at Exh.A/3; Death certificate at Exh.A/4; Aadhar card of the Applicants and the deceased at Exh.A/5-8; Pan card of Applicant no. 2 & 3 at Exh.A/9-10; Bank details of the Applicants at Exh.A/11-13. The Applicants also filed certified copy of Post Mortem Report.

b. The Respondent filed original DRM report with Investigation report as Exh.R/1.

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

“Counsel for Applicants Shri N.R. Kapade has appeared through Mobile Phone Call instead of hybrid mode hearing and ultimately case was represented by Shri

K.M. Shah upon instructions of Mr Kapade, who submitted that deceased was bonafide passenger, during course of travel the deceased accidentally fall down from running train and died during the treatment. Ticket was lost in the incident.

Counsel for Respondent Ms Alka Vaniya submitted through virtual mode that Ticket was not recovered from the body of deceased so deceased was not a bonafide passenger further deceased was sitting on the footboard of the coach during travel so he himself invited this incident and died due to self-inflicted injury and his own criminal act. So Railway is not liable to pay any compensation.”

FINDINGS

10. We have carefully gone through the pleadings of the parties, material made available on record, evidence adduced by them and heard the arguments advanced on behalf of rival parties by their counsel. Our findings on the aforesaid issues are as under:

Reasoning of Issue No. 1 & 2 for the judgment:

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

11. Admittedly in this case no ticket was recovered from the body of the deceased, but the crux of DRM report and stand taken by the Respondent during course of arguments unequivocally suggests that there was travel and accidental fall from the running train, even Gateman of Level Crossing gate 74 was an eye witness to the incident. The crux of DRM report is reproduced at para 4. So, the Respondent has admitted travel and accidental fall but whether the deceased was bonafide passenger or not, is to be seen in from the circumstantial evidence.

12. The Applicants have discharged their initial burden by making averments relating to travel from Udhana Nardana station on a valid general class rail journey ticket and possibility of loss of ticket cannot be ruled out. Even during cross-examination there is no suggestion to the AW/1 that the deceased was not a bonafide passenger. Once the Railway had admitted travel itself and there was no reporting by

checking staff that the deceased was travelling ticketless or was caught and penalised by Railway official, we find that possibility of loss of ticket not be ruled out and presumption of bonafide passenger would go in favour of the Applicants. The defence taken by Respondent that the deceased was travelling by sitting at the foot board of coach is without any basis and is a hypothetical presumption as the Respondent has failed to prove on record any such evidence. The Respondent has failed to prove any criminal element in negligence, which is based on speculations. No contra evidence has been produced by the Respondent in regard to the negligence, but let's assume for a moment that the deceased fell down due to his own negligence it does not amount to criminal act of the deceased as stated in the judgment laid down by the Apex Court in case of Jameela & Others Vs Union of India in Civil Appeal No.1184 of 2003 decided on 27.08.2010 that:

“the deceased was standing at the open door of the train compartment from where he fell down, is called by the Railway itself as negligence. Now negligence of this kind which is not very uncommon on Indian trains is not the same thing as a criminal act mentioned in clause (c) to the proviso to section 124 A. A criminal act envisaged under clause (c) must have an element of malicious intent or mens rea. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act”.

13. Further the Hon'ble Apex Court in the case of Union of India Vs. PrabhakaranVijaya Kumar & Others reported in 2008(5) ALL MR 917, has held that:

“Section 124A of the Railways Act, 1989 casts strict liability on the Railway even the deceased died due to his own fault. Then also, Railway is liable to pay amount of compensation.”

14. The ratio laid down by the Apex Court in above cases, would clearly apply to the present case. As well as, son of the deceased i.e. AW/1 stated during her cross-examination that, “मेरे पति, दुर्घटना के दिन घर से कितने बजे निकले थे, यह मुझे पता नहीं क्योंकि मैं तो अपने गाँव में थी। मुझे दुर्घटना के बाद यह पता चला कि मेरे पति ट्रेन से यात्रा कर

रहे थे।” Although AW/1 was not an eye witness but burden lies upon the Respondent to prove criminal negligence on the part of the deceased to have desired findings. But the Respondent has failed to do so. Hence, it is concluded in absence of concrete evidence by the Respondent, to prove this case is covered in any of proviso u/s 124-A of the Railways Act, 1989, that the case in question falls within the periphery of Section 123(c)(2) read with sec. 124-A of the Railways Act.

