

RAILWAY CLAIMS TRIBUNAL
AMARAVATI BENCH, GUNTUR

CORAM

Ms. R. Sathyabama - Hon'ble Member Judicial
Mr.G. John Prasad - Hon'ble Member Technical

OA II (u) 26/2020

Date of filing : 20.01.2020
Date of decision : 06.06.2024

- 1) K. Vijayalakshmi,
W/o. Late K. Venkateswara Rao,
Aged about 35 years, Occ: House Wife
- 2) K. Harshita, D/o. Late K. Venkaeteswara Rao,
aged about 4 years, Occ: Minor;

(Applicant No.2 being minor, rep. by her mother, natural guardian and Applicant No.1)

Both are R/o. D.No.4-5-71/4,
Salipet, 9th Ward, Tadepalligudem,
West Godavari District,
A.P., Pin: 534101

... Applicants

Versus

Union of India represented by
The General Manager,
South Central Railway, Secunderabad.

... Respondent.

Claim for Rs.8,00,000/- (With interest)

Shri N.P. Rao - Ld. Counsel for Applicants.
Shri M. Adi Lakshmi - Ld. Counsel for Respondent.

JUDGEMENT

1. This claim application is filed by the Applicants under Section 16 of Railway Claims Tribunal Act, 1987 read with Sections 124-A and 125 of Indian Railways Act, 1989 seeking compensation to the tune of Rs.8,00,000/- with interest from

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Respondent Railway for the death of K. Venkateswara Rao (hereinafter referred to as "*the deceased*") who allegedly died in an untoward incident of accidental fall from train carrying passengers that occurred on 21.01.2019.

2. It is pleaded in OA that the deceased, a resident of Tadepalligudem was a catering worker by profession. A week prior to the incident, with a view to attend catering contract work on the eve of Sankranti Festival, the deceased went to his elder brother K. Sivakumar at Kakinada. In order to have Darshan at Kanakadurga Temple, Vijayawada, K. Vijayalakshmi, wife of the deceased, K. Harshita, daughter of the deceased and E. Bhavani, sister of the deceased went to Vijayawada and stayed at their relative P. Lakshmana Rao's house. In the meantime, wife of the deceased requested her husband over cell phone to go back to their house at Tadepalligudem from Kakinada and bring personal luggage to Vijayawada and from there they all would go to Kanakadurga Temple. Accordingly, the deceased started from Kakinada in the early hours of 20.01.2019, reached Tadepalligudem by passenger train holding a 2nd class train journey ticket bearing No.03064833, collected some clothes, luggage from his house and went to the house of the said relative P. Lakshmana Rao at Vijayawada in the afternoon hours of same day. The deceased along with his wife, daughter and sister visited temple, discharged their promises and with a view to commence return journey they all went to Vijayawada Railway Station in the night hours of same day i.e. 20.01.2019, the deceased purchased 2nd Class Train Journey Group Ticket from Vijayawada to Tadepalligudem for three of them i.e, wife, Sister and himself, gave the said ticket to his wife and all of them boarded in a 2nd Class General Compartment of Train No.17243 Guntur-Rayagada Express and settled here and there due to rush of passengers.

3. During journey, as there was a heavy rush of passengers in the compartment, the deceased slipped and fell down accidental from the said running train at Km.No.487/41-39 in the Yard of Eluru Railway Station due to speed, jolts and sudden jerks of the said train. As a result, the deceased sustained severe head injury and other multiple fatal injuries and died on the spot in the early hours of 21.01.2019. Ignorant of this incident, the fellow passengers of the deceased i.e. his wife, daughter and sister reached Tadepalligudem, deboarded the train and found the deceased missing. After waiting on platform for a long time, they informed about the missing of the deceased to Railway officials, surrendered their group journey ticket to the TC at exit gate of the station and left in confused state under the impression that the deceased might have got down from train through other door and left the station. Applicants being family members and dependents of the deceased, filed this claim application.

