



रेल दावा अधिकरण, इलाहाबाद न्यायपीठ

RAILWAY CLAIMS TRIBUNAL, ALLAHABAD BENCH

Coram:

HON'BLE SHRI SANJEEV AGGARWAL, MEMBER (JUDICIAL)

Case No: OA/IIu/ALD/14/2019

Date of filing: 13.11.2019

Date of order: 30.09.2024

1. Pooja Patel wife of Balram Singh daughter of Shyam Singh, aged about 40 years

Resident of Gandhi Bard Bina, Sindhi Colony, behind Lavinja Hotel, Gali No.-2 Sagar, Madhya Pradesh.

-Applicant

Versus

Union of India represented through
General Manager, North Central Railway, Allahabad

-Respondent

Application under Section 16 of Railway Claims Tribunal Act, 1987 in respect of claim for compensation for the death in an untoward incident.

Value of claim: 8,00,000/- with interest

Present:

For the applicant: None

For the respondent: Shri A.K. Bajpai, Learned Counsel

JUDGEMENT

By HON'BLE SHRI SANJEEV AGGARWAL, MEMBER (JUDICIAL)

1. This is an application filed by the applicant under section 16 of the Railway Claims Tribunal Act, against the respondent railway administration for payment of compensation for the death of Shyam Singh Patel son of Late Hardas (hereinafter referred to as the deceased), on the ground of her

dependent of the deceased, who allegedly died as a result of untoward incident.

2. According to the claim application of applicant, on 13.01.2019 Shyam Singh Patel (deceased) was travelling from Bina Jn. railway station to Lalitpur by a train after purchasing a second-class ticket. When the train reached the Lalitpur railway station, he came towards the gate to get down, but he accidentally fell down from the train due to jerk and jolt at Kilometre no. 1037/34 near Lalitpur railway station and sustained serious injuries and died on the spot. Journey ticket was said to be lost during the incident. It was alleged by the applicant that deceased was a bona fide passenger, and he died due to untoward incident while travelling from a train. Therefore, respondent railway is liable to pay compensation under the provision of the Act.
3. The Respondent Railway filed written statement denying the averments of the claim application and inter-alia submitted that as per the investigation DRM report that the deceased was 90 years old weak person. Who was the resident of the vicinity of the station who oftenly comes to the platform and run over by the thru train while crossing the track during the course of changing the platform which is not an untoward incident and as such the said incident does not fall within the purview of Sec.123 (c)(2) of the Railways Act, 1989, therefore, applicants are not entitled and respondent railway is not liable to pay any compensation. Hence, the application deserves to be dismissed.

4. **ISSUES**

On the basis of the pleadings of the parties, following issues were framed on 28.07.2021:

- 1) Whether the deceased was a bona-fide passenger of the train in question at the relevant time of the incident?
 - 2) Whether there was any untoward incident as defined under the provision of Section 123(c) read with Section 124 (A) of The Railways Act, 1989?
 - 3) Whether the applicants are dependants of the deceased?
 - 4) Whether the applicants are entitled for any relief and interest as prayed in the application?
 - 5) Relief, if any?
5. During the course of enquiry/trial, the applicant Smt. Pooja Patel has filed her affidavit as AW-1 and another affidavit of Mr. Balramdas as AW-2, who is stated to be witness of purchase of ticket by deceased and both were cross-examined by the Ld. Counsel for the respondent on 22.08.2023.
6. The applicant have filed Aadhar Card (Exh.A/1), S.M. Memo (Exh.A/2), GD Details (Exh.A/3), Panchnama (Exh.A/4), Postmortem Report (Exh.A/5), Deceased Panchnama Investigation Report (Exh.A/6) and Aadhar Card of Ganesh Saur (Exh.A/6), Parshad Ashrit Certificate (Exh.A/7), Aadhar Card of Balramdas AW-2 (Exh.A/8), Pancard of Pooja Patel (Exh.A/9) and Ayushman Card of Pooja Patel (Exh.A/10) and documents in evidence in support of the claim application.
7. The respondent Railway on the basis of investigation by ASI/RPF/Lalitpur filed DRM Report (Exh.R/1) containing several documents in evidence. No witness was examined by the respondent railway.
8. Heard the submissions made by Ld. Counsels for respondent and perused the record carefully. The decision on the issues is as under: -

FINDINGS

Issue No. 1 & 2:

9. These issues are interconnected, hence are taken up together for discussion.

The analysis of evidence on record regarding deceased being a bonafide passenger and the occurrence of the untoward incident causing death of the deceased is discussed as under:

9.1 The issue for determination before the Bench is whether the deceased was a bonafide passenger and became the victim of an untoward incident in question by falling down from the train. According to the details mentioned in the claim application and affidavit filed by the applicant on 13.01.2019 Shyam Singh Patel (deceased) was travelling from Bina Jn. railway station to Lalitpur by a train after purchasing a second-class ticket. When the train reached the Lalitpur railway station, he came towards the gate to get down, but he accidentally fell down from the train due to jerk and jolt at Kilometre no. 1037/34 near Lalitpur railway station and sustained serious injuries and died on the spot. Journey ticket was said to be lost during the incident.

