

Before Railway Claims Tribunal, Ahmedabad Bench.

Coram: Shri Vinay Goel, Member (Judicial)
Shri R.K. Manocha Member (Technical)

CASE No. OA(IIu)/ADI/2022/0044

Date of Institution: 29.07.2022

Date of Decision: 09.01.2024

Fulvantiben Makaranibhai Marvadi, Aged 45 yrs.
(Mother of the deceased)

....Applicant

Residing at: Bhalej Road, Bismill Society same,
Anand, Gujarat-388001.

-VERSUS-

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

.....Respondent

Mr. A.M. Joshiyara, Ld. Counsel for the Applicant.

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

CLAIM FOR Rs. 8,00,000/-

Judgment

This OA has been filed by the mother of the deceased under section 16 of the Railway Claims Tribunal Act, 1987 read with section 124-A, 125 & 123 (c) (2) of the Railways Act, 1989 for getting compensation from Respondent Railway on account of alleged death of Sh. Kundan Makarani Marvadi, age-19 yrs. (hereinafter referred to as 'deceased') in an alleged untoward incident during alleged train journey, on the ground that she is the dependent of the deceased.

2. It is the case of the Applicant that, the deceased was travelling from Vadodara to Anand in train no. 19484 BJU-ADI Express after purchasing a ticket for said journey. There was heavy rush in the train therefore he was standing near the door of compartment. The deceased accidentally fell down from the running train at Km.No. 403/10-A on Dn line near Bajwa station. Due to which he sustained serious injuries which resulted in to his death. 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 Applicant is entitled to get compensation from the Respondent Railway

3. The Respondent Railway Administration has contested the claim of the Applicant by filing the written statement along with the DRM Report, wherein apart from denying all the averments made in OA. the Respondent denied bonafide passenger status, untoward incident and denied its liability. It is pleaded that the deceased was an unauthorized hawker which is illegal on that account denied liability as the deceased died due to his criminal act. Further contended; that bother and mother of the deceased clearly stated in their statement that the deceased was working as a vendor in trains since 08-10 years and he used to never buy a ticket while travelling in the train. Hence, the deceased was not a bonafide passenger and the injuries sustained by him are *self-inflicted injuries* and he died due to his own *criminal act*. Hence, this act of the deceased is shown gross negligence and the incident comes under the purview of “*Self-inflicted injury*” and for that the Applicant is not entitled the compensation and the claim may be dismissed.

4. **Crux of DRM Report:** “1. मृतक व्यक्ति अवैध तरीके से गाड़ियों एवं रेल परिसर में फेरि का कार्य करता था, अतः वह रेल अधिनियम की धारा के 144 (1) तहत दोषी है। 2. मृतक के भाई के कथन अनुसार मृतक व्यक्ति कभी भी रेल यात्रा से संबंधित टिकिट नहीं लेता था और न ही घटना के पश्चात तलाशी में मृतक ले पास से कोई टिकिट प्राप्त हुई। 3. मृतक व्यक्ति को किसी ने गिरते हुए नहीं देखा था, अतः यह साबित नहीं होता है कि मृतक व्यक्ति की मृत्यु किसी सवारी गाड़ी के गिरने से हुई है। 4. मृतक व्यक्ति की माँ के कथनानुसार उक्त घटना में उन्हें कोई शिकायत नहीं है और न ही उन्हें कोई क्लेम लेना है। ”

5. Based upon the pleadings of the parties and material made available on record, the following issues were framed on 13.12.2022.

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 applicants are the 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. Applicant Evidence and Respondent Evidence: The Applicant filed her examination-in-chief on affidavit as AW/1 and she was cross-examined on 19.06.2023.

The Respondent filed an examination-in-chief on affidavit of Sh. Satyendra Kumar S/o Sh. Omprakash Ram, Inspector/RPF/Bajuwa, as RW/1, in which he stated that:

- “1. उक्त प्रकरण की दिनांक 04/12/2021 को मेरी ड्यूटी बाजवा RPF कार्यालय में इंचार्ज के तौर पर थी। करीबन 11:30 बजे स्टेशन अधीक्षक/बाजवा ने सूचना दिया था कि बाजवा बी केबिन के पास कि.मी. 403/10A पर एक अंजान व्यक्ति मृत अवस्था में पड़ा है, जिसकी सूचना उसे किसी अंजान व्यक्ति ने टेलीफोन के माध्यम से दिया। सूचना मिलते ही मैंने अपने स्टाफ को घटना स्थल पर भेजा और उन्होंने जाकर देखा कि उक्त घटना सही है उसके बाद मैं घटना स्थल पर गया साथ ही GRP/CYI से GRP/ASI कानुभाइ भी घटना स्थल पर आए और उन्होंने मृतक कि तलाशी लेने पर उसके पास से कोई टिकट नहीं मिला था और घटना स्थल पर उपस्थित एक व्यक्ति सिकंदरभाई ने मृतक कि पहचान करते हुये उसका नाम कुन्दन मकरानी बताया।
2. यह कि, मैं उक्त प्रकरण में घटना का अन्वेषणकरता अधिकारी था। दिनांक 13/12/2021 को मृतक कि माँ फुलवंतीबेन और मृतक के भाई संजय मकरानी को बुलाकर उनसे पूछताछ करके उनके द्वारा बताए अनुसार उनका बयान मैंने लिया था और उनके बयान को उनके सामने पढ़कर सुनाया था, जिससे संतुष्ट होने के बाद फुलवंतीबेन ने अपने दाहिने हाथ का अंगूठा लगाया था और संजय ने अपना हस्ताक्षर किए थे। दोनों ने अपने बयान में बताया था कि मृतक रेल गाड़ी में फेरी लगाकर समान बेचने का काम करता था और कभी टिकट नहीं लेता था। घटना के दिन मृतक पाने मौसी के घर विश्वामित्री गया था तथा आनंद लौटते समय रेल गाड़ी से गिर गया था और चोट लगने से घटना स्थल पर उसकी मृत्यु हो गई।
3. यह कि, उक्त मृतक को किसी ने भी किसी गाड़ी से गिरते हुये नहीं देखा था और न ही घटना वाले दिन किसी गाड़ी के लोकोपायलट या गार्ड ने किसी व्यक्ति के किसी गाड़ी से गिरने कि सूचना बाजवा स्टेशन पर दी थी, और न ही किसी व्यक्ति के बाजवा में गिरने कि वजह से किसी गाड़ी में कोई ACP हुआ था। चूंकि मृतक के पास कोई यात्रा टिकट बरामद नहीं हुआ था अतः वह रेलवे के नियमानुसार रेलवे का यात्री नहीं था।”

He was cross-examined by the Applicants.

7. Documents filed by the Parties:

7.1 The Applicants filed certified copy of:

Memo at Exh.A/1; Inquest Panchnama at Exh.A/2; Panchnama of Place of Incident at Exh.A/3; Post Mortem Report at Exh.A/4; Death certificate of the deceased at Exh.A/5; Aadhar card of the deceased at Exh.A/6; Ration card at Exh.A/7; Aadhar card, Election card, Pan card and Bank details at Exh.A/8-11; Death certificate of father of the deceased at Exh.A/12; Memo of SS-Chhayapuri to GRPF/CYI at Exh.A/13.

7.2 The Respondent filed original DRM report with Investigation report. Also filed Site Map of place of incident at Exh.R/1.

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

"Counsel for Applicants submitted that the deceased was travelling with valid ticket from Vadodara to Anand and during said journey he accidentally fell down from running train and deceased was injured on the track. He was found dead on the track. He further submitted that ticket was lost during accident. Ld. Counsel for the respondent submitted that deceased was unauthorized vendor he died due to his own negligence. He was not bonafide passenger as no ticket was recovered. In rebuttal Counsel for the applicant submitted that in cross examination RW-1 admitted that he did not receive any complaint that deceased was travelling without ticket and deceased was not hawker and respondent was failed to prove that deceased was a hawker. This Tribunal put query to Counsels how purchase of ticket has been proved and what would be the effect of recovering of nothing at the time of inquest. Counsel for the applicant submitted that AW-1 duly explained that ticket was purchased by her sister and handed over to the deceased."

FINDINGS

9. 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.

10. Admittedly in this case no ticket was recovered at the time of Inquest panchnama and it is the case of the Respondent that the deceased was not bonafide passenger. One limb of argument of the Respondent is that the deceased was an unauthorized hawker but the Respondent has failed to prove on record that on the fateful day the deceased was doing unauthorized vending in the train coach. So said part of argument as advanced by the Respondent is not tenable.

11. Now we come to the pleadings as made by the Applicant and case as set up by the Applicant to claim compensation. It is the candid case that the deceased was travelling on valid ticket but it has pleaded that ticket was lost during the incident along with wallet. In pleadings there is no reference of any other person as to who has purchased the ticket for the deceased or seen the deceased purchasing rail journey ticket but in the case cross-examination of AW/1 has become relevant for fair adjudication of this case more important.

