

Before Railway Claims Tribunal, Ahmedabad Bench.

Coram: Shri. Vinay Goel, Member (Judicial)

Shri. Raj Kumar Manocha, Member (Technical)

CASE No. OA(Ilu)/ADI/2021/0020

Date of Institution: 20.07.2020

Date of Decision: 13.02.2024

Arjunji Mafaji Thakor, Aged- about 44 yrs.
(Son of the deceased)

Residing at- 201, Soneriya ni Chali, Opp. Rajivnagar,
Bapunagar, Ahmedabad-380024, Gujarat.

..... Applicant

VERSUS

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

..... Respondent

Mr. K.M. Shah, Ld. Counsel for the Applicant.

Ms. R.T. Jain, Ld. Counsel for the Respondent.

CLAIM FOR Rs. 8,00,000/-

Judgment

This claim application has been preferred before this Tribunal by son of the deceased being dependent under Section 16 of RCT Act, 1987 read with sec. 124-A, 125 and 123 (c) (2) of the Railways Act, 1989 seeking compensation of Rs. 8,00,000/- together with interest on account of death of Mafaji Mohanji Thakor, aged about 73 years (hereinafter referred to as 'deceased') in an alleged untoward incident.

2. Briefly stated the facts of the case in claim application are that the deceased, after visiting his sister's house, on 03-04.09.2018 wanted to return from Mehsana to Ahmedabad by travelling in general compartment of a train. Hence, on 03-04.09.2018 he reached at Mehsana station and purchased a valid Railway ticket and paid the fare. He thereafter, accidentally fell down at the platform no.6 of Mehsana station. Due to which he sustained multiple grievous injuries on different parts of his body and died

on the spot. In these consequences, the Applicant being dependent is entitled to compensation.

3. The Respondent Railway Administration contested that the deceased was not a bonafide passenger as no ticket was recovered from the possession of the deceased. Furthermore, the deceased came to Railway premises due to some reason but there was no Railway line on platform no. 06 hence, there was no movement of any train from there, so it is not possible for the deceased to die by falling or run over by a train. As well as, as per Post mortem report cause of death is head injury associated with chronic lungs, liver and spleen diseases. Hence, the incident does not fall within the ambit of untoward incident and the claim be dismissed with costs.

4. Based upon the pleadings of the parties and material made available on record, the following issues were framed on 18.06.2021.

ISSUES:

1. *Whether deceased was travelling on a valid Railway journey ticket and was a bonafide passenger of the train in question at 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 is sole dependent of the deceased and is entitled to compensation as claimed, as per Section 123 (b) of the Railways Act, 1989?*
4. *Relief?*

5. **Applicant's Evidence:** The Applicant Arjunji Mafaji Thakor has filed his own examination-in-chief on affidavit as AW/1 and he was cross examined on 27.08.2021 as under:

“This incident occurred on 03/04.09.2018. My father was returning from Mehsana to Ahmedabad after visiting his sister at Mehsana. I do not know where and how he fell down. I got information form police about this incident at about 10 hours in the morning on 04.09.2018. Police called me at Civil Hospital for PM. My father was doing labour work and he went to Mehsana at his sister's

house. On 03.09.2018 in the evening my father called me and informed me that I purchased the ticket from Mehsana to Ahmedabad and awaiting for the arrival of the train and will reach in the night at Ahmedabad. Police took my signature on Hindi written papers and I have just signed only and I do not understand the Hindi language and what is written on that I do not know. No one read over the facts stated in the statement to me. I am doing labour work in chemical factory. I do not have any brother or sister and my mother died long ago before the incident.”