9.2 On careful perusal of evidence adduced by the parties, following facts have emerged for just decision of this case:

- I. In the inquest report (Exh.A/4), it has been mentioned that the deceased died due to cut by a train and unanimous opinion of panchas is that “मृतक की मृत्यु ट्रेन दुर्घटना में आई गम्भीर चोटों के कारण हुई है, फिर भी मृत्यु का सही कारण जानने के लिए PM करा लिया जाये।” Neither travelling nor falling down from the train is mentioned in the inquest report. On scrutiny of inquest report, it has been noticed that family member i.e. Pooja Patel (daughter of deceased) was present during the preparation of inquest and she was also one of the Panchas but not a single whisper was made by them that the deceased died

due to falling down from the train in the course of his journey. Hence, this inquest report does not inspire confidence to prove the fact that the deceased died due to falling down from the train.

- II. On perusal of affidavit of AW-2 Mr. Balramdas, it is apparent that he is not an eyewitness of the alleged incident. During his deposition on 22.08.2023 he had stated that: - "मैंने मृतक को रेल टिकट 12:00 बजे दिन में खरीदवाया था परंतु ट्रेन का नाम मुझे पता नहीं है क्योंकि मैं स्टेशन के बाहर से लौट गया था। मृतक शायद पंजाब मेल या झेलम ट्रेन से यात्रा कर रहे थे। घटना के वक्त मृतक कि उम्र लगभग 90 वर्ष थी। मेरे ससुर के घर से ललितपुर स्टेशन लगभग 2 कि.मी. कि दूरी पर है।" The testimony of AW-2 is full of contradiction, and he is a false witness and cannot be relied upon.
- III. The injuries mentioned in the panchanama and post-mortem report do not inspire confidence that the deceased had fallen down from the train and died due to such injuries.
- IV. No journey ticket was produced or recovered from the deceased.

9.3 Respondent Railway after the investigation by ASI/RPF/Lalitpur filed DRM

Report (Exh.R/1) with a findings that:- "धारा 124 (ए) के अन्तर्गत प्रदत्त शक्तियों के तहत निरीक्षक रे०सु०ब० ललितपुर के द्वारा जाँच की गई। मामले में सलग्न पत्रावली एवं पुलिस रिकार्ड का अवलोकन करने से स्पष्ट होता है कि दावाकर्ता द्वारा मृतक यात्रा भोपाल से इलाहाबाद बताई है, एवं तलाशी लेने पर मृतक व्यक्ति के पास किसी प्रकार का कोई रेल यात्रा टिकट नहीं पाया गया। तथा पोइन्टसमेंन के बयानानुसार उक्त दिनांक को कोई व्यक्ति गाडी से नहीं गिरा एवं एक यात्री द्वारा बताया गया कि गाडी से कट गया है। अतः जाँच से स्पष्ट होता है कि मृतक व्यक्ति ललितपुर (तलाबपुरा) का रहने वाला था जो प्लेटफॉर्म गया और प्लेटफॉर्म बदलने के लिए लाईन पार करते समय किसी थ्रु गाडी से कट गया।" In

the statutory investigation report, it is mentioned that the deceased was not a passenger of any train. Copies of station records produced by the respondent with his enquiry reports also do not suggest the untoward incident by falling down from the train.

10. Part III of the Indian Evidence Act, 1872 dealing with the “PRODUCTION AND EFFECT OF EVIDENCE” are relevant here. Following sections are quoted for better appreciation and arriving at the just conclusion by the Tribunal:

“101. Burden of proof.- Whosoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

102. On whom the burden of proof lies.- The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

103. Burden of proof as to particular fact.- The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

More recently Hon’ble Supreme Court in Rina Devi’s case [Civil Appeal No. 4945 of 2018, Rina Devi Versus Union of India) and Para 17.4 held as under:

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

Thus, there is no ambiguity regarding *onus probandi*. Though in this case Applicant have adduced number of documentary evidence along with his affidavit, but as discussed above, material on record is not sufficient to prove that it was a case of

untoward incident as defined under Railway Act, 1989. Whereas respondent has amply demonstrated that deceased was not a bonafide passenger and did not die in an “untoward incident”.

Accordingly, the factum of the alleged untoward incident is not established from the evidence on record.

11. Thus, on the basis of evidence on record and attending circumstances of the case, I hold that the deceased was not a bonafide passenger and case of the applicant does not come within purview of untoward incident as defined u/s 123 (c) (2) read with Section 124-A of the Railways Act, 1989. Accordingly, issue nos. 1 and 2 are decided against the applicant and in favour of the respondent.

ISSUE NO. 3, 4 & 5

12. In view of our findings given on Issue No. 1 & 2, these issues need not be discussed.

ORDER

13. The present claim application being devoid of merits is dismissed with no order as to costs. File to be consigned to the record room.
14. The Registry is directed to send a free certified copy of this judgment directly to the applicant at her address mentioned in the claim application by Speed Post in compliance of Rule 34 (3) of the Railway Claims Tribunal (Procedure) Rules, 1989.
15. The Judgment signed, dated and pronounced today in open court.

**[Sanjeev Aggarwal]
Member [Judicial]
Dated: 30.09.2024**