

रेल दावा अधिकरण, अहमदाबाद पीठ, अहमदाबाद के समक्ष

कोरम : श्री विजयंत सिंह, माननीय सदस्य (न्यायिक)

CASE No. OA(Ilu)/ADI/2022/0038

Date of Institution: 15.07.2022

Date of Decision: 06.11.2023

1. Jayaben Bhimabhai Vala, Age about 46 yrs.
(Wife of the deceased)
2. Rajeshbhai Bhimajibhai Vala, Age about 22 yrs.
(Son of the deceased)
3. Kishan Bhimjibhai Vala, Age about 19 yrs.
(Son of the deceased)

All are residing at: Sagar Vistar, Sarkadiya, Maliya Hatina,
Junagadh-362245.

....APPLICANTS

VERSUS

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

..... RESPONDENT

Appearances : Mr. K.M. Shah, Ld. Counsel for the Applicants.

Mr. G.J. Dave, Ld. Counsel for the Respondent.

CLAIM FOR Rs. 8,00,000/-

निर्णय

RAILWAY CLAIMS TRIBUNAL

Through this Application under section 16 of the Railway Claims Tribunal Act, 1987 read with section 124-A, 125 & 123 (c) (2) of the Railways Act, 1989 the Applicants pray for an amount of Rs. 8,00,000/- as compensation on account of death of Bhimjibhai Jivabhai Vala (Koli), aged 51 years (hereinafter referred to as 'deceased') in an alleged untoward incident, on the ground that they are the dependents of the deceased.

2. Briefly stated the facts of the case in claim application are that, on 11.10.2021 the deceased, with a valid ticket, was travelling from Maliya Hatina to Junagadh station and accidentally fell down from a train resulting into his death during the treatment in the hospital on 19.10.2021.

3. In support of the claim, the Applicants have placed on record certified copies of certain documents regarding the incident along with various Govt. Identification cards.

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 hit by any train hence, the incident does not come within the periphery of untoward incident as defined in the statute therefore, the Applicants are not entitled to get compensation.

5. Based upon the pleadings of the parties and material made available on record, 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 sole dependents of the deceased and are entitled to compensation as claimed, as per Section 123 (b) of The Railways Act, 1989?*
4. *To what Relief ?*

6. So as to lead evidence, Applicant No.1 Jayaben Bhimabhai Vala has filed her own examination-in-chief on affidavit as AW/1 and got the documents exhibited as A/1 to A/31. She was cross examined by the Counsel for the Respondent.

7. The Respondent Railway administration adduced documentary evidence as the DRM report and also adduced evidence by way of affidavit of Sh. Ashok S/o Savjibhai Meraiya, Commercial Clerk, HQ-Dholka Station, as RW/1. He was cross examined by the Applicants.

FINDINGS

8. I 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. My findings on the aforesaid issues are as under:

Regarding Issues No. 1:

9. According to the Applicants, the deceased was travelling from Maliya Hatina to Junagadh station on 11.10.2021 with a valid and proper Railway Travelling Ticket in general compartment in a train and the ticket was lost in the incident. *Per contra*, Ld. Counsel for the Respondent vehemently argued that as per the DRM report, travelling ticket/authority/pass was not recovered from the deceased during Panchnama of place of incident or Panchnama of Body condition. Hence, the deceased was not a bonafide passenger on the day of incident.

10. As against this, the Respondent Railway filed an examination-in-chief on the affidavit of Sh. Ashok S/o Savjibhai Meraiya, Commercial Clerk, HQ-Dholka Station, as RW/1, in which he stated; that he was on duty as a Commercial Clerk at Maliya Hatina station from 07 to 12 hrs., from 14 to 15 hrs. and from 16 to 22 hrs. on 11.10.2021; that he was the sole staff entrusted with the ticket booking through UTS/PRS; that during his duty, 1st ticket was issued at 14:40 hrs. and as per DTC details (attached with affidavit as Exh.A/30) of Maliya Hatina for 11.10.2021, prior to his duty hours, last ticket was issued at 05:17 hrs.

