

**RAILWAY CLAIMS TRIBUNAL
AMARAVATI BENCH, GUNTUR**

CORAM

Ms. R. Sathyabama - Hon'ble Member Judicial

OA II (u) 27/2020

Date of filing : 24.01.2020.
Date of decision : 07.06.2024.

- 1) Chelluri Yellamma, W/o. Late Chelluri Devudu,
aged about 43 years, Occ: Fisherman
- 2) Chelluri Mangaraju, S/o. Late Chelluri Devudu,
aged about 25 years, Mentally Disabled
(Died on 17/07/2021, his name is deleted as per
I.A.No.74/2022, Order dated 19/05/2022)

Both are R/o.H. No. 8-12, Lovapalem Village,
Rambilli Mandal, Visakhapatnam District, PIN: 531061. ... Applicants.

Versus

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

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

Ld. Counsel for Applicants - Shri N. P. Rao
Ld. Counsel for Respondent - Sk. M. Ahamed

JUDGEMENT

1. This claim application is filed by Applicants under Section 16 of RCT Act, 1987 read with Section 124-A and 125 of Indian Railways Act, 1989 seeking compensation to the tune of Rs.8,00,000/- with interest from Respondent Railway for the death of Chelluri Devudu(hereinafter referred to as "the deceased") who allegedly died in an untoward incident of while crossing the Railway track, that occurred on 16/09/2019.

2. It is pleaded in the OA that the Deceased was resident of Lovapalem Village, Rambilli Mandal, Visakhapatnam District, A.P., and was a Fisherman. His Elder



Sister was residing at Nandyal, Kumool District and the deceased was informed by his Elder Sister to attend fishing at Gornakal Dam and as such, with a view to go to Nandyal to attend fishing, the Deceased, who accompanied by other 2 Villagers and relatives, by name, Chodipalli Maseenamma, W/o. Chittibabu and Chelluri Nukaratnam, W/o. Durgarao, went to Anakapalle Railway Station in the afternoon hours of 16-09-2019, purchased a 2nd class Train Journey Ticket bearing No. UPE 07712364 from Anakapalle to Nandyal for 1 Adult and UPE 07712363 from Anakapalle to Nandyal for 2 Adults for himself and the other 2 fellow Passengers of Chodipalli Maseenamma and Chelluri Nukaratnam and kept the 2 Tickets with him. They got down from the Platform No. 1 and was going towards Platform No. 2 over crossing the Railway track within the precincts of Railway Station to catch the Train No. 18463 Bhubaneswar - Bangalore City Prasanthi Expresss in a 2nd class General Compartment, but, suddenly, the Deceased hit by Train No. 12867 Howrah Puducherry Express, which was running at very High speed in silent manner without blowing any Horn and as a result, he sustained severe head injury and other multiple sever injuries and died on the spot in the same day afternoon hours of 16-09-2019 at K.M. No. 745/25-A-745/31 in the yard and within the precincts of Anakapalle Railway Station U/s. 124-A "Untoward Incident".

3. Respondent Railways appeared and filed Written Statement in which it has denied the liability and submitted that there is no cause of action for applicants as the claim does not fall within the ambit of Section 123 (c) or Section 124A of Railways Act, 1989. Respondent submitted that, contrary to the averments in the claim application, that, as per the enquiries conducted by Sr.DSC/BZA, which revealed that the Loco-Pilot and Asst. Loco Pilot of the Train No.12867 (HWH- PDY) Express and co-passenger states that the deceased while crossing the Railway track, hit by the Loco and died on the spot, the deceased did not use the Foot Over

Bridge (FOB) to cross the track, thus incident occurred due to own conduct of the deceased. Therefore, it is a clear case of crossing the Railway track (trespassing the track) carelessly without observing any precaution. Further, the deceased died due to hit by the Train. As per principle of law, admitted facts need not be proved, hence, it is a clear case of trespass.