4. The Respondent filed written statement along with the report of Divisional Railway Manager, denying all the averments made in the claim application. It is further submitted by the Respondent that there is no cause of action for applicant as the claim does not fall within the ambit of Section 123 (c)(2) or 124-A of Railways Act, 1989. Respondent submitted that the journey ticket or any other article was recovered from the dead body of the deceased by police at the time of inquest to conclusively prove that the deceased is the bonafide passenger of Train No.17243 Guntur-Rayagada express on 20.01.2019. The applicants being the co-passengers of the deceased had not produced any ticket nor do they take any action to stop the train by pulling alarm chain. As per statutory enquiry, there is no eye witness to the alleged fall of the deceased from train. The claim of the Applicants that they



surrendered the journey ticket at exit gate is false because on duty SS/Tadepalligudem on 20/21.01.2019 clearly mentioned that he neither met a lady nor did he receive any journey ticket. Also, as per CBSR, Tadepalligudem, no ticket checking staff were deployed at Tadepalligudem station in the night of 20/21.01.2019. Respondent further submitted that the wife of the deceased in her statement to GRP/RPF/Tadepalligudem had not mentioned about the aspect of her informing to Railway officials about missing of her husband which is in contradiction to the averments of claim application. As per Respondent, the recovered ticket from Kakinada to Tadepalligudem is not valid and hence the deceased is not a bonafide passenger and it is not a case of untoward incident. Therefore, the application filed by Applicants is not maintainable and is liable to be dismissed.

5. From the pleadings, following issues were framed on 16.02.2021:

- 1) *Whether the deceased was a bonafide passenger of the Train in question and died as a result of an untoward incident?*
- 2) *Whether the Applicant(s) is/are dependant(s) of the deceased?*
- 3) *Whether the Applicant(s) is/are entitled to the compensation as claimed?*
- 4) *To what relief?*

6. In support of the claim, Applicant No.1, wife the deceased has been examined as AW.1 and filed her chief examination affidavit. She also filed the documents, which are marked as Exhibits as under:-

- | | | |
|--|---|---------|
| 1) Attested copy of F.I.R. | - | Ex.A.1. |
| 2) Attested copy of Inquest Report | - | Ex.A.2. |
| 3) Attested copy of Report of PME | - | Ex.A.3. |
| 4) Photocopy of Aadhaar Card of Applicant No.1 | - | Ex.A.4. |
| 5) Photocopy of Aadhaar Card of Applicant No.2 | - | Ex.A.5. |
| 6) Death Certificate of Deceased | - | Ex.A.6. |
| 7) Photo copy of Birth Certificate of Applicant No.2 | - | Ex.A.7. |

AW-1 reiterated the averments of claim application and further deposed that she, her daughter and sister-in-law reached Tadepalligudem Railway Station in the intervening night hours of 20/21.01.2019, all of them deboarded from the said train and found that the deceased was missing. They searched the bogies and also on the Platform but they could not find him. After waiting on platform for a long time, she along with her Sister-in-law informed about the missing of her husband to the Railway Officials concerned and surrendered their combined Train Journey Ticket to the T.C., at the exit Gate. They left station in confusion state under impression that her husband might have got down from the Train through other doors due to heavy rush of Passengers and had left the Station. She came to know about the incident from Railway police at about 01:30 PM on 21.01.2019 and that her husband's dead body was shifted to Govt. Hospital, Eluru. She along with her sister-in-law and some other relatives rushed to the Hospital on the next day morning hours and identified the deceased as her husband at the mortuary room. The place of occurrence is about 52 Kilometers from their residence. Panchanama was held in their presence and police have recorded their statements. They informed the Railway Police that combined train ticket was surrendered to the T.C., at the exit gate of Tadepalligudem Railway Station while they were leaving the station. She further deposed that RPF examined her after filing the OA before the Tribunal.