6. Respondent Evidence: The Respondent Railway administration adduced by way of an affidavit of Sh. Mahavirprasad Saini S/o Sh. Ramswaroop Saini, SIPF (RPF) Katosan Raod station, as RW/1. In the affidavit he stated: that he was on duty as a SIPF at Mehsana station on 04.09.2018 in 08 to 20 hrs. shift; that at about 11;30 hrs., he received a message that a dead body lying between platform no. 05 & 06 at Ahmedabad end; that he immediately reached at the place where Sh. Rajeshkumar, RPF constable and GRP staff already present; that he saw an unknown dead body lying between platform no. 05 and 06, opposite RMS office and saw head of the body was badly injured and a cement brick with blood stain found near the head; that he prepared a site map of incident; that where the dead body was lying, at that place no Railway line available between platform no. 05 & 06, hence no any train movement is possible; that GRP staff taken over the charge of dead body then he returned on duty place and prepared a message of incident and forwarded to Divisional Security Control Room, Ahmedabad for necessary action. He was cross-examined on 29.10.2021 as under:

“I have not done the investigation of this case and also, I have not prepared the DRM investigation report. I had not seen the incident happened with the deceased. I had noticed the injuries on the dead body of the deceased. At the time of preparing the panchnama (A5) I was present. I do not have any knowledge of the final investigation report prepared by GRP and submitted before the Hon’ble SDM. Exhibit R1 is prepared by me and it bears my signature (A-B). I do not have any personal knowledge that how many trains passed from which Platforms on the day of incident at Mehsana Railway station when the incident happened and I have also not brought

any record showing the train passed from Mehsana Railway station on the day incident."

7. Documents filed by the Parties:

a. The Applicant filed certified copy of:

Memo at Exh.A/1; Station diary with accidental death at Exh.A/2; Inquest Panchnama at Exh.A/3; Identification Panchnama at Exh.A/4; Panchnama of Place of Incident at Exh.A/5; Request letter to provide cause of death certificate at Exh.A/6; Post Mortem report at Exh.A/7; SDM report at Exh.A/8; Death certificate of the deceased at Exh.A/9; Ration card at Exh.A/10; Aadhar card of the deceased at Exh.A/11; Aadhar card & Pan card of the Applicant at Exh.A/12-13; Death certificate of wife of the deceased at Exh.A/14; Bank details of the Applicant at Exh.A/15; Final Investigation report of GRP at Exh.A/16; GRP's Approval of accidental death at Exh.A/17.

b. The Respondent filed the Statutory DRM report with Investigation report.

FINDINGS

8. 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:

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

10. At outset, we would like to quote the judgment of Hon'ble Supreme Court in case of Union of India vs. Rina Devi, Civil Appeal No. 4945 of 2018, the Hon'ble Apex court has held at para 17.4

"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."

Hence, according to the verdict of the Hon'ble Apex court, each case has its own peculiar facts and circumstances and there cannot be any straight jacket formula. A singular point (or few aspects individually) may favour a particular thing or happening, but to arrive at a right conclusion cumulative and holistic effect of all the relevant facts and circumstances in a given case are to be seen for judicious adjudication. There should be synchronization between facts and circumstances of a given case to apply correct law and ratio decidendi

11. As per the Memo of Dy. Station Manager-Mehsana to RPF/GRP/Mehsana (Exh.A/1), the dead body was lying at platform no.6 towards Ahmedabad side. As per Inquest Panchnama (Exh.A/3), the deceased died as sustained injuries on head due to fallen down in the night from platform no. 6. This fact is corroborated with all the GRP documents, prepared u/s 174 of Cr.P.C. 1973, i.e. Exh.A/4, Exh.A/5, Exh.A/6, Exh.A/16 & Exh.A/17. Also, it is the case of the Applicant that the deceased accidentally fell down from platform, not from the running train. Now question before us, is whether the incident would fall under untoward incident as defined u/s 123 (c)(2) of Railways Act, 1989 or not.

12. In support of these, Ld. Counsel for the Applicant filed written arguments and relied upon 22 judgments which are as under:

1	2018 ACJ 1441	Supreme Court of India	UOI vs. Rinadevi
2	2023 ACJ 2009	Supreme Court of India	Sanyokta Devi vs. UOI
3	2017(3) GLR 2632	Gujarat High Court	UOI vs. L.B. Sendhane
4	2001 ACJ 871	High Court of Orissa	UOI vs. Jshna Kanhar
5	2019 ACJ 86	Madras High Court	M. Santha & ors. Vs. UOI
6	2016 (1) TAC 830 (Bom.)	Bombay High Court	UOI vs. Nandabai & ors.
7	2013 ACJ 635	Kerala High Court	UOI vs. Parameshwaram pillai
8	2008 ACJ 822	Raj. HC at Jaipur	UOI vs. Hari Narayan Gupta
9	20016 (1) TAC 29 (Ori.)	Orissa HC	Sakhia Naik & ors. Vs. UOI
10	2010 ACJ 2777	Culcutta HC	Asharani Das vs. UOI
11	2023 ACJ 1659	Supreme Court of India	Kamukayi vs. UOI
12	2008 ACJ 1343	Raj. HC at Jaipur	Inderjit Singh & ors. Vs. UOI
13	2018 ACJ 1964	High Court of Delhi	Somvati & ors. Vs. UOI
14	2017 ACJ 2432	High Court of Delhi	Mukesh Rani & ors. Vs. UOI
15	2021 ACJ 806	Telangana HC	Avula Venkateshwarlu & ors. Vs. UOI

16	2007 ACJ 2790	Kerala High Court	Philomina & ors. Vs. UOI
17	2021 ACJ 808	Madhya Pradesh HC	Radhesyam & ors. Vs. Rajendra & ors.
18	2019 ACJ 1632	Punjab & Haryana HC	Dulari Devi & ors. Vs. UOI
19	FAO 172/2014	High Court of Delhi	Ram Pratap & ors. Vs. UOI
20	2023 ACJ 818	Madhya Pradesh HC	Bhavana Gupta & ors. Vs. UOI
21	FAO 629/2019	Orissa HC	Ganapati Behera & ors. Vs. UOI
22	2015 ACJ 1064	High Court of Delhi	Raj Bal & ors. Vs. UOI
23	2013 ACJ 1503	Orissa HC	Manorama Nath Vs. UOI
24	2010 ACJ 2453	Supreme Court of India	Jameela & ors. Vs. UOI
25	(2008) 9 527	Supreme Court of India	UOI vs. Prabhakaran Vijaya kumar
26	C.A.No. 5608 of 2017	Supreme Court of India	Kalindi Charan vs. S.E.C. Railway
27	FA No. 2178/2010	HC of Gujarat	Jayantilal Tandel vs. UOI
28	MA 1184/2014	Madhya Pradesh HC	Hari Ram adivasi vs. UOI
29	2017 ACJ 1369	Punjab & Haryana HC	Kanchan & ors. Vs. UOI
30	2013 ACJ 1707	Kerala High Court	Jayalshmi & ors. Vs. UOI
31	2012 ACJ 2109	High Court of Delhi	Vidyawati Vs. UOI

13. The counsel for Applicant relied as many as 11 judgments for bonafide passenger status, 20 judgments for untoward incident and 04 judgments in support of his arguments on credibility of the DRM investigation report. He has placed on record copies of only 12 judgments, Sr. no. 12 to 23 of above table.

14. All these cases are related to accidental fall from running train and the case in hand is fall on ground of platform, hence these cited judgments are having some different facts than the present case. The practice to cite so many judgements in a mechanical manner without referring how these judgments are applicable to the facts and circumstances of given case under consideration, is a wrong practice. It is worthwhile to mention that this Tribunal time and again requested Ld. Counsels to cite judgement as many as they like but with specific reference to the facts how facts of quoted judgement are applicable to the facts of case in hand. Although we have reiterated this fact many a times but still such practice is going on. Despite such a situation we have gone through the cited judgments and we found that judgments quoted on behalf of the Applicant are on different footing then the case in hand, hence stand distinguished. In present case injured was suffering from various chronic disease of liver and kidney but pleadings in the original application are silent on that

aspect. The Applicant has practically concealed such facts. So, practically the Applicant has not come to the Court with clean hand once the deceased himself fell down while walking on the platform without any external reason. It was the duty of the Applicant to rule out whether said fall was due to any extraneous element or health condition. So, such judgments are not applicable to the case in hand and none of the judgment quoted above have such facts.