“मेरा लड़का दिनांक 03.12.2021 को दोपहर 12:00 बजे घर से वडोदरा, उसकी मौसी के यहाँ जाने के लिए निकला था। मेरी बहन ने दिनांक 04.12.2021 को, मुझे फोन पर बताया कि मैंने टिकट लेकर तुम्हारे लड़के को सुबह 10:00 बजे, बरौनी एक्सप्रेस ट्रेन में बैठा दिया। मेरे लड़के को यात्रा के लिए टिकट मेरी बहन ने दिलाया था। शपथपत्र की मद सं. 3 में ‘A-B’ हिस्से में, मेरे लड़के द्वारा जो टिकट खरीदना अंकित किया है, वह गलत अंकित किया है। मेरा लड़का आणंद के सब्जी मार्केट में सब्जी बेचने का काम करता था। पुलिस ने मुझसे लिखे हुए कागजों पर अंगूठा करवाया था, पर उसमें क्या लिखा था, वह मुझे पता नहीं। मेरा छोटा लड़का संजय, मेरे बड़े लड़के की जगह सब्जी का कारोबार करता है। यह कहना गलत है कि मेरा बेटा कुन्दन रेलवे स्टेशन पर ट्रेन में अनधिकृत रूप से फेरी लगा कर खाने का सामान बेचता हो, और इसलिए चलती ट्रेन से उतरने के प्रयास में गिर गया। यह कहना गलत है कि दुर्घटना के दिन वह अनधिकृत रूप से बिना टिकट खरीदे फेरि लगाकर सामान बेच रहा था, इसलिए स्वयं की गलती से दुर्घटनाग्रस्त हुआ। यह कहना गलत है कि ट्रेन में अवैध रूप से फेरी लगाकर सामान बेचना अपराध है। यह कहना सही है कि मैंने दुर्घटना घटित होने नहीं देखी।”

12. So as per the cross-examination, the deceased left home on 03.12.2017 and in return journey from Vadodara, his maternal aunt purchased ticket for him and

thereafter she informed mother of the deceased about purchasing ticket and boarding of the deceased into the train. So there was an eye witness of purchase of ticket and boarding train by the deceased but in the OA such facts about the purchasing of ticket by maternal aunt and intimation to the family about boarding of train with ticket are conspicuous by absence. At this juncture we would like to quote 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.”

13. No ticket was recovered from the body of the deceased so initial burden lies upon the Applicant to prove such fact through AW/1 who stepped into the witness box. But in her examination-in-chief she nowhere stated anything about admission and statement made during the course of her cross-examination. The admission so made cannot be said as stray admission rather in candid word, the Applicant answered the question about ticket purchased by her sister, telephonic information and bearing of train. But surprisingly enough, said maternal aunt as the eye witness of purchase of ticket and boarding of the train by deceased, has not been produced before this Tribunal in witness box to depose on oath above all such facts.

14. Applying the principle laid down by Hon'ble Supreme Court in RINA DEVI (supra) case, it can be said that the Applicant has failed to discharge her initial burden. Likewise non-production of best evidence by the Applicant would also compel this Tribunal to draw adverse inference. Even there is no reference of any specific journey in the initial panchnama etc. though the person was duly identified. Nothing was recovered from the body of the deceased on the day of incident, it also creates suspicion about alleged travel. At the time of DRM enquiry even mother

and brother of the deceased nowhere stated that ticket was purchased for the deceased by his maternal aunt. Further as per Joint Observation Report of GRP and RPF, “मृतक व्यक्ति के तलाशी के दौरान यात्रा संबंधी कोई टिकट नहीं पाया गया”.

15. To get compensation three factors are very much important to prove (1) travel in train (2) bonafide passenger status and (3) death/injury due to untoward incident occurred during travel. All these factor are to be proved independently and presumption of one factor upon establishment of other factor is not a good rule for these cases. Through somehow there is no direct evidence to accidental fall from running train and there is nothing incriminating which may suggest otherwise. The body was found by the side of down line Railway track and again we would rely upon judgment of RINA DEVI (supra).

16. In this case travel on valid ticket is not established, so it would be appropriate to say that the deceased was not a bonafide passenger. As far as recovery of body from Railway track is concerned, that would not mean that the deceased met with some untoward incident. Under what circumstance body of the deceased came on track remain suspicious. Even if we adopt liberal approach and consider that person would have fallen down from running train and the incident would come within the ambit of untoward incident, but issue of bonafide passenger has already been answered against the Applicant.

17. In the backdrop of above the Applicant has failed to prove purchase of ticket. So the deceased cannot be treated as a bonafide passenger and the alleged occurrence not to be treated as untoward incident purpose of adjudication of this case rather the deceased died due to some other reason other than accidental fall from running train. Hence, issue no. 1 & 2 are decided against the Applicant.

Reasoning of Issue No. 3 & 4 for the judgment:

18. The claim has been filed by mother of the deceased and she deposed that she is the only dependent of the deceased. In support thereof she filed documents regarding dependency at Exh.A/7-12.

19. There is no dispute about relationship of the Applicant with the deceased and Respondent side has failed to counter the documentary evidence produced by the Applicant. The Applicant is mother of the deceased and she has every locus to file this petition under Section 16 of RCT Act, 1987 read with Section 124A and 125 of Railways Act, 1989. Issue No.3 is decided accordingly.

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

ORDER

21. In view of the negative findings on issue no. 1 & 2, the claim application stands dismissed on merits, but with no order as to cost.

22. 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.

[R.K. Manocha]
Member (Technical)

[Vinay Goel]
Member (Judicial)

Judgment pronounced and signed in open court today i.e. on 09.01.2024.

Place : Ahmedabad

Date : 09.01.2024.

[R.K. Manocha]
Member (Technical)

[Vinay Goel]
Member (Judicial)