



रेल दावा अधिकरण, इलाहाबाद न्यायपीठ

RAILWAY CLAIMS TRIBUNAL, ALLAHABAD BENCH

Corum:

SHRI MUKESH NIGAM, VICE CHAIRMAN (TECHNICAL)

Case No: OA/IIu/ALD/162/2022

Date of filing: 27/10/2022

Date of order: 31/05/2024

1. Jay Shri aged about 54 years w/o Late Shiv Krishan
2. Laxmi Kant Dubedi aged about 31 years s/o Late Shiv Krishan
3. Shiv Narayan aged about 27 years s/o Late Shiv Krishan
4. Dhruv Nayaran aged about 21 years s/o Late Shiv Krishan

All Residents of Village Chhibao, P.S. Girwan, Post Khurhand, Tehsil Atarra, District Banda, Uttar Pradesh- 210120.

-Applicants

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: 10,00,000/- with interest

Present:

For the applicant: Shri Ashok Gupta, Learned Counsel

For the respondent: Shri Sabhajeet Singh, Learned Counsel

J U D G E M E N T

By Shri Mukesh Nigam, Vice-Chairman (Technical)

1. The basic details relating to the accident as contained in the application are listed as under:

a.	Date of accident	15/12/2021
b	Person Died (hereinafter referred to as “deceased”)	Late Shiv Krishan
c	Relationship of the claimant with the deceased	Wife and Sons
d	Train involved	Train number and name not mentioned
e	Place of occurrence of untoward incident	Near Khurhand Railway Station
f	Untoward incident narrated :(in verbatim): <i>Para III 2 (e): “Deceased Shiv Krishan, on 15.12.2021 at 2:00 PM, was returning to his home after grazing the cattles, reaching on to the boundary wall of the Khurhand railway station, whereby the metal boundary wall of the station fell over him causing grievous injuries to which he was taken to hospital where he was declared dead.”</i>	

g	Written Statement and DRM's Report	W.S. & DRM's Report filed on 23/01/2023
h	Averments in reply in Written Statement: (Para 1, 3, 5 & 8 in verbatim) <i>Para 1: "That the contents of para 1, 2, 3, 4, 5 & 6 of part I of the claim petition are related with the contents of description of claimants and the deceased as well as their mutual relation and the dependency of applicants on deceased which are denied for want of knowledge, however, it is submitted that deceased is the husband of claimant No.1 and father of claimant No. 2, 3 and 4 and from perusal of all the sons are above 21 years of their age as such they are not dependent of the deceased who sustained injuries due to his own fault by passing through iron boundary of railway station and as per statement of station superintendent on duty at relevant time the accident was not caused by any train and the incidence took place due to fault of deceased himself by falling of iron boundary of railway station and the injured was carried to hospital by the police after dialing 112 number where he was declared dead by the Doctors therefore, claimants are not entitled for any compensation."</i> <i>Para 3: "That the contents of paragraph No. 1, 2, 3 & 4 of part II of the claim petition are related with the travel detail of the deceased which need no comments as it is the admitted case of claimants that the deceased sustained injuries due to falling of iron boundary wall of railway station when he was engaged in the grazing of his cows at the time of their return to home, thus due to the fault of deceased iron boundary wall fell down on the deceased. Thus there is no fault of railway for causing incident, therefore, claimants are not entitled for any compensation."</i> <i>Para 5: "That the contents of paragraph No. 1 & 2 of the part IV of the claim petition are related with the post accidental details which shows that deceased died due to antemortem injury as per post mortem report of the deceased, and actually the incidence took place due to fault and carelessness of the deceased and the railway have no role in the said</i>	