11. I have carefully perused cross-examination of RW/1, in which she stated that, “मैंने अपने शपथपत्र के साथ जो कागज़ पेश किया है वह मालिया हटिना के स्टेशन अधीक्षक ने मेरे मोबाइल फोन के whatsapp पर भेजा था। उसका प्रिंट निकाल कर न्यायालय में पेश किया है। इसमें एक मोहर भी लगी है। मैंने तो इसे मोबाइल फोन के whatsapp से ही प्रिंट किया है। मैं आज अपने साथ CRIS का रिकॉर्ड नहीं लेकर आया हूँ जिसमें टिकट बेचने का इंड्राज़ दर्ज होता है। उक्त दिनांक को मालिया हटिना से जूनागढ़ जाने वाली गाड़ियों में कितने टिकट EFT के जरिये जारी की गयी, मैं नहीं बता सकता हूँ। ” The Respondent did not file the original CRIS record, in which the ticket(s) selling entries (detailed) has been registered and stored automatically in CRIS server, and this record might have been *turn the tables for the opposition*. As well as, an executor of the document (Exh.A/30 i.e. DTC) was not presented before the Court and he was not made to prove the document. In this aspect, it is worthwhile to reproduce the ratio laid down by the hon'ble Supreme Court of India, in case of *Narbada Devi Gupta Vs. Birendra Kumar Jaiswal & ors.*, Civil Appeal

No. 315 of 1998, decided on 03.11.2003, {(2003) 8 SCC 745}, the Apex court has held at that;

“16. Reliance is heavily placed on behalf of the appellant on the case of Ramji Dayawala & Sons (P) Ltd. {(1981) 1 SCC 80}. The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence that is by the 'evidence of those persons who can vouchsafe for the truth of the facts in issue'.”

12. It is also 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. But the Applicants successfully discharge the burden by filling the affidavit. I have carefully examined the examination-in-chief of AW/1, which reveals that “मेरे पति का रेलवे टिकिट, कंघा, घड़ी, रुमाल व रु. 1000/- से 1200/- नहीं मिला।”. The Respondent could not contend her deposition.

13. Furthermore, in reply of the Respondent, regarding travel details of the deceased, there are nothing mentioned about the said ticket was not sold. Hence, according to the above principle, the present Applicants have successfully discharged the burden. But, the Railways could not discharge the burden by producing any tangible evidence against the Applicants. In my view, the principles of law laid down by the 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. Hence, this issue is decided in favour of the Applicants.

Regarding Issues No. 2:

14. According to the Applicants, the deceased had left the home nearly at 07:00 hrs. on 11.10.2021 by saying that he was going from Maliya Hatina (MLHA) to Junagadh by travelling in a train and will be return in the night. During the course of the journey, when the train was running between k.m.no. 154/0 & 153/9 between MLHA and Keshod stations, at that time, due to all of a sudden jerk & jolt of the train, the deceased lost his balance and accidentally fell down from the running train. Due to which he was dragged with train and sustained multiple grievous injuries. On receipt of the message from Loco Pilot of train no. 01465 Somnath-Jabalpur, regarding the body lying at the place, the Dy.SS- MLHA issued a Memo and informed GRP-Keshod and also called 108 ambulance regarding the same. The deceased was taken and admitted in Government Hospital- MLHA, thereafter Civil Hospital-Junagadh, Civil Hospital-Rajkot and Civil Hospital-Ahmedabad respectively. But, unfortunately, on 18.10.2021 doctors of the Ahmedabad hospital declared him as dead. After completion of due procedural police formalities, the dead body was handed over to the Applicants for performing final rites. Hence, the incident is covered under the definition of Section 123 (c) (2) of the Railways Act, 1989.

AHMEDABAD BENCH

15. In support of the claim application, the Applicants filed certified copy of Memo at Exh.A/1, Extract of Janva Jog/GRP-Junagadh at Exh.A/2, Panchnama of Body condition at Exh.A/3, Extract of Notes registered in A.D. No. 10/2021/GRP-Junagadh at Exh.A/4, Inquest Panchnama at Exh.A/5, Panchnama of place of incident at Exh.A/6, SDM report at Exh.A/8, P.M. report at Exh.A/9, Certificate of cause of death at Exh.A/10, Death certificate at Exh.A/11, Aadhar card & Pan card of the deceased at Exh.A/13-14, Treatment certificate of the Hospital at Exh.A/30-31.

