
Before Railway Claims Tribunal, Ahmedabad Bench

Coram : Shri Vinay Goel, Member (Judicial)
Shri Rajkumar Manocha, Member (Technical)

CASE No. OA(IIu)/ADI/2019/0138

Date of Institution: 10.06.2019

Date of Decision: 02.02.2024

1. Syamli Devi Jagat Prasad, Aged - 68 yrs.

(Mother of the deceased, died during the pendency of OA)

1/1. Gupta Abhilashaben W/o Uma Shankar, Aged – 49 yrs.

(Married daughter of the original Applicant)

1/2. Reetu Gupta W/o Santosh Kumar Gupta, Aged – 39 yrs.

(Married daughter of the original Applicant)

1/3. Jyoti Gupta W/o Naresh Kumar Gupta, Aged – 35 yrs.

(Married daughter of the original Applicant)

All are residing at Mota-Kadiwad, Maroli Bazar,

Village- Chhinam, Dist- Navsari,

Gujarat- 396436.

.....APPLICANTS

-VERSUS-

Union of India Through General Manager,

Western Railway, Churchgate, Mumbai.

.....RESPONDENT

CLAIM FOR Rs. 8,00,000/-

Mr. N.R. Kapade, Ld. Counsel for the Applicants.

Ms. K.P. Vyas, Ld. Counsel for the Respondent.

JUDGEMENT

This OA has been filed by the mother of the deceased, who died during the pendency of OA. So legal heirs have been brought on record and to pursue the case (i.e. three married daughters of the original applicant) under section 16 of the Railway Claim Tribunal Act, 1987 read with section 124- A, 125 & 123 (c) (2) of the Railways Act, 1989 for compensation from Respondent Railway on account of alleged death of Sh. Amit Kumar Jagat Prasad Gupta, age- 31 yrs. (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.

1. Basic details relating to accident as contained and alleged in the Application:-

- a) **Date of accident:** 05.03.2019
- b) **Person Deceased:** Amit Kumar Jagat Prasad Gupta, Age- 31 yrs.
- c) **Relationship of the Applicant Nos. 1/1 to 1/3 with the deceased:** Three married Daughter as legal heirs of the original Applicant. The is Mother of the deceased initially filed the OA.
- d) **Train involved and transit details:** The deceased along with his friend was travelling by Kutch Express from Valsad to Surat railway station with a valid ticket.
- e) **Untoward incident narrated:** During the course of journey, the deceased accidentally fell down from the said train, due to heavy jerk between Udhana and Bhestan Railway station between K.M. No. 261/13-16. He sustained serious injuries on both the hands, legs and back other injuries on whole part of the body and he died while undergoing treatment.
- f) **Jurisdiction:** The place of incident was between Udhana and Bhestan railway station, this Bench of the Tribunal has territorial jurisdiction.

2. Salient features of reply:

- a) **Averments in reply:** The deceased was not a bonafide passenger and Respondent denied this Untoward Incident and its Liabilities to pay compensation.
- b) **Crux of DRM Report:** “

GRP/UDN

— **S/O**

”

3. From the pleadings, following issues were framed on 05.11.2019.

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. *Relief?*

4. Applicants Evidence and Respondent Evidence: Applicants no. 1 has filled her affidavit as AW/1 and she died during the pendency of OA and she was cross-examined on 07.01.2020 by Respondent.

5. Documents filed by the parties.

Applicant file certified copy of:

Vardhi - Exh.A/1, Panchnama of place - Exh.A/2, Inquest Panchnama - Exh.A/3, Death Certificate - Exh.A/4, Unique card of Applicant - Exh.A/5, Unique card of deceased - Exh.A/6, Ration card - Exh.A/7, Bank Pass Book of Applicant - Exh.A/8.

Respondent has opted to bank upon its DRM Report & Documents next thereof, but did not adduced any oral evidence.

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

With the concurrence of both the sides, case is taken for final hearing. Learned Counsel for the Applicant submitted that deceased was travelling with one co-passenger, named Manishbhai N Moriya, in Kutch Express from Valsad to Surat. Due to heavy rush in the train, the deceased fell down from the running train and died while undergoing treatment in the hospital and his ticket was lost. His mother had filed this Original Application for compensation but during the pendency of this case, mother also died. So, now her three daughters i.e, the sister of the deceased are entitled for compensation.

Whereas, Counsel for the Respondent submitted that there was no information of the alleged incident to Railway authorities. Even the applicant has not produced the co-passenger in the witness box. The deceased was not a bonafide passenger as no ticket was recovered and applicant has failed to discharge the initial burden by not producing co-passenger. She further submitted that, co-passenger has given statement which would reveal that the deceased died due to his own negligence.