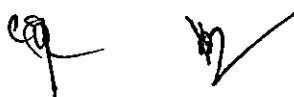
7. During cross examination, AW-1 deposed that they stayed at her uncle Lakshman Rao's house at Vijayawada but she does not know his house address or distance between railway station and her uncle's house. While travelling from Tadepalligudem, they reached Vijayawada at 13:00 hours and then went directly to Sri Lakshman Rao's house along with her daughter and sister-in-law. They have



gone directly to Goddess Durga Temple, Vijayawada by auto rickshaw in the evening hours at 04:00 pm. She denied the suggestion of counsel for respondent that auto rickshaws are not permitted to go to temple and that visitors can only walk or use the bus service provided by Temple. They had reached directly to Vijayawada Railway Station from Temple. Her husband, the deceased purchased the journey ticket. She does not know the price of the ticket as her child was crying at the time of purchase of ticket. They have boarded in the compartment at middle of the train. They went little inside the coach but her husband stood near the wash basin. She does not know the time taken for their journey from Vijayawada to Tadepalligudem. They have not witnessed the fall of her husband from train. They came to know the missing of the deceased only after getting down at Tadepalligudem station. They have thoroughly searched for the deceased in all the coaches though there is no vestibule available to general coaches. They have informed about the missing of her husband in the police station available on PF No.3 as well as to the Ticket collector available on PF No.1. She was not aware of the fact that Ticket collector would not be available during night time at Tadepalligudem station. She was present for inquest and the previous journey ticket was recovered during inquest. It was true that the fact of handing over of journey ticket to Ticket collector at station was not mentioned in Col.15 of Inquest report.

8. In support of his case, Counsel for Applicants cited four judgments mentioned below:-

- i) CMA No.143 of 2016 before Hon'ble High Court of Telangana at Hyderabad decided on 04.09.2018.



- ii) CMA No.590 of 2016 Hon'ble High Court of Andhra Pradesh at Amaravati decided on 28.08.2023.
- iii) CMA No.220 of 2019 before Hon'ble High Court of Telangana at Hyderabad decided on 10.10.2023.
- iv) MFA No.30503 of 2008, 2017 ACJ 1902, between Mallapa Vs. Union of India decided by Hon'ble High Court of Karnataka on 11.12.2015.

9. **Summary of Respondent Evidence:** Respondent Railway examined Devi Prasad Kalapala, Mail Express Train Manager (Guard), Vijayawada as RW.1 and D. Kishore, Track Maintainer-IV, Eluru as RW-2. Respondent also filed DRM Report as documentary evidence which is marked as Ex.R.1. It was concluded and indicated in the Ex.R1 DRM report that the journey ticket from Kakinada to Tadepalligudem which was mentioned in the inquest by GRP/Tadepalligudem has no where connected to this incident. Hence, the deceased was not a bonafide passenger. As such Railway administration is not responsible for the incident and there was no failure on part of Railways.

10. RW.1 stated that in the intervening night of 20/21.01.2019, he worked for Train No.17243 Rayagada Express as Senior Passenger Guard from Vijayawada to Rajahmundry. During his working, the said train departed from Vijayawada at 23.42 hours on 20.01.2019 and arrived at Eluru at 00.43 hours of 21.01.2019. Train departed from Eluru at 01:00 hours on 21.01.2019 after 2 minutes of regular halt and 15 minutes of extra halt for clearance. He did not notice any unusual occurrence nor was he informed by anyone about any unusual occurrence either at Km. No.441-39 or enroute between Vatluru and Eluru Railway Stations. Train reached Rajahmundry at about 02.37 hours on 21.01.2019. As per the Guard Rough Journal maintained by

him, no ACP or unusual occurrence was noticed. No jerks or jolts experienced for the said train during its run between Vijayawada and Rajahmundry. During cross examination, he stated that as a normal course they would come out of the guard cabin to observe Curvatures, LC gates and approaching signals. Depending upon the requirement, they would observe the signals on either side of the train but it would not be possible to observe both sides of the train at the same time. Even if they remain alert, it would not be possible to observe what is happening in general coaches from the engine side. He denied the suggestion of counsel for Respondent that since it was mid night RW-1 had not observed anything during his duty hours.