4. It is also submitted that, it is not a case of untoward incident of accidental fall from Train and it is case of trespass of Railway track. Hence, the application is not maintainable in law before this Hon'ble Tribunal and is liable to be dismissed.

5. It is further submitted by the DRM that, the case of the applicants for compensation in the case, is not tenable in law or on facts. Therefore, the Respondent prays that, the Hon'ble Tribunal be pleased to dismiss the application with costs in the interest of justice.

6. 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 dependent(s) of the deceased?*
- 3) *Whether the applicant(s) is/are entitled to compensation as claimed?*
- 4) *To what relief?*

7. **Summary of Applicants' evidence:** In support of the claim, Applicant No.1 (Wife of the deceased) filed her affidavit in chief examination as AW.1 and filed the documents, which are marked as Exhibits as under:-

- 1) Attested Copy of F.I.R. in Cr. No. 297/2019 issued by G.R.P., Visakhapatnam along with Message. - Ex.A.1.
- 2) Attested Copy of Inquest Report in Telugu and English Translation. - Ex.A.2.
- 3) Attested copy of PME Report. - Ex.A.3.
- 4) Death Certificate of the deceased (original) - Ex.A.4.
- 5) Photocopy of Ration Card compared with original - Ex.A.5.
- 6) Photocopy of Aadhaar Card of the deceased - Ex.A.6.
- 7) Photocopy of Aadhaar Card of Applicant No.1 - Ex.A.7.
- 8) Photocopy of Aadhaar Card of Applicant No.2 - Ex.A.8.
- 9) Death Certificate of Applicant No.2 - Ex.A.9.
- 10) Two photographs of the accident of the deceased - Ex.A.10.



8. AW-1 reiterated the averments of the claim application and further deposed that on the date of fatal incident, her husband went to Ankapalle Railway station along with two others, by name Sinamma and Nookaratnam , and they were the co-passengers of the deceased and they are from her native place. She has also deposed that her husband was going inside from Platform No.1 to Platform No.2, to which the train was arriving, after purchasing the ticket. She stated that she came to know that he was hit by train and she didn't know how it was happened. She admitted that it has been mentioned in the affidavit that her husband died while crossing the Railway track in Ankapalle station. She also admits that there is a Foot over bridge at Ankapalle station to facilitate the movement of passengers from one Platform to the other.

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

- i) CMA No.12/2022 dated 21.12.2023.
- ii) CMA No.321/2018 dated 16.03.2023.
- iii) CMA No.664/2014 dated 06.11.2018.

10. It is claimed by the Applicants that the deceased was about to travel with valid ticket from Ankapalli to Nandyal and while crossing the Railway tracks to board the Prasanthi Express, he was hit by an Express train which was running very high speed in silent manner without blowing horn, the deceased sustained severe multiple fatal injuries and died on the spot at Ankapalle Railway station.

11. **Summary of Respondent Evidence:** Respondent Railway examined S.Sravan Kumar, Loco Pilot, Goods, Vijayawada Division as RW.1. The Respondent also filed DRM Report as documentary evidence which is marked as Ext.R.1. In the DRM report, it is concluded and indicated that as per the facts and circumstances, the Loco pilot and Asst. Loco Pilot of train No.12867 express, stated that the deceased

suddenly crossed the track on UP line platform No.2, Anakapalle station yard and the deceased was hit by the loco of the said train. The train was stopped by applying emergency brake. As a result of the incident, he sustained severe head injury. 108 Ambulance reached Anakapalle station, Ambulance Doctor examined the injured and declared him as dead. The deceased did not use the foot over bridge to cross the track which is a grave negligence on part of the deceased. Hence, the enquiry clearly established that the incident occurred as a consequence of his own volition which tantamount to self-inflicted injury under the exception of section 124A (b) of the Railway Act, 1989. Railway Administration is not responsible for the death of the deceased. The incident does not cover the meaning of 'Untoward Incident' as denoted in section 123 (2) (c) of Railway Act, 1989. Hence, this case is not fit for compensation.

