

Before Railway Claims Tribunal, Ahmedabad Bench

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

CASE No. OA(IIu)/ADI/2019/0201

Date of Institution: 30.10.2019

Date of Decision: 16.05.2024

1. Gitaben Mukeshbhai Patni, Aged - 36 yrs.

(Wife of the deceased)

2. Kinjalben Mukeshbhai Patni, Aged - 24 yrs.

(Daughter of the deceased)

Both are Residing at Village – Sabalpur,
Head Post – Aheripur, Thana & Block – Ajitmal,
Tehsil – Darbalpur, District – Auraiya – 206120
Uttar Pradesh.

.....APPLICANT

-VERSUS-

Union of India Through General Manager,

Western Railway, Churchgate, Mumbai- 400020.

.....RESPONDENT

CLAIM FOR Rs. 8,00,000/-

Mr. K.M. Shah, Ld. Counsel for Applicants

Mr. J.H. Joshi, Ld. Counsel for the Respondent.

JUDGEMENT

This OA has been filed by two Applicants i.e. father and mother of the deceased 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. Gauravkumar Shivkumar Prajapati, age- 18 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.

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

a) **Date of accident:** 03.07.2018

b) **Person Deceased:** Gauravkumar Shivkumar Prajapati, age- 18 yrs

c) **Relationship of the Applicant Nos. 1 & 2 with the deceased:** Father and Mother of the deceased respectively.

d) **Train involved and transit details:** The deceased was travelling by train No. 16534 Bengaluru – Bhagat Ki Kothi Express from Ahmedabad to Mehsana railway station with a valid railway travelling ticket bearing No. L - 54655992.

e) **Untoward incident narrated:** On 03.07.2018, the deceased was travelling from Ahmedabad to Mehsana in the general compartment of the said train. During the course journey, due to all of a sudden jerk and jolt of the train as well as due to heavy rush and push of the passengers in the compartment of the train, the deceased lost his balance and he accidentally fell down from the train at platform No. 2 of Mehsana railway station, he was dragged with the train and he sustained multiple grievous crushed injuries on different parts of his body and he died on the spot.

f) **Jurisdiction:** Place of incident was at Mehsana railway station, this Bench of the Tribunal has territorial jurisdiction.

3. 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 as passenger died due to his own negligence. The part of Para No. 6 of Written Statement is reproduced as under:-

“Without prejudice to the above, with regard to the contents of Para 6 as per the DRM Report and investigation Report, the incident occurred when the deceased was fallen down from the running train no. 16534 Bangalore – Jodhpur Express on 03.07.2018 at 09.38 am on Platform No. 2, when the train was passing through the Platform No. 2 the deceased tried to de-board the running train and fell down. The said incident was seen by the on duty Porter Mr. Rajendra Kunjaji of Mehsana Railway Station and as per his statement the train no. 16534 was passing through the Platform No. 2 Mehsana, as there was no stoppage of the said train at Mehsana, at that time one unknown person was trying to deboard the running train and he lost his balance while deboarding the running train he fall doen between the gap of platform and train due to which he sustained multiple inuries resulting into death. The on duty porter informed about the said incident to the Station Superintendent of Mehsana Railway Station and he had informed through the Memo to RPF and GRP of Mehsana about the said incident.”

b) **Crux of DRM Report:** "उपरोक्त मामले की जांच के दौरान प्राप्त दस्तावेजों के अवलोकन से यह प्रमाणित है कि मृतक – गौरव कुमार अधिकृत रेल यात्री नहीं था क्योंकि GRP महेसाणा के द्वारा घटना स्थल पर तलाशी पंचनामा मे मृतक के पास से जप्त टिकट संख्या L 54655992 की RPF पोस्ट महेसाणा के जाँच अधिकारी द्वारा जाँच करने पर यह पाया गया हैकि उक्त टिकट मुख्य बुकिंग पर्यवेक्षक, अहमदाबाद द्वारा दिनांक 03.07.2018 को समय 07:54 बजे जारी किया गया था जबकि स्टेशन अधीक्षक कार्यालय, अहमदाबाद से प्राप्त प्रमाणपत्र से यह सिद्ध होता है कि सवारी गाड़ी संख्या 16534 अहमदाबाद रेल्वे स्टेशन से दिनांक 03.07.2018 को समय 07:39 बजे ही रवाना हो गयी