16. As against this, the Respondent filed the statutory DRM report, in which it is reveals that, “उक्त मृतक बाहरी व्यक्ति मानसिक बीमारी से ग्रसित था, हो किसी कारण से घटना

स्थल पर से पसार हो रही किसी सवारी/मालगाड़ी से टकराने से उसके सिर पर चोट लगने से घायल हो गया तथा उपचार के दौरान दिनांक 19.10.2021 को सिविल अस्पताल अहमदाबाद में मृत्यु हो गई।”

17. With support of this Ld. Counsel for the Respondent vehemently argued; that as per the DRM report the deceased was hit by any passenger/goods train and Loco pilot of train no. 01465 saw that an unknown person was lying in unconscious condition; that as per statement of AW/1, her husband (the deceased) was suffering from mental illness and went to Veraval for purchasing medicine around 08:00 am from home. Therefore, the incident is not fall within the definition of *untoward incident* as defined u/s 123 (c)(2) of the Railways Act, 1989 but actually fall within sec. 124-A (b) i.e. *self-inflicted injury*, and for that the Applicants are not entitled to get any compensation and the application is required to be dismissed.

18. I have carefully perused the cross-examination of AW/1, in which she stated that “यह कहना गलत है कि मेरे पति ने टिकिट नहीं लिया हो और वह मानसिक रूप से बीमार होने के कारण रेल परिसर में घुस कर ट्रेन से टकरा गया हो।”. This reply was given against the suggestion of the Respondent i.e. it is correct to say that the deceased did not take the ticket and due to being mentally ill, he entered the Railway premises and got hit by the train. In connection with suggestions and reply to suggestions, I deem it proper to mention here the judgment of the Hon’ble Supreme Court of India, in the case of *Sanyokta Devi Vs. Union of India* in Civil Appeal No. 770 of 2023 decided on 02.02.2023, reported in 2023 (2) T.A.C. 16 (S.C.) the Court has held that;

“19. There is no oral or documentary evidence to indicate the mental fitness of the deceased, except the statement alleged to have been made by his own son Dilip Kumar pursuant to which First Information Report was registered. The alleged statement cannot be held to be a conclusive proof of the mental health condition of the deceased, firstly, for the reason that Dilip Kumar subsequently on affidavit disowned any such statement; secondly, neither the respondent(s) examined any covillager nor produced any medical proof to substantiate their defence. In fact, no such specific plea has been taken by the respondent(s), except a question being put to the appellant in her cross-examination where she stoutly controverted the said allegation and asserted that her husband was mentally fit.”

19. The judgment (supra) would clearly apply to the present case. The Respondent did not adduce such evidence which shows that the deceased was suffering from mental illness. Hence, according to the ratio laid down (supra), the reply of the AW/1 to the suggestion would definitely form part of the evidence.

20. After perusal of the Form-1, Form-2, Memo of Guard of train no. 01465 to Station Superintendent-Keshod and Joint Observation report of RPF & GRP, it is revealed that the body of the deceased was found lying at k.m.no. 153/09 near track, which is Railway premises. Hence, in absence of any concrete evidence, it can be said that the deceased must have fallen down from the open door of the train compartment. For these circumstances it is worthwhile to mention here 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 has held 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”.

21. Furthermore, I deem it proper to reproduce the ratio laid down by the Hon’ble Supreme Court in the case of Sanyokta Devi Vs. Union of India (supra) the Court has held at para20 that:

“the appellant successfully discharged the initial onus on her by proving that the deceased had bought a valid railway ticket and boarded the train to reach the specified destination. It was a compensatory claim, originating out of a social welfare legislation, and such claim ought to have been examined on the basis of preponderance of probabilities and not on the parameters of ‘beyond any reasonable doubt’ as we often apply in a criminal trial. ”

22. In my view, the principles of law laid down by the Supreme Court would clearly apply to the facts of this case. It can be also said that the Respondent could not lead any evidence who/which leads the case against the Applicants.

23. Therefore, according to my findings and above principles of law, it is evident clear that the present case is covered under definition of *untoward incident* which is defined in section 123 (c)(2) of the Railways Act,1989. Hence, this issue is decided in favour of the Applicants.