11. RW-2 stated that in the night hours of 20/21.01.2019, he was on duty as Night Patrol Man. From 22.30 hours of 20.01.2019 to 06.30 hours of 21.01.2019 he made four trips from SM Office/Eluru to K.M.No.484/0 in between Eluru and Vatluru Railway stations by taking intervening rests. In his last trip, he started from Km.No.484/0 at 05:00 hrs and reached SM office, Eluru at 06:30 hours. During his duty hours, he had not found any dead body. At about 10.30 hours on 21.01.2019, he came to know that Sri Karri Naga Vara Satyanarayana, TM-2 found a dead body at Km.No.487/41-39 at about 06.10 hours on 21.01.2019. During cross examination, RW-2 deposed that dead body was found in between UP and Down lines at Km.No.487, which falls in the jurisdiction of his duty stretch. RW-2 denied the suggestion of Ld. Counsel for Applicants that he had not done his duty properly.

12. Heard both sides Counsels and perused the case file. On consideration of materials available on record and the contentions of the Ld. Counsels appearing for both the parties, issues wise findings are recorded as follows:-

FINDINGS

Issue No.1: *Whether the Applicant was a bonafide passenger of the Train and sustained injuries as a result of an untoward incident?*

13. As per claim, the deceased, a catering worker went to his brother's place at Kakinada from Tadepalligudem to attend catering contract work on the eve of Sankranthi Festival. Meanwhile, his wife, the AW-1 along with their daughter and sister of the deceased went to Vijayawada to have darshan at Kanakadurga Temple and stayed in their relative P. Lakshmana Rao's house. As per the request of his wife to bring personal luggage from their house, the deceased started from Kakinada in the early hours of 20.01.2019 and went to Tadepalligudem by passenger train holding a 2nd class train journey ticket bearing No.03064833, collected some clothes, luggage from his house and went to the house of the said relative P. Lakshmana Rao at Vijayawada in the afternoon hours of 20.01.2019. After having darshan at temple, the deceased along with his wife, daughter and sister went to Vijayawada Railway Station in the night hours of same day i.e. 20.01.2019, purchased 2nd Class Train Journey Group Ticket from Vijayawada to Tadepalligudem for three of them i.e, wife, Sister and himself, gave the said ticket to his wife and all of them boarded in a 2nd Class General Compartment of Train No.17243 Guntur-Rayagada Express and settled here and there due to rush of passengers. During the course of journey, as there was a heavy rush of passengers in the compartment, the deceased slipped and fell down accidental from the said running train at Km.No.487/41-39 in the Yard of Eluru Railway Station due to speed, jolts and sudden jerks of the said train. As a result, the deceased sustained severe head injury and other multiple fatal injuries and died on the spot in the early hours of 21.01.2019. Ignorant of this incident, the



co-passengers of the deceased i.e. his wife, daughter and sister reached Tadepalligudem, deboarded the train and found the deceased missing. After waiting on platform for a long time, they informed about the missing of the deceased to Railway officials, surrendered their group journey ticket to the TC at exit gate of the station and left in confused state under the impression that the deceased might have got down from train through other door and left the station. As per applicants, the deceased was travelling with them and journey tickets were available with AW-1 and during journey the deceased accidentally fell down from a running train, hence, he was a bonafide passenger and the incident would come under the ambit of untoward incident.

14. Per contra, the Respondent argued that though the wife and sister of the deceased travelled along with the deceased as co-passengers, there is no eye witness to prove the fall of the deceased from the said train. The journey ticket recovered from the dead body of the deceased during inquest does not pertain to Train No.17243 Guntur-Rayagada express on 20.01.2019. Hence, there is no conclusive evidence to prove that deceased is the bonafide passenger of said train. As per statutory enquiry, no ticket checking staff were deployed at Tadepalligudem station in the night of 20/21.01.2019 and SS/Tadepalligudem also had not received any journey ticket from any travelling passenger, hence the surrendering of journey of journey tickets at Tadepalligudem station does not exist. Respondent also contended that the recovered ticket from Kakinada to Tadepalligudem is not valid and hence the deceased is not a bonafide passenger and this is not a case of untoward incident.