15. So-far-as question of bonafide passenger is concerned, according to the Applicants and as per affidavit filed, the deceased was travelling with general class ticket from Udhana to Nardana station on 04.07.2022 in train no. 19105 and the ticket was lost in the incident. Hence, the deceased was bonafide passenger. *Per contra*, Ld. Counsel for the Respondent vehemently argued that as per the DRM report and Investigation report, the Railway ticket was not recovered from the deceased. Hence, the deceased was not a bonafide passenger on the day of incident.

16. It is worthwhile to mention here, in the case of Union of India Vs. Rina Devi reported in 2018 AIR (SC) 2362, the Hon’ble Apex Court has held that:

“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”.

In this case, there is every possibility that the ticket might have been lost in an accident of such magnitude therefore the Applicants could not file the ticket. The Applicants successfully discharge the burden by filling the affidavit. The Respondent did not cross-examine the Applicants. Hence, the contention of the Applicants regarding *bonafide* status of the deceased is uncontroverted.

17. In the light of above, the present Applicants have successfully discharged the burden. But the Railways could not discharge its burden by producing any tangible

evidence against the Applicants. In our view, the principles of law laid down by the Hon'ble Supreme Court in the above case would clearly apply to the facts of this case also. Therefore, there is no legal impediment in coming to the conclusion that the deceased was travelling as a bonafide passenger on the day of incident.

18. Therefore, according to our findings and above principles of law, we conclude that the deceased was travelling as a bonafide passenger and died as a result of the untoward incident as defined u/s 123 (c) (2) read with Section 124-A of the Railways Act, 1989. Accordingly, our findings on issue No. 1 & 2 are in the affirmative.

Regarding Issue No. 3 & 4 :

19. It is averred in the application that Applicant no.1 is wife, Applicant no.2 is son and Applicant no.3 is married daughter of the deceased and they all are only dependents of the deceased. In support thereof, the Applicants have filed document regarding dependency at Exh.A/5-13.

20. Evidence of the Applicants goes unchallenged on the point of relationship with the deceased. As against this, the Respondent Railway administration did not adduce any contra evidence to show that the present Applicants are not the dependents of the deceased. Hence, it can be concluded that the present Applicants are the dependents of the deceased being entitled to compensation within the meaning of Section 123 (b) of the Railways Act, 1989.

21. Thus, the Applicants in this case will be entitled, as dependents, to get Rs. 8,00,000/- as compensation from the Respondent Railway administration on account of death of Nandubhai alies Nandlal Ramdasbhai alies Ramdas Patil as prescribed under part-I of the Schedule appended to Rule 3 (3) of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 as amended on 22.12.2016 w.e.f. 01.01.2017.

Both these issues are decided accordingly in favour of the Applicants.

On the facts and in the circumstances of this case, we find it just and proper to award compensation as mentioned below ;

ORDER

22. The application is allowed. The Respondent Railway shall pay to the dependents a sum of Rs.8,00,000/- (Rs. Eight lakhs) as compensation as per apportionment given below within 30 days from the date of this order. The awarded sum will carry simple interest @ 9% per annum from the date of the incident i.e. 04.07.2022 till the date of this order.

23. The Respondent Railway Administration is directed to deposit the whole amount along with interest with the Registry of RCT/Ahmedabad within a period of 30 days from the date of this order, failing which interest @9% p.a. shall be liable from the date 04.07.2022 till the date of realization. Further the Respondent is directed to place the proof of the awarded amount on record with up to date interest along with the calculation sheet.