Regarding Issue No. 3 & 4 :

24. It is averred in the application that Applicant no.1 is wife, Applicant no.2 & 3 are sons of the deceased and they were solely dependents of the deceased. The Applicant also deposed that parent of the deceased has died before the incident. In support thereof, the Applicants have filed document regarding dependency i.e. Ration card at Exh.A/12; Aadhar card & Pan card of Applicant no.1 at Exh.A/15-16; Voter Id, Aadhar card, Pan card, Birth certificate & Disability certificate of Applicant no.2 at Exh.A/17-21; Aadhar card, Pan card & Birth certificate of Applicant no.3 at Exh.A/22-24; Death certificate of parents of the deceased at Exh.A/25-26; Dependency certificate issued by Gram-Panchayat at Exh.A/27.

25. 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 dependent of the deceased. Moreover, no one is present before the bench to prove their dependency on the deceased during pendency. Hence, it can be concluded that the present Applicants are the dependents of the deceased being entitled to compensation in this case within the meaning of Section 123 (b) of the Railways Act. Hence, these issues are decided in favor of the Applicants who are entitled to get compensation.

26. Thus, the present Applicants in this case will be entitled to get Rs. 8,00,000/- as compensation from the Respondent Railway administration on account of death of Bhimjibhai Jivabjai Vala (Koli) as prescribed under part-1 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.

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

ORDER

27. The application is allowed. The Respondent Railway shall pay to the Applicants 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. 11.10.2021 till the date of this order. If the Respondent Railway fails to pay the amount within above stipulated time (30days), the awarded sum will carry simple interest @ 9% per annum from the date of this order till the date of realization.

28. Further, 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 date of the order. Further the Respondent is directed to place the proof of award amount with up to date interest along with the calculation sheet.

29. The Registry is directed that, 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 Jayaben Bhimabhai Vala	+ Rs. 6,00,000/- accrued interest.	Rs. 50,000/- + accrued interest.	Balance amount of Rs. Five Lakh Fifty Thousand only shall be split into 55 fixed deposits of Rs.10,000/- each and invested for a period of 01 to 55 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 Rajeshbhai Bhimajibhai Vala	Rs. 1 Lakh only.	-Nil-	Awarded amount Rs. One Lakh only shall be deposited in Fixed Deposit in the same bank in the name of the claimant for a period of two years. The claimant is at liberty to withdraw the quarterly interest from time to time.

Appli. No.3 Kishan Bhimjibhai Vala	Rs. 1 Lakh only.	-Nil-	Awarded amount Rs. One Lakh only shall be deposited in Fixed Deposit in the same bank in the name of the claimant for a period of two years. The claimant is at liberty to withdraw the quarterly interest from time to time.
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30. The Applicants(s) is/are hereby directed to furnish the particulars of his/her/their savings bank account of a Nationalized/Scheduled bank *near to his/her/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. The Applicants(s) is/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.

31. The Registry is directed to defer the disbursement of award amount till passbook of saving bank account of the claimant(s) in the bank near the place of his/her/their permanent residence is not produced along with necessary endorsement.

32. 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 claimant(s).

33. Further, I deem it proper to direct the concerned bank that :

- (a) The Bank shall not permit any joint name to be added in the savings bank account or fixed deposit amount of the claimant(s) i.e. savings bank account of the claimant(s) shall be an individual bank account and not joint account.
- (b) The Bank shall not issue any Cheque book and debit card to the claimant(s). 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 claimant(s) to the effect that no Cheque book and/or debit card have been issued.
- (e) The statement containing FDR number/FDR amount/date of maturity and maturity amount shall be furnished to the claimant(s).

(f) The Bank is directed not to permit any debit to Saving Bank of 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.

32. 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.

[Vijayant Singh]
Member (Judicial)

Judgment pronounced and signed in open court today i.e. on 06.11.2023.

Place : Ahmedabad

Date : 06.11.2023

रेलवे अपीकरण

अहमदाबाद पीठ

[Vijayant Singh]
Member (Judicial)

RAILWAY CLAIMS TRIBUNAL

AHMEDABAD BENCH