

BEFORE THE RAILWAY CLAIMS TRIBUNAL**BHUBANESWAR BENCH**

Case No. OA (IIU)/37/2020

Coram: Hon'ble Sri Virendra Kumar Goyal, Member (Judicial), RCT/BBS

Hon'ble Sri Ajoy Kumar Behera, Member (Technical), RCT/BBS

Date of incident: 17/09/2019

Date of Registration: 01/09/2020

Date of Judgment: 02/01/2024

Claim Amount: Rs.8,00,000/-

In the matter of

1. **BHABAGRAHI NAYAK**, aged about 60 years Applicants
S/o. Late Laxman Nayak
 2. **SANJUKTA NAYAK**, aged about 32 years,
W/o. Late Manoranjan Nayak
 3. **AMLAN NAYAK**, aged about 06 years,
S/o. Late Manoranjan Nayak
 4. **PURUSOTTAM NAYAK**, aged about 02 years,
S/o. Late Manoranjan Nayak
- All are residence of Village: Rahandia,
PO: Sirel, PS: Kanas,
Dist.: Puri – 752017, Odisha.

- Versus -

Union of India represented through Respondent
It's **GENERAL MANAGER, EASTEREN RAILWAY,**
Kolkata, West Bengal.

Appearance:

For the Applicant : Sri P.K. Das, Advocate.

For the Respondent : Sri N.C. Pattnaik, Ld. Counsel.

JUDGEMENT

1. This present claim application has been filed by the Applicants (father, wife and minor sons of the deceased) under section 16 of the Railway Claims Tribunal's Act 1987, claiming compensation of Rs.8,00,000/- (Rupees Eight Lakhs) along with 12% interest from the date of filing till realization from the Respondent Railway on account of death of one Manoranjan Nayak, allegedly in an Untoward Incident involving fall from a running train.



2. **Brief facts of the case:** - According to the original claim application the deceased namely Manoranjan Nayak was working as a labour in Durgapur Engineering Works, situated at Durgapur, West Bengal and on the date of incident i.e. on 17/09/2019 he was travelling from Durgapur to Howrah railway station in an overcrowded general class compartment by Dn Vibhuti Express train (12334) with a valid general class journey ticket along with one Narayan Penthoi of his co-villager. It is further averred that during course of journey while the said train was passing through Panagarh railway station with high speed, at that moment the said compartment oscillated and had a sudden violent jerk as a result of which the deceased became imbalanced and accidentally fell down from the said running train, sustained multiple injuries on his body and succumbed to death at the spot. In this connection the GRPS/UDL has registered an UD case bearing No. 52/2019 dated 17/09/2019 and took up investigation. It is further mentioned by the Applicants that on the date of incident the deceased was travelling with a valid journey ticket bearing ticket No. UTG-62399004 dated 17/09/2019 from Durgapur to Howrah Railway Station.

3. **Respondent's Reply:** On receipt of the notice, the Respondent Railway appeared and filed its written statement to the original claim application along with DRM's statutory investigation report. In reply, the Respondent Railway have vehemently denied the averments of the Applicants as made in the claim application, on the grounds that it was devoid of substantial evidence against them, and they also have taken a stand that the alleged incident does not come under the definition of untoward incident under Section 123 of Railways Act, read with under Section 124-A of the Act. It is stated that there is no evidence on record that has been produced by the Applicants to establish that the deceased was a bona fide passenger and that the incident had occurred due to fall from running train. In view of the above facts and circumstances, the Respondent Railway sought for dismissal of the claim application.

4. **Applicant's Evidence:** In the evidence, the Applicant No. 2, Smt. Sanjukta Nayak, has filed her own examination in chief on affidavit. A copy of FIR, memo of Dy. SM/Durgapur, final report, investigation report, dead body challan, post mortem examination report, seizure list, dead body handed over receipt, electric chulli receipt, application by police, original journey ticket, and exhibited the documents marked as A/1 to A/11 respectively and presented herself as AW1 and another witness namely Narayan Penthoi, has been examined as AW2 respectively and both were cross examined by the Ld. Counsel for the Respondent Railway Administration.