In rebuttal, Counsel for the Applicant submitted that Railway has failed to adduce any evidence and have failed to prove alleged incident.

FINDINGS

7. We have carefully gone through the pleading of the parties, material made available on record evidence adduce on behalf of applicants 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

8. Issue no. 1 and 2 are being taken up together as they interconnected. Our findings on the issues are as under:

9. It is the case of Applicants that deceased was travelling from Valsad to Surat in Kutch Express on 05.03.2019 along with his friend Sh. Manishbhai S/o Nagandra Moriya and he accidentally fell down from running train and ticket was lost during incident. Whereas, Railway has denied liability on the ground that there was no report to Railway authority about alleged incident and the Applicant has not produced alleged co-passenger before this court and deceased was not a bonafide passenger and he died due to his own negligence. Before proceeding further, we would like to refer to relevant portion of various documents annexed with the OA/Written Statement and parties have not raised any dispute about authenticity of these.

Details about Panchnamas are as under:

Sr. No.	Panchnamas	Date of Panchnama	Place of Panchnama	Co-Traveler Deatils	Train Details
1.	Inquest Panchnama	08.03.2019	Civil Hospital	N/A	Unknown Train
2.	Panchnama of Place	12.03.2019	Nr. Shivhari Nagar	Manishbhai N. Moriya	Kutch Express

10. So in initial documents there was no reference of co-traveler or train but in subsequent documents there is reference of co-traveler and specific train. During DRM inquiry, the alleged co-passenger Manishbhai gave his detailed statement about all events happened before alleged journey. In the said statement also there is no reference of purchase of any ticket. When the co-passenger reached hospital while deceased was struggling for his life and he made a phone call to sister of deceased to inform about incident, there should have been exchange all relevant information about co-passenger and train etc. how such relevant information remained missing in initial documents is a matter of great surprise. Even sister of deceased on 06.03.2019 did not disclose anything to police about co-passenger to

details of train in which her brother was travelling. That information was very much important to disclose to Police, as it was a case of unnatural death. To our opinion once matter was within the knowledge of Surat Railway Police on 06.03.2019. The Applicants cannot be non-suited on the ground that there was no information to the railway authority. It was the duty of the police to inform railway authorities about the incident. So on that account we find no merits in the defence allegedly taken by the Respondent.

11. Somehow accidental fall from the running train is also mentioned in all the documents but fact remains that Applicants have failed to prove on record any purchase of ticket and bonafide passenger status of deceased. The applicants have failed to produce alleged co-passenger into the witness box. The testimony of AW/1 is of no value as she was not eye witness, to have effective relief, it is the duty of the Applicants to prove their case in accordance with law, at this juncture, we would like to reproduce the Judgment of Hon'ble Supreme Court in Rina Devi v/s Union of India case in para No. 17.4 held that :-

“We thus hold that mere presence of a body on the Railway premises ill not be conclusion to hold the injured or deceased was bonafide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on claimant which can be discharged by filing on affidavit of the relevant facts and burden will then shift on the Railways and the issue cane 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. The legal position in this regard will stand explained accordingly.”

12. The Applicants did not produce said witness before this Tribunal. However the Respondent filed an application for summoning Manishbhai N. Moriya into the witness box. At the instance of the Respondent said person was summoned but ultimately report has come that said witness has left the said place. Why the Respondent filed the said application remained a mystery particularly when it was the duty of Applicant to produce said the witness to prove its own case. Simply by saying that said person is now not traceable is not sufficient to discharge said onus to prove bonafide passenger status of the deceased, particularly when in the initial statement given by Manishbhai the alleged co-passenger on 12.03.2019, there was no reference of purchase of any ticket in the statement dated 12.03.2019 (Although

in the translation submitted by the Respondent railway, the date of statement is mentioned as 06.03.2019 but actually statement was recorded on 12.03.2019. taking lined view such mistake of Railway is ignored), the statement given by Manishbhai N. Moriya is as under:-