15. In this case there is medical evidence on record that the deceased was suffering from various chronic diseases and we can safely quote relevant portion of Post Mortem report (Exh.A/7), cause of death is *shock due to head injury associated with chronic lungs + liver + spleen diseases*. In the OA the Applicant is silent about any such diseases. The document so proved on record by the Applicant can be read against the Applicant without any other further proof.

16. At the cost of repetition we must record that we have carefully gone through the judgments cited on behalf of Applicant, about untoward incident, of various Hon'ble Higher Courts. In none of the case victim was suffering from any such chronic diseases and further in none of the case Applicant(s) concealed all such material and relevant facts from the Court. Further in none of the case person himself fell down on the ground of platform without any involvement of rail or any equipment fitted by Railways. So, in our humble opinion said judgments are not applicable to the facts and circumstances of present case and are quite distinguishable.

17. There was nothing on the part of Railway which has attributed to such accidental fall. However, there is medical evidence on record that he was suffering from liver diseases and as per medical jurisprudence high ammonia level may cause due to bad liver. High ammonia level may affect working of brain or cause other medical problems like severe shortness of breath and low blood oxygen level. The Applicant has failed to plead anything about such diseases in the OA, even the Applicant has not pleaded and referred any medical history and treatment taken thereof. So, the Railway cannot be blamed for not taking defense on that account. It

was the duty of the Applicant to state true and correct facts at first instance, once the deceased fell down on the ground of platform and there was no fall from running train or fall at the time of boarding or de-boarding the train.

18. So, it can be said that the Applicant has not come to the Court with clean hands and thus this Tribunal has opted to adjudicate this matter on the basis of material available in books of medical jurisprudence. One other factor that one brick smeared with blood was lying near the dead body is also taken care of by the Tribunal as if a person had fallen down due to that brick that would not have smeared with blood as the injury was on the head. If said person would have fallen down due to said brick that would be towards its legs not towards its head and further it is not the case of Applicant that the deceased fell down due to said brick. Keeping in view all such facts this Tribunal is of the considered opinion that the deceased might have fallen down due to some internal or natural cause for which Railways cannot be blamed in any manner.

19. For the cited judgment on credibility of the DRM investigation report, we are of the opinion that the Railway has failed to conduct statutory enquiry in time, that would not have any bearing on the merits of the case, as the case set up by the Applicants itself is full of doubts and there is lack of synchronization. The Applicant is to stand on its own legs and the Applicant cannot be permitted to take benefit of weakness of other side if any. The delay in investigation, if any, would not be a permit/license for acceptance of the OA, provided other relevant factor are against the Applicant. This case is being decided on the basis of material available on record, which has been produced primarily and we have not banked upon our judgment on the findings of DRM enquiry alone. Hence, facts of the cited *Kalandi Charan* and other judgments are quite distinguished from the present case.

20. For the cited judgment on bonafide passenger status, we are of the considered opinion that, in this case no ticket was recovered from the deceased so checking by TTE or Railway staff would not have any bearings because the deceased fell down

on platform and he had not boarded any train. Checking staff of Railway would check the platform at the time of exit, while leaving the station. A person can enter into a platform without any hindrance.

21. It is a case of selective loss of ticket. Certainly, under given circumstances the Applicant has failed to prove on record any untoward incident and purchase of ticket. So, the deceased cannot be treated as a bonafide passenger. So, this incident would not be covered under untoward incident.

22. On the basis of facts spell out by the Ld. Counsels for the parties in the light of documents on record, we are of the view, that in the present case the victim himself was responsible for the incident and, therefore, this case is not covered by the definition of the untoward incident as defined u/s 123 (c)(2) of Railways Act, 1989. Accordingly, we hold that these issues are decided in negative and against the Applicant.

Reasoning of Issue No. 3 for the judgment:

23. There is no dispute that the Applicant is son of the deceased and would come within 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:

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

ORDER

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

26. 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 13.02.2024.

Place : Ahmedabad
Date : 13.02.2024.

[R.K. Manocha]
Member (Technical)

[Vinay Goel]
Member (Judicial)

RAILWAY CLAIMS TRIBUNAL

AHMEDABAD BENCH