थी। इससे स्पष्ट है कि उक्त टिकट सवारी गाड़ी के लिए वैध है नहीं था। टिकट के जारी होने से पूर्व उक्त सवारी गाड़ी के खाना होने से यह स्पष्ट है कि गौरव कुमार उक्त टिकट को लेकर यात्रा नहीं कर रहा था अर्थात् रेल टिकट प्रोजेक्ट है।

घटना का प्रत्यक्षदर्शी प्लेटफार्म पोर्टर, गाड़ी के गार्ड और लोको पायलट के कथन, स्टेशन अधीक्षक की चार्ज बुक की सत्यापित छाया प्रति और उसके कथन तथा ऑन ड्यूटी RPF के बल सदस्य के कथनानुसार गौरव कुमार, महेसाणा स्टेशन से थु पास हो रही उक्त सवारी गाड़ी से उतारने के प्रयास करने पर गाड़ी के नीचे जाने पर गंभीर रूप से चोटिल होने पर उसकी घटना स्थल पर ही मृत्यु हो गयी थी जो घटना उसकी स्वयं की गलती व लापरवाही से हुई है। जबकि चलती हुई सवारी गाड़ी में उतरना व चढ़ना रेल अधिनियम के तहत दंडनीय अपराध है और इस संदर्भ में जनजागरण हेतु रेलगाड़ियों के रेल्वे स्टेशन पर आवागमन के दरम्यान PA System द्वारा उद्घोषणा की जाती है।”

4. From the pleadings, following issues were framed on 12.07.2019.

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 dependent of the deceased and are entitled to compensation as claimed under Para- 16 of the claim application?
4. Relief?

5. Applicants Evidence and Respondent Evidence: Applicant No. 1 filled his affidavit as AW/1 and was cross-examined on 26.11.2021 by the Respondent.

6. Documents filed by the parties.

Applicant file certified copy of:

Railway Travelling Ticket - Exh.A/1, Memo - Exh.A/2, Inquest Panchnama – Exh.A/3, Panchnama of place of incident - Exh.A/4, P.M. Report - Exh.A/5, Receipt of handing over of dead body - Exh.A/6, Death Certificate and Aadhar card of deceased - Exh.A/7 to Exh.A/8, Election card, Aadhar card of App. No. 1 and 2 - Exh.A/9 to Exh.A/12, Bank Details - Exh.A/13.

a. The Respondent Railway administration adduced documentary evidence as the DRM report and filed examination-in-chief on affidavit of Sh. Kiransingh Barot S/o Sh. Amarsingh Barot, Service as a Gurad at Vadodara railway station as RW/1 and Respondent filled a certified copy of Guard Rough Journal as Exh.R/1 . The Applicants cross examined him on 08.06.2022.

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

Whereas, Counsel for the Respondent while arguing this case submitted that the ticket allegedly shown recovered is a planted ticket as such on this ticket no journey could be possible on the date of incident. To explain his argument he submitted that the ticket allegedly recovered has been purchased from Ahmedabad station at 07:54 AM whereas, the train No.16534 Bangalore-Bhagat Ki Kothi Express had already left Ahmedabad station at 07:39 AM. So, in said train journey was not possible whereas, as per Guard's statement at Mahesana from that train only deceased was fallen down. So, deceased was not a bonafide passenger and applicants have failed to connect the journey with the said ticket allegedly shown recovered from the deceased.

Whereas, Counsel for the applicants submitted that in affidavit tendered in examination-in-chief in para-15 applicants has already explained the circumstances how after purchasing the ticket the deceased boarded some other train and possibility of boarding train No.16534 in enroute cannot be ruled out. He further submitted that apart from the ticket, at the time Jama Talashi Aadhar Card and Rs.2308/- were also recovered from the deceased.

FINDINGS

8. 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. The Counsel for the Applicants also filed Written Arguments. We have considered the said Written Arguments. Our findings on the aforesaid issues are as under.