12. RW-1, deposed that on the date of incident i.e. on 16.09.2019, he worked as Asst., Loco Pilot by Train No.12867 (Howrah-Pondecherry Express) from Visakhapatnam to Vijayawada section and for this train, there was no scheduled stoppage at Anakapalle station and at that time train passed through main line of Anakapalle station yard at 50 Kmph by blowing continuous horn. After the incident, he stopped the train by applying emergency brake, at a distance of 5 to 6 coaches distance from platform end. They informed the Guard, over walkie-talkie who in turn informed the Station Master. Similarly, he mentioned about the same message in register available in his lobby. He also denied that he did not blow the horn and passed through the Anakapalle Railway station without speed restriction. He has submitted the site plan of the place where the deceased was found dead. It is seen in the site plan that there is a public Foot Over Bridge and other Foot Over Bridge inside the Railway station and a walk path way.



13. We have heard the arguments of Ld. Counsels for both the parties and gone through the material available on record. The following are our findings on the issues framed:

FINDINGS

14. As far as the issue No.1 is concerned,

Issue No.1: *Whether the deceased was a bonafide passenger of the train in question and died as a result of an untoward incident?*

15. As per claim, the deceased a resident of Lovapalem Village was married and having one son, (who died during the pendency of the present claim application) working as a fisherman. The deceased, with a view to go to Nandyal to attend fishing work at Gornakal Dam, accompanied by other two villagers, went to Anakapalle Railway station, purchased train journey tickets from Anakapalli to Nandyal in the afternoon hours of 16.09.2019 and while he was going towards the other Platform, crossing the Railway tracks to board Prasanthi Express, he was hit by Train No.12867 (Howrah-Puducherry Express), which was running at a high speed in silent manner without blowing horn, and sustained severe injuries and succumbed to the injuries on the spot.

16. As per claim application, the deceased was about to travel on the strength of Tickets Nos.UPE 07712363 and UPE 07712364 issued at Anakapalle Railway station and the deceased had the legal authority to travel in the train, but the deceased never got the opportunity to board the train and died while crossing the track.

17. The Railway has strongly opposed the claim application and has specifically stated in their written statement as well as in the DRM report that the deceased was a trespasser and hit by a Train No.12867 (Howrah-Puducherry Express) as he was



crossing the railway track unauthorizedly. Respondent Railway has countered that the incident occurred as a consequence of his own volition which tantamount to self-inflicted injury under the exceptions of section 124A (b) of the Railway Act, 1989. Railway Administration is not responsible for the death of the deceased. The incident does not cover the meaning of 'Untoward Incident' as denoted in section 123 (2) (c) of Railway Act, 1989. Hence, this case is not fit for compensation.

18. It is admitted by the claimants that the deceased was crossing the Railway track to enter the Platform No. 2 of Anakapalle Railway station. It is proved on record that the deceased was hit by the Train No.12867, while crossing the track to go to Platform No.2 to catch other train. Admittedly, the deceased was an adult and was well aware of the dangers involved in trespassing and walking through railway track. Hence, it is proved on record that the claim application filed by the Applicants is not valid and I feel that this is a clear case of trespass.

19. It is also stated in the FIR and Inquest report of the Police that the deceased was travelling from Anakapalle to Nandyal for his fishing works and the deceased while crossing the track to go to the Platform No.2, Howrah-Puducheri Express severely hit the deceased and died on the spot and the cause of the death was stated that the deceased while crossing the track accidentally hit by Train No.12867, sustained injuries to head and died.

20. As per **Section 124 A, no compensation shall be payable 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.

The above conclusion and explanation do not support the claim of the Applicants as far as the untoward incident is concerned. Therefore, the death of the deceased comes under the purview of self-inflicted injury. I would like to draw the support of judgement held by Hon'ble Bombay High Court in First Appeal No.1294/2017.