:c: e s iwNus ij fy[kok jgk gjaw dh Åij fn; sirs ij eaS vius ifjokj ds lkFk jgrk gaw vHkh
jsyos esa iksVZj dh gsfl;r ls ukSdjh djrk g;wA
vkt jkst eaS vki lkgc eq>s lwjr jsyos ikfs yl LVs"ku AD-u&a 66@19]CRPC dh /kkjk 174 rgr ekeys e s e`rd O;fDr uke& vferdqeKj iq= txrizlkn xqlrk] mez&28o`kZ] irk& HksLrku vko
fcfYMax ua ,@27] :e ua&17] lwjr] ewy irk& edku ua&70] oksMZ ua-020 mijks`k ekSngk jxkSy] ftyk& gehj LVsV& mUkj izns`k dks fnukad 05-03-2019 dks le; 21@30 cts dh jk=h ij m/kuk o HksLrku jsyos LVs"ku chp KM-261/13-26 ds chp MkmU jsyos V^ads ds Åij V^asu dPN ,DI V^asu eas ;k=k djus ds nkSjku jsyos V^aus nq?kZVuk /kheh xfr ls py jgh V^asu eas ls mrjrs oDr fxj tkus ls nksukas gkFk] nkfguk iSj] ihB o f`kj ds Hkkx ij pksV yxh ij ,etsZalh 108 ds ek/;e ls bykt ds fy, U;w flfoy vLirky eas nkf[ky djus ij bykt ds nkSjku fnukda 07-03-2019 dks le;&17@30 cts e`R;q gqbZ gS tks e`rd O;fDr dh ekSr dh ?kVuk ds laca/k esa gdhdr crkdj c;ku djrk o fy[kok jgk g;wa dhA eSa fiNys nl lky ls Åij crk, gq, irs ij jgrs gSa vkSj fiNys rhu o`kZ ls e`rd O;fDr vferdqeKj lkFk esjh fe=rk Fkh ge ihNys rhu o`kkasZ ls vPNh fe=rk eas FksA dy fnukda 05-03-2019 ds fnu esjk fe= vfer eq>s crk;k Fkk fd neu ls esjh cgu dh yM+dh esjh Hkhrth jgrh gS gedks esjh Hkhrth ls feyus ds fy, tkuk gS ftlls eSa vkSj esjk fe= vfer ge nksuka s lqcg dh esew V^asu ls m/kuk jsyos LVs"ku ls cSB oylkM dks ml vkjs og ls ckb jksM+ neu dks x, FksA tgka ij mldh Hkhrth jk"skuh ls feys Fks vkSj iwjk fnu ge ogh ij :d x; s vkSj ne.k ls "kke ds le; 20@20 fudyrh dPN ,DI] V^asu ls cSB lwjr dh vksj vkus ds fy, fudys Fks esjk fe= islastj dh HkhM+ gksus ls ,sfa tu ls nwljs uacj ds dkps eas vkWQ lkbM njokts ij cSB x;k vkSj eSa ,asftu ls rhljs ds dksp eas ihNs fd vksj vkWQ lkbM ds igyk njokts ij cSB x;k islastjks dh T;knk HkhM+ Fkh ge vyx&vyx fMCc s eas FksA ijarq nksuksa fMCcksa ds njokts utnhd gksus ij ge pkyw V^asu esa Hkh ckr dj jgs FksA V^asu le; 21@3 "kke dks HksLrku jsyos LVs"ku ckn BRC ds lkeus vkbZ f"kofgjk uxj 02 ds lkeus fdeh-261@13&26 ds chp ykbu ij Vs^au /kheh xfr ls pyus ij esj s fe= vfer us crk;k dh Vs^au /kheh py jgh gS ge nksukas xkM+h ls mrjrs gS rHkh esjs }kjk esj s fe= dk s pyrh V^asu ls mrjus ds fy, euk fd;k Fkk fQj Hkh vfer pky w V^asu ls uhp s mrjus dh dksf"kk" djus ij vkdfLed :lk ls njokts dh ,asxy eas ls gkFk NwV tkus ls vfer yxHkx rhl ls pkyhl dn /kheh xfr ls V^asu ls mrj tkus ij ?klhV us o /kheh V^asu us LihM idM+us ij e`rd O;fDr vfer njokts ds okys LVsi flj ds Hkkx ij yxk gS tk s eus s viuh vka[kkas ls ns[kk Fkk V^asu us