	<i>accident therefore, claimants are not entitled for any compensation.”</i> <i>Para 8: “That as per DRM report the deceased Shiv Krishan is said to be 57 years old farmer and went to have their cattle grazing and when he was returning with cows which strike with the iron boundary wall of railway thereby due to falling of iron boundary wall the deceased sustained injuries and he was rushed to the hospital by the concerned police after receiving the information of accident, thus the accident took place due to the fault of deceased himself and the railway has no role in causing the untoward incidence rather the deceased was crossing the railway through iron boundary wall which is illegal therefore, the claim petition deserves to be dismissed by the railway claim tribunal.”</i>
i	Averments in reply in DRM’s Report: (in verbatim) <i>“समस्त कागजातों के अवलोकन से पंचायतनामा व पोस्टमार्टम रिपोर्ट एवं मृतक के परिजनों के बयान ऑन ड्यूटी स्टेशन प्रबंधक के बयान से यह स्पष्ट होता है कि मृतक श्री शिव कृष्ण पुत्र सुखराम की मृत्यु रेलवे के लोहे की बाउंड्री से असावधानीपूर्वक गायों को निकालते समय बाउंड्री गिर जाने से घायल हुए बाद जिला अस्पताल ले जाते समय उनकी मृत्यु हो गई इसमें रेल प्रशासन की कोई लापरवाही नहीं है। जाँच रिपोर्ट आपके अवलोकनार्थ एवं अनुमोदनार्थ सादर प्रेषित है।”</i>

2. Upon pleadings of the parties, four issues were framed on 27/04/2023: -

- 1) Whether the applicants are the sole dependant of the deceased and are covered by the definition of dependant under Section 123(b) of The Railways Act, 1989?
- 2) Whether the deceased was a bona-fide passenger of the train in question at the relevant time of the incident?
- 3) Whether the death of the deceased was on account of an untoward incident as defined under Section 123(c) read with Section 124A of The Railways Act, 1989?

- 4) To what amount of compensation and relief, if any, are the applicants entitled?
3. The applicant Shri Laxmi Kant Dubedi tendered an affidavit as AW/1 and presented Shri Abhimanyu Singh as AW/2. Both were cross examined and discharged. The Applicant had furnished certain documents which are marked Exhibits as under:

1	Copy of Aadhar Card of Laxmi Kant Dubedi	Exhibit A/1
2	Copy of Aadhar Card of Deceased Late Shiv Krishan	Exhibit A/2
3	Copy of Aadhar Card of Abhimanyu Singh AW/2	Exhibit A/3

4. The Respondent had not adduced any oral evidence and had filed its certified DRM's Report Exh. R/01 along with annexure. The Respondent Railway had filed along with its DRM's Report, the Investigation Report of Shri Bishan Ram Kohli, SI/RPF/Post- Banda, North Central Railway along with Annexure.
5. Considered the pleadings of both sides, perused all the documents and evidence available on record and heard the submissions made by Ld. Counsels on both sides. The decisions on the issues are as under: -

Decision with Reasons

Issues No 1&2

6. Issue no 1&2 are being taken up together as they are interconnected. In the Station Diary of Khurhand railway station of 15/12/2021, as an unusual occurrence, it was mentioned that around 1455 hrs information was received that one old person of about 60 years of age whose name was Pahalwan Pandit was lying unconscious near the fencing on platform number 1. It was mentioned that people had informed the family of the injured person and, thereafter, her son and wife went with the Police at 1515 hrs for further treatment.
7. The proceedings of the Panchnama of the body of the deceased were done between 1345 hrs to 1455 hrs of 16/12/2021. It was mentioned that ward boy of the district hospital, Banda was the first to inform about the incident. It was noted in the Panchnama that the cause of death of the deceased after investigation by Constable Shri Kundan Singh was due to injury arising out of the accident. There was no mention of any rail journey or rail ticket in the Panchnama. In the opinion of the Panchas, the cause of death of the deceased was on account of injury out of accident.
8. The Post-Mortem of the body of the deceased was done from 1600 hrs to 1700 hrs of 16/12/2021. As per the Postmortem report, the cause of death of the deceased was shock and hemorrhage on account of his antemortem injuries.