15. As per the material available with case file, on 21.01.2019 at about 06:10 hours Karri Naga Vara Satyanarayana, Trackman-2, SSE/P-Way/Eluru during his duty hours found a dead body at Km.No.487/41-39 lying between UP and Down line tracks in Eluru yard. After arranging one gangmate for guarding the dead body, the said Trackman informed the matter to SS/Eluru station in writing. On receipt of information from Trackman, V. Srinivasa Kumar, SS/Bhimadole informed to GRP and RPF, Eluru through a message. Based on the message of SS/Bhimadole an FIR was registered at GRP, Eluru police station in Cr.No.5/2019 U/s.174 Cr.P.C. at 10:00 hours of 21.01.2019. The attested copy of FIR is available with case file as Ex.A1. Inquest was held on 22.01.2019 from 09:00 hours to 11:00 hours at GGH, Eluru Mortuary Room. Inquest report is marked as Ex.A2. As per recitals in inquest report, the deceased while travelling in Train No.17243 Rayagada Express from Vijayawada to Tadepalligudem along with his wife, daughter and sister, might have been accidentally fell down from train at Km.487/41-39 and died at spot. During inquest a train journey ticket No.03064833, from Kakinada Town to Tadepalligudem issued at 03:39 hours on 20.01.2019 at a fare of Rs.25/-, was recovered from the dead body of the deceased. Except journey ticket and purse, nothing was found in possession of the deceased. Though the recovered train journey ticket was not filed by the Applicants, it was mentioned in DRM report that Yekula Suri babu, Constable, RPF, Eluru along with GRP visited the place of incident and found the dead body with head injury and the said journey ticket was in possession of the deceased. Hence, there is no dispute with regard to availability of previous journey ticket No.03064833 with the deceased.



16. Post Mortem was held on 22.01.2019 at District Hospital, Eluru and it was opined by doctor that death of the deceased was caused due to 'Head injury # occipital bone'. The contention of the applicants is that the deceased along with his wife, the AW-1, daughter and sister were traveling together from Vijayawada to Tadepalligudem and incident was happened enroute which they were ignorant of, deboarded the train at Tadepalligudem Railway station and surrendered the combined train journey ticket to TC at exit of station, hence they could not produce the train journey ticket. On the other hand, the contention of the Respondent is that the journey ticket found with the deceased does not pertain to the route of Train No.17243 Rayagada Express and no ticket checking staff were deployed at Tadepalligudem station on the intervening night of 20/21.01.2019 and the version of applicants is a fabricated story.

17. The purport of evidence of RW-1 and RW-2 is that Guard of Train No.17243 Rayagada Express did not observe any passenger fall from his train nor did he observe any jerks or jolts to said train and the dead body of the deceased was found at Km.No.487/41-39 at Eluru Yard at about 06:10 hours on 21.01.2019 by Karri Naga Satyanarayana, TM-2. Though RW-2 worked as night patrolman from SM office to Km.No.484/0 in between Eluru Station and Vatlaru stations between 22:30 hours of 20.01.2019 to 06:30 hours of 21.01.2019 and made four trips through the place of incident, he could not find the dead body. The last trip of RW-2 in between SM office and Km.No.484/0 commenced at 05:00 hours at Km.No.484/0 and completed at 06:30 hours at SM office, Eluru. The penultimate trip of RW-2 commenced at 02:50 hours of 21.01.2019 at SM office, Eluru and completed at 04:20 hours of 21.01.2019 at Km.484/0. The dead body was found at 06:10 hours on 21.01.2019 by Trackman-

2 during his duty hours. By the time TM-2 find the body, RW-2 would have been completing his last trip. So, the incident would have happened in between 02:50 hours to 06:10 hours.

18. RW-1 stated that during his working, Train No.17243 Rayagada Express left Vijayawada at 23:42 hours and reached Eluru at 00:43 hours. The dead body was found at Eluru yard in between Eluru and Vatluru Railway stations. Had the deceased travelled by Train No.17243 Express, the incident would have taken place before 00:43 hours. But as per RW-2, no dead body was found during his night patrol duties in between 22:30 hours to 06:30 hours in between SM office and Km.No.484/0. Hence, an inference can be drawn that the deceased had not travelled by Train.No.17243 Express as purported by the Applicants.