LihM c<+ tkus ls eSa V^asu ls mrjk ugha Fkka vkSj V^aus lwjr jsYko s LVs''ku ij [kM+h jgus ij eSa V^asu e sa ls rqjar okil esjs fe= vfer dh tkpa djus ?kVuk LFky ij x;k Fkka rc fdlh vKkr O;fDr us bZetZsalh 108 dks Qksu dj bykt ds fy, U;w flfoy vLirky Hkst fn;k Fkka eSa vLirky igqapk Fkka vkSj eSaus ns[kk dh vfer dks gkFk iSj ds Hkkx o ihB ds Hkkx ls [kwu fudy dj pksV yxh vkSj flj ij van:uh pksV yxh gSA [kwu fudyk ugha Fkk ;g ?kVuk ea S easSus esj s fe= vfer dh cgU fjrQ dk s Qkus dj tkudkj fn;k vkSj ?kVuk dh lkjh tkudkj cgU fjrQ dks fn;k e`rd O;fDr esjk fe= vfer dPN ,DI ik;nku ls flj ds Hkkx o nksuka s gkFk o nkfguk iSj o ihB ij pksV gkus s ls108 betZsUlh }kjk U;w vLirky tkus ij bykt ds nkSjku e`R;q gqbZ gS ;g ?kVuk eaSus viuh vka[kkas ls ns[kk Fkk nwljk dkbs Z dkj.k ugha gSA

13. To our opinion the Applicants have failed to discharge there initial burden about purchase of ticket and it is settled law that occurrence of untoward incident and bonafide passenger status are two essential things which are to be proved separately and independently to each other. So in view of above discussion, the Applicants have failed to prove on record any purchase of ticket. It is alleged that deceased fell down from Kutch Express as per statement of Manishbhai, they boarded train at 20:20 hrs. from Valsad railway station, where as incident happened between Udhna and Bhestan railway station at about 21:30 hrs. As per statement of Ritu W/o Santosh kumar, sister of the deceased her neighbour, Seema informed her about railway accident of her brother and thereafter, she came to civil hospital and found her brother unconscious there. The said statement was given on 06.03.2019 as under:-

vkt jkst eaS vki lkgc eq>s lwjr jsyos ikfs yl LVs''ku j-s ik-s LVs Mk-u&a 04@19] fnukda &06-03-2019 dks le;&02@10 cts ds ekeys es pksV yxh gqbZ O;fDr uke&vferdkekj iq= txrizlkn xqlrk] mez&28o'kZ] irk& HkLs rku vkokl] fcfYMax u-a ,@27] :e ua&17] lwjr dks fnukda &05-03-2019 dks le;&21@30 cts uokxke f''ko ghjkuxj ds ikl fdlh vKkr V^asu ls fxj dj mlds flj ds Hkkx o iSj eas pksV yxu s ls mldks bykt ds fy, vLirky eas HkrhZ fd;k gvq k Fkk tks pkVs yxh O;fDr ds ckjs iqNus ij fy[kok jgh ga w dsA ;g ?kVuk esa pksV yxh O;fDr vferdkekj esjk lxx HkkbZ gS mldh "kknh ugha gqbZ gSA vkSj og vyx&vyx daifu;ka s eas lqijokbtj dh gSfl;r ls ukSdjH djrk Fkk vkSj ;g ?kVuk ds fnu ea s viu s ?kj ij mifLFkr Fkh ml le; ejs s iM+kslh lhek uke dh efgyk esjs ?kj ij vkdj eq>s tkudkj fn;k fd vfer HkkbZ dk jsyos V^asu es ls fxj tkus ls pksV yxus ls ,Ecqysal mldks nokbZ[kkus esa ys dj xbZ gS tks lekpkj feyr s gh eaS vkSj esjk yM+dk flfoy vLirky eas vk, Fks vkSj esjs HkkbZ dks csgks''k gkyr esa ns[kk Fkka

14. Whereas on 12.03.2019, Manishbhai the alleged co-passenger gave statement to the Police that he informed Ritu about the incident from the hospital. All these discrepancies creates doubts about the alleged story of travel and purchase of ticket. This statement got recorded of 06.03.2019 by sister during ordinary course having no reference of co-passenger, ticket and travel or details of specific train and said statement was more natural and spontaneous than the subsequent statements. The attempt to improve the things to show travel and bonafide passenger status appears to be an afterthought and would be fatal the case allegedly setup by the Applicants. So deceased was not a bonafide passenger in term provision section 2 (29) of the Railways Act. Though he might have met with some railway accident but cannot be termed as untoward incident.

Reasoning of Issue No. 3

15. The Applicants have proved on record, Ration card on Exh.A/7, KYC documents at Exh.A/5 and Exh.A/8 and the Respondent has failed to dispute inter-se relations of Applicants and their relationship with deceased.

Reasoning of Issue No. 4

16. In view of our findings on main issue no. 1 and 2, which has been decided against the Applicants, it is held that applicants not entitle of any relief or compensation as prayed for, we pass the following order:

ORDER

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

18. 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.

19. 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 02.02.2024.

Place: Ahmedabad

Date: 02.02.2024.

[R.K. Manocha]
Member (Technical)

[VinayGoel]
Member (Judicial)