9. As per GD entry no. 030 entered at 1707 hrs of 19/01/2022 at Police Station Girwan in District Banda, it was noted that Shri Lakshmikant Dwivedi had informed that the iron boundary wall erected at Khurhand railway station, suddenly and for unknown reasons, had fallen on the head of his father due to which he had suffered injury on the head and body and was declared dead by the doctor when taken to the hospital. It was further mentioned that Shri Laxmikant Dubedi, son of the deceased, had stated that the deceased was returning home after grazing the cattle when this incident took place.
10. The applicant no. 2 had filed an affidavit and presented himself as AW/1 in which he had stated in the affidavit that the incident had taken place at 1400 hrs of 15/12/2021. He had stated in the affidavit around 1400 hrs of 15/12/2021 he had seen that when his father came out of the railway fencing, which was lying open, he saw the fencing fall on the deceased due to which the deceased fell on ground and the fencing which had fallen over him was removed by the people.
11. During the cross examination, AW/1 stated that the deceased was returning home after grazing the cattle and the cattle had dispersed due to which the deceased had to move towards the railway boundary and the railway boundary fell on the deceased. The reasons for the fall of the

fencing were not known to him. AW/1 had stated that the deceased was not travelling by train.

12. Shri Abhimanyu had filed an affidavit and presented himself as AW/2, in which he had stated in the affidavit that the incident had taken place at 1400 hrs of 15/12/2021. He had stated in the affidavit that around 1400 hrs of 15/12/2021 he had seen that when his father came out of the railway fencing, which was lying open, he saw the fencing fall on the deceased due to which the deceased fell on ground and the fencing which had fallen over him was removed by the people. During the cross examination, AW/2 had stated that the deceased was returning after grazing the cattle when the iron grill of the railway fell on the deceased and the site of the incident where the iron grill fell was railway land. He has stated that the deceased was not doing any rail journey but was returning home after grazing the cattle.

13. The respondent had stated that the accident relating to the death of the deceased was not caused by any train and it took place due to the fault of deceased himself.

14. The respondent had stated that from the available documents Panchnama and Postmortem report and the statements of the family members, it was apparent that the cause of death of the deceased was on account of iron grill erected of the boundary of the railway station fall on the deceased.

The respondent had stated that the reasons for the incident was the carelessness with which the deceased was grazing his cattle and there was no responsibility of the railways for his death.

15. It would be relevant here to reproduce relevant provision of Section 2(29) of the Railway Act 1989 wherein a bonafide passenger has been defined and Section 124-A which provides for compensation to the victims in an untoward accident and the same are as under:

Section 2(29): "Passenger" means a person travelling with a valid pass or ticket"

Section 124-A. Compensation on account of untoward incidents.—"When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to—

(a) Suicide or attempted suicide by him;

(b) Self-inflicted injury;

(c) His own criminal act;

(d) Any act committed by him in a state of intoxication or insanity;

(e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation.—For the purpose of this section, "passenger" includes—

(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.

16. Thus, a passenger includes a person travelling with a valid pass or ticket as well as who has purchased a valid ticket for travelling by a train carrying passenger on any date or having a valid platform ticket and becomes a victim of an untoward incident. There is no evidence or claim on behalf of the applicants that the deceased had a valid journey ticket or was travelling by train when the incident took place.

17. In view of the facts and attending circumstances of the present case, it is proved on record that at the time of the accident, the deceased was neither a bonafide passenger nor had died in the incident by falling from a passenger carrying train which is an untoward incident as defined in Section 123(C)(2) read with Section 124-A of the Railway Act 1989. Hence, issues no. (1) and (2) are decided in favor of the respondent and against the applicants.

Issues No 3 & 4

18. Having decided the issues of bonafide and untoward incident against the applicants they are not eligible to receive any compensation. Secondly, the issue of dependency loses its relevance and is not adjudicated.

O R D E R

19. The present claim application being devoid of merits is dismissed with no order as to cost.

20.The Registry is directed to send a free certified copy of this judgment directly to the applicants at their address mentioned in the claim application by Speed Post in compliance of Rule 34 (3) of the Railway Claims Tribunal (Procedure) Rules, 1989.

Date: 31/05/2024

(Mukesh Nigam)
Vice-Chairman (Technical)