

**Before Railway Claims Tribunal, Ahmedabad Bench
Ahmedabad**

Coram :Shri Vinay Goel, Member (Judicial)

Shri Raj Kumar Manocha, Member (Technical)

CASE No. OA IIu/2022/0051

Date of Institution: 09.09.2022

Date of Decision: 13.02.2024

1. Janki Bai Hardev Lodhi, Aged about 27 years

(Wife of the deceased)

2. Minor Bhoopsingh Hardev Lodhi, Aged about 11 years

(Son of the deceased)

3. Minor Harsh Hardev Lodhi, Aged about 9 years

(Son of the deceased passenger)

(Minor applicants i.e. applicant No.2 and 3, through their mother and legal guardian i.e. applicant No.1)

Applicant No.1 to 3 are residing at : Mahuvat, Agara,

Dist.: Damoh, State : Madhya Pradesh-470673.

....APPLICANTS

VERSUS

1. UNION OF INDIA

Through General Manager,

Western Railway, Churchgate, Mumbai.

2. Parvatibai Pancham Singh Lodhi, Aged 60 years

(Mother of deceased)

Residing at : Agara, Village : Mahuvat, Agara,

Dist.: Damoh, State : Madhya Pradesh-470673.

...RESPONDENTS

Appearance: Mr. A.M. Joshiyara, Ld. Counsel for the Applicants.

Ms. Ruchita Jain, Ld. Counsel for the Respondent.

CLAIM FOR Rs. 8,00,000/-

JUDGMENT

This Original Application has been filed by three applicants i.e. wife and minor sons of the deceased under section 16 of the Railway Claim Tribunal Act,1987 read with section 124-A, 125 and 123 (c) (2) of the Railways Act,1989 for getting compensation from Respondent Railway on account of alleged death of

Shri Hardev Pancham Singh Lodhi, age 29 years (herein after referred to as ‘deceased’) in an alleged untoward incident during alleged train journey, on the ground that they are the dependents of the deceased. The applicants also impleaded mother of the wife as Respondent No.2 in this claim application.

2. In brief, it has been averred in the claim application that, applicant No.1 is widowed wife of the deceased, applicant No.2 and 3 are minor sons of the deceased. The deceased was going to Damoh to Ajmer Station. That the deceased was travelling from Ajmer to Surat Railway station. He purchased valid rail journey ticket from Ajmer to Surat Railway station. On that day there was heavy rush in the train, that due to heavy rush of passenger, deceased boarded in the general compartment and was standing inside near the door of the compartment. On 20.07.2019, the deceased accidentally fell down from running train at Bharuch Railway station at KM. No.325/11-12, near up line, while travelling in the Ajmer-Puri Express train. He sustained serious injuries and died. The travelling ticket was lost in the incident.

3. On receipt of notice, the respondent railway administration appeared and filed its written statement along with the original DRM’s Report in which the Respondent pleaded that the deceased was not a bonafide passenger as no travelling authority was recovered from the body of deceased at the time of Inquest Panchnama. Respondent also denied occurrence of untoward incident. Hence, the alleged incident is covered under the proviso to Section 124-A of Railways Act, 1989. The Applicant is put into strict proof regarding averments made in Original Application. On the basis of these and other pleas, dismissal of the claim application has been sought by the Respondent.

4. Based upon the pleadings of the parties and material made available on record, the following issues were framed on 20.12.2022 :

ISSUES

- i. *Whether deceased was travelling on a valid Railway journey ticket and was a bonafide passenger of the train in question at the relevant time ?*
- ii. *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 ?*

iii. *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 ?*

iv. *To what Relief ?*

5. So as to lead evidence, applicant No.1 has filed he own examination-in-chief as AW-1 and got the documents exhibited as Memo A/1, Vardhi A/2, Inquest Panchnama A/3, Panchnama of place of incident A/4, Panchnama of Identification A/5, Post Mortem Report A/6, Aadhar Card of Deceased A/7, Aadhar Card of applicant No.1 to 3 as A/8 to A/10, Election Card of applicant No.1 as A/11, Ration Card A/12, PAN Card of applicant No.1 to 3 as A/13 and A/15, Bank Pass Book of applicant No.1 to 3 as A/16 to A/18. AW-1 was cross-examined by counsel for the Respondent on 05.09.2023.

6. Respondent has opted not to adduce any oral evidence but has relied upon its DRM Report & Documents next thereof.

At the time of final hearing both the counsel argued as under :

“With the concurrence of both the sides case is taken up for final hearing. Counsel for the Applicants submitted that deceased was travelling by Ajmer Puri Express from Ajmer to Surat. During the said journey he accidentally fell down from the running train at Bharuch station and lost his life during the incident. The applicants being dependent are entitled to get compensation. Whereas, Counsel for the Respondent submitted that no ticket was recovered from the body of the deceased and there is no evidence of travel and accidental fall. She further submitted that deceased was working and residing at Bharuch. He died due to some reason other than accidental fall from the running train. She further referred to statements of Applicant Janki Bai and statement recorded by RPF of brother-in-law of deceased and submitted that in view of statements there was no averment of journey from Ajmer to Surat. She further submitted that statement of brother-in-law and sister of deceased who took the body from the Police for the last rites and was present at the time of Inquest, where there was no reference of journey from Ajmer to Surat. In rebuttal Counsel for Applicants submitted that in cross-examination Railway has failed to put its defence. Deceased was travelling from Ajmer to Surat and if he was ticketless than someone or TTE might have caught him without ticket. He further submitted that the Respondent has failed to produce any RE .”