24. The Registry is directed to disburse the total compensation amount as per detailed apportion as given below :

Applicants' Name	Awarded Amount	Initial Amount to be given through ECS/NEFT	Amount to be invested under Annuity Scheme/FD
Appli. No.1 Patil Pushpa Nandlal	Rs. 6,50,000/- + accrued proportionate interest.	Rs. 50,000/- + accrued proportionate interest.	Balance amount of Rs. Six Lakh only shall be split into 60 fixed deposits of Rs.10,000/- each and invested for a period of 01 to 60 months in the ascending order. The bank shall release the amount monthly with accumulated interest upon maturity of each of these deposits to the credit of the respective Bank Account.
Appli. No.2	Rs. 1,00,000/- + accrued	Rs. 25,000/- + accrued proportionate	Balance Amount Rs. 75,000/- only shall be deposited in Fixed Deposit in the same bank in the name of the claimant for a period of one year. The

Patil Sagar Nandlal	proportionate interest.	proportionate interest.	maturity amounts of the FDR be credited in the savings bank account of the Applicant.
Appli. No.3 Pooja Vijay Borse	Rs. 50,000/- + accrued proportionate interest.	Rs. 25,000/- + accrued proportionate interest.	Balance Amount Rs. 25,000/- only shall be deposited in Fixed Deposit in the same bank in the name of the claimant for a period of one year. The maturity amounts of the FDR be credited in the savings bank account of the Applicant.

25. The Applicants are hereby directed to furnish the particulars of their savings bank account of a Nationalized bank *near to their permanent place of residence* along with a copy of Aadhar Card, PAN card, two photographs, specimen signature and pass book of the bank with necessary endorsement of the bank that no debit card/Cheque book has been issued, with the Registry of this Bench. So that after being satisfied with such KYC norms amount can be released. The Applicants are directed to produce the copy of the order passed by the Tribunal before the concerned bank whereupon the bank is directed to make an endorsement on the passbook.

26. The Applicants are further directed to submit Form 15G of Form 15H (for senior citizen) to the Presenting Officer of the Railway (as applicable under sub-section (2) of section 19 of the Railway Claims Tribunal Act, 1987) within 30 days of this order otherwise, the Railway Administration will deduct the applicable TDS as per the provisions of the income tax act.

27. The Registry is directed to defer the disbursement of award amount till the passbook of saving bank account of the Applicants in a bank near the place of their permanent residence is not produced along with necessary endorsement.

28. The Registry is further directed to ensure that the statement containing FDR number/FDR amount/date of maturity and maturity amount shall be furnished by the Bank to the Applicants.

29. Further, we deem it proper to direct the concerned bank that :

- (a) The Bank shall not permit any joint name(s) to be added in the savings bank account or fixed deposit account of the Applicant(s) i.e. savings bank account(s) of the Applicant(s) shall be an individual savings bank account(s) and not a joint account(s).
- (b) The Bank shall not issue any Cheque book and debit card to the dependents. However, in case the debit card or Cheque has already been issued, the Bank shall cancel the same before the disbursement of the awarded amount.
- (c) No loan, advance, withdrawal or premature discharge is allowed on fixed deposit without the permission of the court.
- (d) The Bank shall make an endorsement on the pass book of the dependents to the effect that no Cheque book and/or debit card have been issued.
- (e) The original fixed deposit shall be retained by the bank in safe custody. However, the statement containing FDR number/FDR amount/date of maturity and maturity amount shall be furnished by the bank to the Applicant(s).
- (f) The Bank is directed not to permit any debit to Savings Bank account of the Applicant(s) from any electronic channel or e-payment platform and to permit the Applicant(s) to withdraw money from his/her/their savings Bank Account by means of a withdrawal form only.

30. 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.

[R.K. Manocha]
Member (Technical)

[Vinay Goel]
Member (Judicial)

Judgment pronounced and signed in open court today i.e. on 19.04.2024.

Place : Ahmedabad

Date : 19.04.2024.

[R.K. Manocha]
Member (Technical)

[Vinay Goel]
Member (Judicial)



सत्यमेव जयते

रेल दावा अधिकरण

अहमदाबाद पीठ

RAILWAY CLAIMS TRIBUNAL

AHMEDABAD BENCH