Regarding Issue No. 1 & 2

9. Both these issues have been taken up together to avoid repetition and considering there inter-connectivity. Our findings on the issues are as under:

10. As per documents, one ticket bearing No. L 54655992 from Ahmedabad to Mehsana purchased on 03.07.2018 at 07:54 a.m. had been shown recovered from the deceased. Whereas, the Respondent has come with the plea that on the ticket so recovered there was no possibility of travel because ticket was purchased on 07:54 a.m. and by that time train No. 16534 Bengaluru – Bhagat Ki Kothi Express had already been left Ahmedabad railway station on 07:39 a.m. It is the case of the Railways that that was the only train available towards Mehsana and Railway has heavily relied upon its arguments, whereas, Ld. Counsel for the Applicants during course of arguments relied upon Para No. 15 of Affidavit tendered in examination-in-chief which is reproduced as under:-

“It is true that at the time of untoward incident, I and my wife were at Uttar Pradesh. It is true that in the claim application, I have stated that my deceased son was travelling with a valid and proper railway travelling ticket bearing no. L – 54655992 (Ex. Ahmedabad to Mehsana, dated 03/.7/2018, Second Class,

Containing for 01 adult, Fare Rs. 40/-) as while preparing the Panchnama of place of incident, on 03/07/2018, the GRP of Mehsana had found and seized one Original Railway Travelling Ticket bearing no. L – 54655922 (Ex. Ahmedabad to Mehsana, dated 03/7/2018, Second Class, Containing for 01 adult, Fare Rs. 40/-) from one purse found near the place of incident. Based on recovery of ticket from place, it is claimed that my deceased son was travelling on the said ticket. But, it may be happened that he boarded the other next train (after purchasing the above said ticket) from Ahmedabad Railway Station for going Mehsana and in between Ahmedabad and Mehsana Railway Station, to reach early at Mehsana Railway Station, he had interchanged the train at any Station and boarded the train bearing no. 16534 named Bengaluru – Bhagat Ki Kothi Express and fallen down from the train at the platform no. 2 of Mehsana Railway Station. It is true that in past, my son never travelled without proper and valid ticket in train or in bus. He was habitual in purchasing the ticket first and then to travel. He was even not checked or labeled as without ticket traveler or not travelling with valid ticket by the railway staff from origin upto his destination station on the day of incident. After the untoward incident, the dead body of my deceased son was in the custody of railway administration. The said ticket was recovered from the place of incident and not planned or not technically sound to understand the train timing and train number and name and etc.”

11. So in the pleadings the Applicants have as stated travel by train No. 16534 Bengaluru – Bhagat Ki Kothi Express, boarded from Ahmedabad and during course of evidence the Applicants them self shifted their stand that after purchase of ticket, deceased might have boarded some other train at Ahmedabad and deceased with view to reach Mehsana early inter-changed the train in between Ahmedabad and Mehsana and boarded train No. 16534. The Ld. Counsel for the Applicants tried to explain the time difference between purchase of ticket and actual departure of the train No. 16534 and profitably added boarding in some unknown train and inter changing of said train in a midway between Ahmedabad and Mehsana during course of arguments and written arguments.

12. So the Applicants them self refuted the possibility of boarding of train No. 16534 Bengaluru – Bhagat Ki Kothi Express at Ahmedabad railway station. Legally, it is for the Applicants to prove travel and bonafide passenger status. So practically, It is the duty of the Applicants to place facts at which station he boarded train No. 16534, once he did not board said train at Ahmedabad railway station. The distance between Ahmedabad to Mehsana is about 75 K.M. The Railways has produced a document of ICMS application of CRIS. As per that document, the scheduled departure of train No. 16534 from Ahmedabad railway station was at 07.05 a.m. and actually trains left from the platform of Ahmedabad