21. To have compensation under Section 124A of the Railways Act, 1989, Applicants have to satisfy two main ingredients independently i.e., "*the untoward incident*" 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*. In the instant case, the definition of passenger and untoward incident as per the Railway Act, 1989 does not meet out to claim compensation.

22. 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".

"Therefore, the two limbs of the Proviso should be construed to have two different objectives to be achieved. We can understand the meaning of the term "self-inflicted injury" not only from the sources provided by the dictionaries, but also from the context in which it is used in the statute. The term "self-inflicted injury" used in the statute can be deduced as one which a person suffers on account of one's own action, which is something more than a rash or negligent act But it shall not be an intentional act of attempted suicide. While there may be cases where there is intention to inflict oneself with injury amounting to self-inflicted injury, which falls short of an attempt to commit suicide, there can also be cases where, irrespective of intention, a person may act with total recklessness, in that, he may throw all norms of caution to the wind and regardless to his age, circumstances, etc.

Though the journey ticket was recovered from the possession of the deceased, the Applicants have failed to discharge their initial burden of proof and failed to establish that the incident was caused due to the accidental fall from the train.

23. As discussed, though the journey ticket was recovered from the deceased, there is no evidence to prove the victim was a sufferer of an untoward incident. In the instant case, Applicants have failed to prove the ingredient i.e. 'Untoward incident'. Also, applicants miserably failed to adduce any cogent evidence to prove their case as per Rina Devi case judgment. On the other hand, it supports the version of the Respondent that the incident is not an untoward incident.

24. Further, it must be said, at the cost of repetition, that not every case of death or finding of dead body within the premises of the Railway Administration would enable a dependent to succeed in a claim against Railways in-as-much as the provisions of Sec.124-A, although imposing an absolute/strict liability upon Railways clearly required of an untoward incident as defined in Railways Act not falling within



the exceptions cited in the proviso there is a condition precedent for claim under that section.

28. It has to be mentioned, with due respect that the case-laws cited by the Applicants, due to different facts and circumstances of the present case are neither applicable nor favourable to the Applicants.

29. In view of the facts and circumstances of the case, I hold that at the time of incident the deceased was not died due to injuries sustained due to accidental fall from running passenger train. 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, 1989. Accordingly, Issue No.1 is decided against the Applicants and in favour of Respondent.

Issue Nos. 2,3 & 4:

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

31. 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.

32. 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.


(R. Sathyabama)
Judicial Member

APPENDIX

WITNESSES EXAMINED FOR APPLICANTS:

- 1) AW.1 - ChelluriYellamma

DOCUMENTS MARKED FOR APPLICANT:

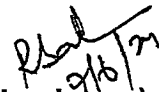
- 1) Ex.A.1 - Attested Copy of F.I.R. in Cr. No. 297/2019 issued by G.R.P., Visakhapatnam along with Message.
- 2) Ex.A.2 - Attested Copy of Inquest Report.
- 3) Ex.A.3 - Attested copy of PME Report.
- 4) Ex.A.4 - Original Death Certificate of the deceased.
- 5) Ex.A.5 - Photocopy of Ration Card.
- 6) Ex.A.6 - Photocopy of Aadhaar Card of the deceased.
- 7) Ex.A.7 - Photocopy of Aadhaar Card of Applicant No.1.
- 8) Ex.A.8 - Photocopy of Aadhaar Card of Applicant No.2.
- 9) Ex.A.9 - Death Certificate of Applicant No.2.
- 10) Ex.A.10 - Two photographs of the accident of the deceased.

WITNESSES EXAMINED FOR RESPONDENT:

- 1) RW.1 - S. Sravan Kumar, Loco Pilot, Goods, Vijayawada Division

DOCUMENTS MARKED FOR RESPONDENT:

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


(R. Sathyabama)
Judicial Member