5. **Respondent's Evidence:** The Respondent railway on the other hand filed the DRM's investigation report along with enquiry report of ASI/RPF/Panagarh, memo of Dy. SM/Panagarh, report of untoward incident, final report, post mortem report and

statements of railway personnel in connection with the alleged incident. The Respondent Railway has examined one Sishir Kumar, Enquiry Officer in this case as RW1 and the Bench has examined one Sri Anit Pathak, SM/Panagarh railway station before the Bench as CW 1, who got exhibited the memo and his statement as R/2 & R/3 respectively. Both were cross examined by the Ld. Counsel for the Applicants.

6. **Issues:** From the pleadings of the parties, this Tribunal framed the following issues for determination: -

1. Whether the death of deceased was due to any untoward incident as defined u/s 123 (C) of the Railways Act 1989?
2. Whether the deceased was travelling as a bona fide passenger of the train at the time of occurrence of the untoward incident?
3. Whether the Applicant entitled to get compensation u/s 124 A of the Railways Act 1989?
4. Whether the Applicants are the dependents of the deceased to receive the compensation as claimed?
5. To what relief the Applicants are entitled to?

7. **FINDINGS:** We have carefully gone through the pleadings of the parties, material made available on record, evidence adduced on behalf of the Applicants as well as Respondent and heard the arguments of both sides by their counsels and written note of argument submitted by the Ld. Counsel for the Respondent. Our findings on the aforesaid issues are as under: -

7.1 **Issue Nos. 1, 2 & 3:** These three issues are taken up together for discussion, being interconnected.

During course of argument, the Ld. Counsel for the Applicant submitted that the deceased in course of his journey from Durgapur to Howrah railway station by Dn Vibhuti Express train (12334) as a bona fide passenger in an overcrowded compartment, accidentally fell down from the said running train due to oscillation and sudden violent jerk of the train, sustained multiple injuries on his body and died on the spot. It is submitted that the deceased before boarding the train at Durgapur Railway Station had purchased a journey ticket which was filed along with the OA. He further submitted that the final report clearly mentioned that the deceased fell down from Dn 12334 Bibhuti express train. He emphasized that the deceased died out of an accidental fall from running train that occurred during his journey by Dn Vibhuti express train, and the said incident comes within the ambit of section 123 (c) of the Railways Act, for which the Respondent Railway is liable to pay compensation to the dependents of the deceased under aegis of section 124 A of the Railways Act.

7.2. In his counter arguments, the Ld. Counsel for the Respondent Railway submitted that the deceased died out of his own criminal Act, when he tried to cross the railway track and got hit by the train engine, and this act was the outcome of sheer criminal negligence and cannot be termed as an untoward incident within the scope of section 123 (c) (2) of the Railway act and sought for dismissal of the claim application under the exceptions of Section 124 A sub-sections (a) to (e). He emphasized that there is a direct eye witness to the incident by way of on duty Station Master of Panagarh railway station (CW1) and also there are written documents in the station records which clearly prove that the incident of run over had indeed occurred. He added that the Applicants have wrongly pleaded that the deceased was travelling along with his co-villager, AW2, who deposed before the Bench that he along with the deceased were travelling from Durgapur to Howrah railway station by the said train, is an afterthought and cannot be belived and he is planted witness. He further submitted that it is a clear negligence on the part of the deceased arising out of his own criminal act for which Respondent railway is no way responsible and protected under section 124 A of the Railway Act and not liable to pay compensation.

7.3. The evidence on record clearly shows that the deceased had not fallen down from any train as averred by the Applicants since the on duty SM/Panagarh railway station had been clearly seen that one unknown male person was run over by train No. 12334 while he was crossing the railway track. Apart from the documentary evidence, the Bench has examined one Sri Anit Pathak, on duty Station Manager of Panagarh railway station, who is the direct eye witness to the alleged incident, who appeared before the Bench as CW1 and filed a memo dated 17/09/2019 Exhibit R/2 issued by him to all concerns relating to this case. He was cross examined by the Ld. Counsel for the Applicants. The CW1 (Anit Pathak) during cross examination before the Bench has deposed that ***"Yes, I have seen the incident on 17/09/2019 the Dn Vibhuti express train was passing through Platform No. 3 of Panagarh railway station and was going from Asansol side towards Howrah. I was present at the platform for exchanging alright signal and I saw a male person at a distance of about 25 to 30 mtrs from where I was standing and he was trying to move from platform No. 2 to 3 and was unfortunately dashed by Vibhuti Express train on the track."*** The Enquiry Officer has also examined him (SM/Panagarh railway), who reiterated the same facts as stated above in his statement which is marked as Exhibit R/3. During cross examination as well as his statement given before the Enquiry Officer nothing contradictory has come out. Hence, the testimony of the witness CW1, who is the direct eye witness of the occurrence cannot be disbelieved.