railway station at 07.39 a.m. Further, train No. 16534 Bengaluru – Bhagat Ki Kothi Express after Ahmedabad, its scheduled halt was at Abu Road. In between there was no halt at Mehsana or Palanpur. If train left the Ahmedabad railway station, it would have been impossible to catch the train before Abu Road railway station. The story of travel as put forth by the Applicants regarding change of train during examination-in-chief is nothing but an afterthought just to meet with the defence taken in Written Statement. The probability as suggested by the Applicants about boarding of some unknown train and in the midway inter-changing with express train No. 16534 was technically, practically and even theoretically as not possible. Speed of express train and priority to express train would not allow any other passenger train to pass and over take the express train. There is no halt of train No. 16534 between Ahmedabad to Mehsana railway station. Recovery of ticket or recovery of ticket shown by GRP/MSH from the place of the incident in itself is not a proof that deceased was travelling on a said ticket if technically and practically ticket so recovered cannot be linked with a specific train in which alleged travel has been claimed. It is not a case of travel in an unknown train. The travel was not possible, so the ticket recovered from the place of incident is nothing but a concoction to add some authenticity to the incident. After explaining possibility of change of the train in mid-way, the Applicant in its examination-in-chief, further added few lines which creates doubt about the bonafide passenger status. The Applicant deposed following facts in Para 15 of the affidavit.

“It is true that in past, my son never travelled without proper and valid ticket in train or in bus. He was habitual in purchasing the ticket first and then to travel. He was even not checked or labeled as without ticket traveler or not travelling with valid ticket by the railway staff from origin upto his destination station on the day of incident.”

What was the reason to add these lines in examination-in-chief, particularly when as per pleadings ticket had been duly recovered from the place of incident. The only answer would be that infact the Applicant intends to cover up their case and have taken this plea in advance to meet with the findings against recovery of ticket. It all reflects modus operandi to bring their case within the ambit of Welfare Legislation.

13. We are having over sympathetic sentiments for the deceased but certainly, we are bound by the procedure and rules. We cannot add or subtract anything due to our emotions.

14. The Ld. Counsel for the Applicants has referred following judgments:

1	2003 ACJ 1934	Andhra Pradesh HC	P. Ramaswami Vs. Union of India
2	2006 (2) TAC 808 (A.P.)	Andhra Pradesh HC	UOI Vs. K. Parvathamma
3	2018 ACJ 1441	Supreme Court of India	UOI Vs. Rinadevi
4	2023 ACJ 2009	Supreme Court of India	Sanyokta Devi Vs. UOI
5	2017(3) GLR 2632	Gujarat High Court	UOI Vs. L.B. Sendhane
6	2001 ACJ 871	High Court of Orissa	UOI Vs. Jshna Kanhar
7	2013 ACJ 635	Kerala High Court	UOI Vs. Parameshwaram pillai
8	2006 (1) TAC 29 (Ori.)	Orissa High Court	Sakhia Naik & Another Vs. UOI
9	2023 ACJ 1659	Supreme Court of India	Kamukayi Vs. UOI
10	2010 ACJ 2777	Culcutta HC	Asharani Das vs. UOI

In the Judgment cited at serial No. 1 i.e. P. Ramaswamy Vs. Union of India, 2003 ACJ 1934 infact Railway took two defences on alleged ticket i.e. about date of issuance and time. After forensic evidence the evidence regarding date as taken by the Respondent was found wrong. So Hon'ble High Court refused to accept defence of Railways about timings but in this case Railway has taken one defence only about timing of purchase of ticket and the Applicants has failed to dispute the correctness of timings of purchase of ticket. So facts of said case are quit distinguishable from the facts of this case.

In the Judgment cited at serial No. 2 to 10, in present case the Applicant himself admitted timing of train ticket as correct and during course of evidence, shifted its stand from the original pleading by saying that deceased boarded in some other train and in midway inter-changed some train. So the Judgment cited on behalf of the Applicants from Sr. No. 2 to 10 are quite distinguishable and are not applicable to the facts and circumstances of this case.

The recovery of ticket under given circumstances is full of doubts and travel in specific train No. 16534 on the said ticket was practically not possible. So alleged recovery of ticket is liable to be ignored and the Applicant has failed to prove on record any travel with valid ticket in train No. 16534 Bengaluru – Bhagat Ki Kothi Express. The Applicant himself has relied upon Judgment of Hon'ble Supreme Court in Rina Devi Vs. Union of India and in the said Judgment the Hon'ble Supreme Court has pleased to decide that each case has its own merits and there would not be straight jacketed formula to deal with the case. Each case has its own peculiar circumstances and unique facts. The relevant portion of the Judgment is reproduced as under:

“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 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. The legal position in this regard will stand explained accordingly.”