19. It was claimed by Applicants that their combined train journey ticket was surrendered at TC available at exit way of the Tadepalligudem Railway Station. As per certificate of Chief Booking Supervisor, Tadepalligudem, which is annexed to DRM enquiry report at Page No.47, no ticket collecting/ticket checking staff worked in the intervening night of 20/21.01.2019. During investigation by GRP, the alleged co-passengers of the deceased i.e. AW-1 and sister of the deceased were examined by GRP and they unequivocally stated that the journey ticket has been handed over to Station Master available at exit point of the Tadepalligudem Railway station. In contrary, during enquiry on duty station master in the intervening night of 20/21.01.2019 at Tadepalligudem Railway station stated that in his duty hours he was available at Platform No.2 & 3 of the station and during his duty hours nobody had either approached him nor did he receive any journey tickets from travelling passengers (Annexed to DRM report at Pg.No.52).

20. As previously discussed, the very fact of the deceased's journey on the said train is in question. Furthermore, the alleged travel of AW-1 and the deceased's sister as co-passengers is highly implausible. According to the Applicants, all of them were in the same compartment, and the deceased was seated near the entrance of the compartment door in an overcrowded train. In such a situation, if someone had accidentally fallen from the train, it is likely there would have been immediate commotion from fellow passengers, who would have attempted to stop the train by pulling the Alarm Chain (ACP). This action would have alerted the deceased's family members to the incident. But nothing was reported by RW-1, the Guard of Train No:17243 Rayagada Express on the said date.

21. It is purported that the deceased allegedly travelled alone from Kakinada to Tadepalligudem, and from Tadepalligudem to Vijayawada to reunite with his family in Vijayawada. However, the Applicants have not clarified by what means the deceased traveled from Tadepalligudem to Vijayawada. Moreover, if the alleged co-passengers had noticed that the deceased was missing, they would have at least lodged a complaint with the GRP (Government Railway Police) at the station or reported it to the station master on duty. However, the co-passengers took no such action. This raises doubts about whether they actually undertook the journey as claimed in the application.

22. The journey ticket found in the possession of the deceased was from Kakinada to Tadepalligudem and the dead body of the deceased was found at Yard of Eluru Railway station which does not fall in Kakinada – Tadepalligudem section. It appears that the Applicants have created a whole story of visiting Vijayawada to justify the recovered ticket from the deceased and purported the wife and sister of

the deceased as alleged co-passengers. There is not an iota of evidence on record to prove that the deceased along the alleged co-passengers had indeed travelled in the train.

23. Further, the deceased's body was found in the yard of Eluru Station. As an operational practice, when a train approaches major stations where a commercial stop is scheduled, its speed is reduced to 15 km/h or even lower. In this case, if the incident had occurred as alleged by the Applicants, the co-passengers in the crowded train would likely have informed the train's Guard or the railway officials at Eluru Station. However, no such report was made to either the train guard or the authorities at Eluru Station.

24. With all these contradictions, suspicious and non-synchronisation of facts and events, an adverse inference can be drawn that the deceased did not travel by Train No. 17243 Express and the Applicants have fabricated a false story by purporting themselves as co-passengers to justify the journey ticket found in possession of the deceased which does not pertain to the section in which the dead body of the deceased was found.

25. To have compensation under Section 124A of the Railways Act, 1989, Applicants have to satisfy two main ingredients independently i.e., *"the accidental falling from a train carrying passengers"* and (2) he must have a *"valid ticket or authority/Railway pass"* for travelling by a train carrying passengers. It is, therefore, evident that while this is welfare legislation, with reference to the liability of the Respondent, so far as the entitlement is concerned, first it has to be established that the victim was a bona fide passenger and secondly he became a victim of an *untoward incident*.

26. Hon'ble Supreme Court in UOI v. Rina Devi in Civil Appeal No.4945 of 2018 decided on 09.05.2018, while specifically considering the issue of **Burden of Proof When Body Found on Railway Premises – Definition of Passenger** held 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 bona fide 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 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".