Regarding Issue No.1 & 2

7. Issues no 1 and 2 are being taken up together as they are interconnected for fair adjudication. Our findings on these issues are as under :-

8. Admittedly in this case no ticket was recovered from the body of deceased at the time of Inquest Panchnama and it is the case of applicant that deceased started his journey from Damoh to Ajmer and thereafter he was travelling from Ajmer to Surat after purchasing valid ticket to travel and due to heavy rush in the train deceased accidentally fell down from the running train on 20.7.2019 at Bharuch Railway station as he was standing near the door of the compartment. He sustained injuries and succumbed to death. At 07:30 AM of 20.07.2019, Dy. Station Superintendent-Bharuch issued the following memo :-

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9. And applicants have proved on record one telephone Vardhi as exhibit A/2 and as per Inquest Panchnama deceased accidentally fell down from Ajmer-Puri Express train.

10. As per exhibit A/5 Identification Panchnama initially the dead body was recovered being unknown person and subsequently Identification Panchnama prepared on 20.07.2019 from 22:40 hours to 23:25 hours one Shri Gulabsing s/o Kallusing Lodhi and Smt. Sushmarani w/o Gulab Singh Lodhi identified the dead body and disclosed that the deceased was the brother of Smt. Sushmarani, Hardev who was coming to Bharuch for labour work. As per Post Mortem Report the deceased suffered following injuries :-

“Head completely detached from Neck region only posteriorly skin attached. Right hand detached from body from shoulder joint. Right palm & finger crushed completely & detached from Right hand. Left shoulder joint fracture present. Crush injury of left whole palm & fingers. Right side chest wall laceration of 15x10 cm present. B/L knee laceration of 4x4 cm present. On Back laceration present of 10x20 cm. Left leg all five finer crushed injury present.”

11. As per Form-1 and exhibit A/1 Station Memo it was a case of runover by some unknown train. Form-2 also disclosed runover by some unknown train.

12. There was no eyewitness to the incident and nothing was recovered from the body of deceased any proof of identification, Aadhar card, PAN Card, Bank details, Mobile etc. The wife of the deceased during DRM enquiry gave statement that her husband left home on 16.07.2019 and thereafter she gave statement that her husband left home on 19.07.2019 and during cross examination she again changed her stand that her husband left home on 18.07.2019. During cross examination she said that she is not aware that her sister-in-law and husband of sister-in-law are residing at Bharuch or not. The relevant portion of cross examination is reproduced as under :-

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13. How family came to know about the incident particularly when nothing was recovered from the body of the deceased. Further the initial statements regarding travel from Damoh to Ajmer and from Ajmer to Surat have not been proved on record by the Applicants. The contradictions in the statements of wife of the deceased to some extent can be ignored but certainly the sister and her husband of the deceased who reached at the spot revealed to the police that the deceased was coming to them. The Ajmer-Puri Express had no scheduled stoppage at Bharuch Railway station and there was no eyewitness and applicants have failed to prove on record any purchase of ticket and travel as claimed in the original claim application.

14. Further continuous travel for a long distance from Damoh to Ajmer and thereafter further journey from Ajmer to Surat without any work or purpose also creates doubt about the propounded in the Original Application about travel. It seems unusual that a person would travel approx. 950 kilometers from Damoh to Surat and without staying he keeping his continuous journey. It appears that just to gave authentication in a travel in a particular train. Applicant have narrated story of travel as deceased gave answering about the residence of her near relatives i.e. sister-in-law of her husband and husband of her sister-in-law creates doubt about the story alleged in Original Application. Recovery of body of the deceased on Railway track itself is not a proof of travel and bonafide passenger status. We can safely rely on judgment of Rina Devi v/s Union of India of Hon’ble Supreme Court or not is to be seen. Para No.17.4 of the judgment is as under :-

“We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a 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 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 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. The crux of Inquest Panchnama and opinion of panchas are liable to be ignored as they were not the eyewitnesses and it was a hypothetical assumption of the panchas to relate to conclude that it was accidental fall from running Ajmer-Puri Express. On such hypothetical assumptions no effective relief can be granted to the applicants. To get effective relief applicants are required to prove travel, bonafide passenger status and occurrence of untoward incident. Therefore, these issues are decided against the applicants and in favour of the Respondent.

Issue nos. 3

16. In this case the applicants are wife, minor sons of the deceased and Respondent No.2 is mother of the deceased. So at this stage regarding the dependency of the applicants and Respondent No.2 is not in doubt and they are dependents on the deceased and also entitled to get compensation.

Issue nos. 4

17. On the negative findings on issues No.1 and 2, this Original Claim Application is hereby dismissed on merit, without imposing any cost.

(R.K. Manocha)
Member (Technical)

(Vinay Goel)
Member (Judicial)

Judgment pronounced and signed in open Court today i.e. on 13.02.2024.

(R.K. Manocha)
Member (Technical)

(Vinay Goel)
Member (Judicial)

Date :13.02.2024
Place: Ahmedabad