15. In Written Arguments, Counsel for the Applicants vehemently referred Exh.A/3, wherein, it is specifically mentioned that deceased died due to fallen from down train bearing No. 16534. Admittedly, in this case Loco Pilot/Guard has informed Railway authorities that one unknown person had run over while getting down from the running train. So from the running train the incident was informed to the Railway authorities. Exh.A/2 is Memo, issued by the Railways upon such incident. Even RW/1, Guard of the train is not the eye witness of the incident. The Memo Exh.A/2 is not specific as to who had given information to Station Master/Mehsana about the incident, whether informant was Loco Pilot or Guard. The Guard of the train during cross-examination admitted that from the shouting persons standing on platform, he came to know about same incident at the platform but he did not stop the train at Mehana. He informed Station Master/Mehana about the incident and in writing gave it to Station Master/Abu Road. The train was in through running mode. Nothing was recovered from the body of the deceased. The Guard of the train opted not to stop the train, clearly reflects that speed of the train would have been fast. There is no evidence that person jumped from the train or attempted to alight from the train or accidentally fell down from the running train at Mehana railway station but certainly there was fall from running train and it was reported to Station Authorities by the Guard of the said train. We can extend benefit of doubt that deceased had accidentally fell down from the running train but fact remains that the ticket shown to be recovered from the place of incident is not matching with the travel time with train No. 16534. Even Counsel for the Applicants during cross-examination did not put any question to the Guard to cover up the possibility of inter-changing train between Ahmedabad and Mehana by the deceased from some other train to train No. 16534. So by planting a ticket to add authenticity to travel and create authority to alleged travel, it can be said that Applicant has not come to this Tribunal with clean hands. We can rely on the judgment of Hon'ble Supreme court in the case of V. Chandrasekaran vs.

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 Detrimeto 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. (Vide: **The Ramjas Foundation & Ors. v. Union of India & Ors.**, AIR 1993 SC 852; **Nooruddin v. (Dr.) K.L. Anand**, 1995(2) R.R.R. 556 : (1995) 1 SCC 242; and **Ramnislal N. Bhutta & Anr. v. State of Maharashtra & Ors.**, AIR 1997 SC 1236).*

35. *The judicial process cannot become an instrument of oppression or abuse, or a means in the process of the court to subvert justice, for the reason that the court exercises its jurisdiction, only in furtherance of justice. The interests of justice and public interest coalesce, and therefore, they are very often one and the same. A petition or an affidavit containing a misleading and/or an inaccurate statement, only to achieve an ulterior purpose, amounts to an abuse of process of the court.*

16. So Applicants are not entitled to any relief. Both this issues are liable to be decided against the Applicants. The Citations referred by the Counsel for the Applicants from Sr. No. 1 to 10 are not applicable to the facts of this case because in none of the case as discussed supra, ticket was found planted and on ticket so recovered, technically it was not possible to travel. As the case of the Applicant as setup in the OA and as deviated from original pleadings at the time of evidence and arguments are not in synchronization with each other, rather contradictory in themselves. So without going in to the details of DRM Report it can said that the Applicants have failed to prove their case in accordance with law. The liberal sympathetic and pragmatic approach of this Tribunal under Social Welfare Legislation cannot be extended to litigants, who have not come to the Court with clean hands.

17. 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 and there would have been accidental fall from running train but same cannot be termed as untoward incident. In the light of above, the deceased cannot be treated as bonafide passenger and further the incident would not come in the

ambit of untoward incident. Accordingly, these issue No. 1 and 2, have been decided against the Applicants and in favour of the Respondent.

Reasoning of Issue No. 3

18. The Applicants have proved on record, KYC documents from Exh.A/9 to Exh.A/13, the Respondent has failed to dispute inter-se relations of the Applicants with deceased. So this issue is decided in favour of the Applicants.

Reasoning of Issue No. 4

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

ORDER

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

21. 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.

22. 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.

AHMEDABAD BENCH

[R.K. Manocha]
Member (Technical)

[Vinay Goel]
Member (Judicial)

Judgment pronounced and signed in open court today i.e. on 16.05.2024.

Place: Ahmedabad
Date: 16.05.2024.

[R.K. Manocha]
Member (Technical)

[VinayGoel]
Member (Judicial)