The Applicants have failed to discharge their initial burden of proof and failed to establish that the incident was happened in the manner they claimed

27. As discussed, though the journey ticket was recovered from the deceased, during inquest taking into account the facts and circumstances of the case, it is clear that the deceased is not a bonafide passenger of Train No. 17243 Rayagada Express in the intervening night of 20/21.01.2019 and the incident does not fall under the ambit of untoward incident as contemplated in Section 123(c)(2) and of Railways act.

28. It is pertinent to mention here that as per Sec. 123(c) (2) of the Railways Act, 1989, the accidental falling of any passenger from a train carrying passengers, reads as under:




Section 123 of Railways Act, 1989

123. Definitions.—In this Chapter, unless the context otherwise requires,—

(a) "accident" means an accident of the nature described in section 124;

(c) "untoward incident" means—

(1) (i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers.

29. The evidence on record do not support the claim that the deceased was a bona fide passenger in any train and had accidentally fallen from train as projected by the applicants. As discussed, although journey ticket was alleged to have been recovered from the deceased, there is no evidence to prove the victims' train journey in Train Train No. 17243 Rayagada Express. The applicants have even failed to prove victim's bona fide status and there is no eye witness and absolutely nothing on record to link victims travel and his presence in any train.

30. Counsel for the applicants relied upon four judgments, but facts and circumstances of such cases are quite different. In this case, the applicants along with deceased alleged to have been boarded in the same compartment and the journey ticket recovered from the deceased does not pertain to the train in which the deceased alleged to have been travelling. Also, when the journey of AW-1 and sister of the deceased as co-passengers in the alleged train along with deceased is in question and not proved, the handing over of journey tickets by co-passengers at Tadepalligudem Railway Station does not sustain. So, the judgments cited by the

Counsel, would not be applicable to the facts and circumstances of the case under discussion and are quite distinguishable.

31. In view of the facts and circumstances of the case, we hold that at the time of incident the deceased was not a bonafide passenger of the said train and the death of the deceased did not occur due to an untoward incident i.e. accidental fall from the train carrying passengers. Therefore, the death of the deceased is not covered under the definition of untoward incident as defined U/s. 123(c)(2) of Railways Act. The claimants have not approached the Tribunal with clean hands and accordingly, Issue No.1 is decided against the Applicants and in favour of Respondent.

Issue Nos. 2 & 3:

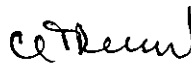
32. In the light of the findings on Issue No.1, the other issues do not survive and hence not taken up for discussion.

33. As a result, the case of Applicants is liable to be dismissed. It is, therefore,

Ordered

that the claim application filed by the Applicants is devoid of merits, hence dismissed on contest without costs.

34. The Registry is directed to send a free certified copy of this judgement 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.


(G. John Prasad)
Technical Member


(R. Sathyabama)
Judicial Member

APPENDIX**WITNESSES EXAMINED FOR APPLICANT:**

- 1) AW.1 - K. Vijayalakshmi

DOCUMENTS MARKED FOR APPLICANTS:

- 1) Ex.A.1. - Attested copy of F.I.R.
- 2) Ex.A.2. - Attested copy of Inquest Report.
- 3) Ex.A.3. - Attested copy of Report of PME
- 4) Ex.A.4. - Photocopy of Aadhaar Card of Applicant No.1
- 5) Ex.A.5. - Photocopy of Aadhaar Card of Applicant No.2
- 6) Ex.A.6. - Death Certificate of Deceased
- 7) Ex.A.7. - Photo copy of Birth Certificate of Applicant No.2

WITNESSES EXAMINED FOR RESPONDENT:

- 1) RW.1 - Devi Prasad Kalaga, Mail Express Train Manager, Vijayawada
- 2) RW.2 - D. Kishore, Trackman-IV, Eluru

DOCUMENTS MARKED FOR RESPONDENT:

- 1) Ext.R.1 - Divisional Railway Manager's Report.

WITNESS EXAMINED FOR COURT:

-NIL-

G. John Prasad
 (G. John Prasad)
 Technical Member

R. Sathyabama
 (R. Sathyabama)
 Judicial Member