7.4. The station diary entries made by SM/Panagarh as Exhibit R/2 is available on records which reveals that there is a specific mention regarding the deceased dying as a result of run over by Train No. 12334 Dn on Line No. 1 platform area at KM No. 154/66 inside the track and it is not a case of accidental falling down from the running train.

7.5. In this connection we would like to cite **Section 191 of the Railways Act, 1989** which clearly stipulates that *'entries made in the records or other documents of a railway administration shall be admitted in evidence in all proceedings by or against the railway administration, and all such entries may be prove either by the production of the records or other documents of the railway administration containing such entries or by the production of a copy of the entries certified by the officer having custody of the records or other documents under his signature and standing that it is a true copy of the original entries and that such original entries are contained in the records or other documents of the railway administration in his possession.'*

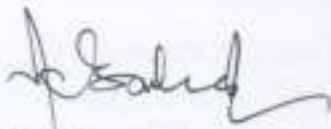
7.6. In so far as the untoward incident is concern, the Applicants have come up with the plea that deceased in course of journey accidentally fell down from the train is not supported by any tangible evidence, it is rather proved beyond doubt with direct evidence that it is a case of run over that occurred while crossing railway track. Although a journey ticket was filed by the Applicants along with the original claim application but it is not relevant to the case, as the death of the deceased arose not out of falling down from Dn. Vibhuti Express train 12334 as alleged but due to run over by the said train while trespassing the railway track. It is very clear in this case, going by both direct as well as documentary evidence, that the death of the deceased arose out of run over by the train which was witnessed by the on duty Station Manager of Panagarh railway station (CW1) and was not on account of falling down from the alleged train and the Applicants failed to establish that the deceased died out of a fall from running train. We have thus found that the testimony of AW2, comes under a complete cloud of doubt and is not believable. Also the evidence at hand clearly establishes that this was not a case of accidental fall from train, which would otherwise have come under the ambit of an untoward incident, but it is clearly a case that would come under the exceptions under Section 124 A (a) to (c) of the Railways Act. The Hon'ble High Court at Calcutta in S.A No. 406/2016, titled **"Minati Bhadra & others Vs. Dilip Kr. Bhadra & others"** vide judgment dated 19/10/2023 has held that when documentary evidence is available the oral testimony of witness is not sufficient to rebut the probative value. In this case there is memo of station master and station diary entries are available on record, which reveals that the deceased died as a result of run over by the engine of the train. The testimony of AW1 & AW2 are

not sufficient to belie or outweigh the evidentiary value of the said documents. Against the above background, the incident in which death of the deceased was caused cannot be termed as an "Untoward incident" and it is rather a case of criminal act leading to death and is covered by the provision of exception of section 124 A of the Railways Act.

7.7. In view of above facts and circumstances of the case, it is held that the Applicants has failed to discharge their burden lying upon to establish that the deceased was a bona fide passenger and victim of an untoward incident, as has been defined under section 123 (c) (2) of the Railways Act 1989. It does appear from all evidence, both direct as well as documentary that the death of the deceased has arisen due to reasons that are covered in exceptions (a) to (c) of Sec 124-A of the Indian Railways Act. Therefore, Applicants are not entitled to any compensation from the Railway Administration for such death. These issues are decided against the Applicants.

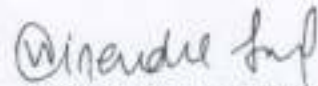
8. **Issue Nos. 4 & 5:** In view of finding on the issue Nos. 1, 2 & 3, which goes against the Applicants, issue Nos. 4 & 5, need not be discussed. Hence Ordered.

9. **ORDER:** The OA is dismissed on merits. There shall be no order as to costs. Pronounced in the open Tribunal to-day on 02/01/2024.



(Ajoy Kumar Behera)
Member (Technical)

Dt: 02/01/2024



(Virendra Kumar Goyal)
Member (Judicial)

Dt: 02/01/2024