

BEFORE THE RAILWAY CLAIMS TRIBUNAL

BHUBANESWAR BENCH

Case No. OA (IU)/58/2019

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

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

Date of Incident: 12/12/2018

Date of Registration: 17/06/2019

Date of Judgment: 05/06/2024

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

In the matter of

1. **ARJUN MAHAKUD**, aged about 42 years
S/o. Late Basudeb Mahakud
2. **MAMATA MAHAKUD**, aged about 46 years
W/o. Arjun Mahakud
Both are residence of
At: Tilichapadar, PO: Laxmanpur,
PS: Harabhanga, Dist. Boudh.

Applicants

- Versus -

Union of India represented through
It's **GENERAL MANAGER, EAST COAST RAILWAY,**
Chandrasekharpur, Bhubaneswar, Odisha.

Respondent

Appearance:

For the Applicants : Sri B. Beura, Advocate

For the Respondent : Sri K.C. Mahapatra, Ld. Standing Counsel.

JUDGEMENT

1. This present claim application has been filed by the father of the deceased under section 16 of the Railway Claims Tribunal Act, 1987, claiming compensation of Rs. 8,00,000/- (Rupees Eight Lakhs) along with 12% interest from the date of filing from Railway Administration for the death of his unmarried son namely Akhil alias Akshay Kumar Mahakud, allegedly in an Untoward Incident involving fall from running train. Subsequently the mother of the deceased namely Mamata Mahakud, has been

impleaded as party to the original claim application as Applicant Nos. 2, vide order dated 16/02/2023.

2. **Brief facts of the case:** - In the original claim application it has been averred by the Applicant that on the date of incident i.e. on 12/12/2018 the deceased namely Akhil alias Akshay Kumar Mahakud was travelling by Durg-Puri Express train from Harishankar Road to Bhubaneswar Railway Station with a valid journey ticket. During course of journey on the way just ahead of Harishankar Railway Station, the deceased accidentally fell down from the said train, sustained injuries on his person and died on the spot. In this connection, the GRPS/Titilagarh has registered a UD case No. 48/2018 and took up investigated into the matter. With regard to ticket, it is further averred by the Applicants that on the date of incident, the deceased was travelling from Harishankar Road to Bhubaneswar railway station with a valid journey ticket but the same was lost in the incident along with bag of the deceased.

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 strongly denied the allegations of the Applicants made in the original claim application and have held that it is a false and fabricated case and is therefore not maintainable both in fact and law. It is submitted that there is no information or any diary entries was made by the on duty SM of HSK, TRKR or KBJ railway station regarding the incident and also there is no such report of falling down from the train by the on duty crew members of the alleged train. As per DRM's investigation report there is no eye witness to the alleged incident and during inquest one money purse containing Voter ID & Aadhaar card and some cash was recovered but no journey ticket or any travelling authority was found from the possession of the deceased, which proves that the deceased was not a bona fide passenger in the train. In view of above observations and reasons, the Respondent Railway has prayed for dismissal of the claim application and no compensation should be granted to the Applicants.

4. **Applicant's Evidence :** In the evidence, the Applicant No. 2, Smt. Mamata Mahakud, mother of the deceased, has filed her own examination in chief on

affidavit. A copy of FIR, inquest report, dead body challan, post mortem report, and final report has been filed along with the OA. The Applicant No. 2, & another witness namely Manoj Kumar Mahakud, appeared before the Bench as AW1 & AW2 respectively and they were cross examined by the Ld. Counsel for the Respondent Railway Administration.

5. **Respondent's Evidence** : The Respondent Railway Administration on the other hand have filed DRM's statutory investigation report along with other documents in connection with the alleged incident. The Respondent Railway did not adduce any evidence.

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 Applicant is 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. 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.

It is the case of the Applicants is that, on 12/12/2018, while the deceased was travelling from Harishankar Road to Bhubaneswar railway station by Durg-Puri

express train, on the way just ahead of Harishankar Railway station, due to sudden jerk of the train and push and pull of passengers inside the compartment, he accidentally fell down from the train, sustained injuries on his person and died on the spot on the same day. The Ld. Counsel for the Applicants submitted that the AW2 (Manoj Kumar Mahakuda), has deposed in evidence that the deceased had purchased the journey ticket for himself to travel to Bhubaneswar railway station in his presence at Harishankar railway station and he had witnessed the boarding into the train by the deceased. It is submitted that in the post mortem report the doctor has opined that the cause of death may be due to intracranial bleeding due to external injury by a hard object probably due to accident. He emphasized that the deceased is a victim of an untoward incident that occurred during course of his journey in the night hours and the Respondent Railway is liable to pay compensation to the dependents of the deceased under the aegis of section 124A of the Railways Act.

7.2. In rebuttal, the Ld. Counsel for the Respondent Railway submitted that there is no direct witness to the alleged accidental fall and there was no report of any untoward incident from the on duty crew members and no diary entries has been made by any SM of Harishankar, Turekela Road and KBJ railway station. It is submitted that as no railway ticket was recovered in possession with the deceased at the time of inquest, it is clearly established that the deceased was not at all travelling in the train. He added that there was a selective loss of the ticket in this case whereas one adhaar & Voter ID card and money purse containing Rs. 600/- was found on his possession, which gives rise to doubt regarding his being a bona fide passenger of any train. He summed up his argument that the reliability of evidence adduced by the Applicants by way of presenting the AW2 is an afterthought and he is a planted witness, therefore his testimony cannot be believed. He added that after completion of investigation, it is came to the light that the deceased was working as a driver under ARSS construction company at Pipulbahal and when finishing his work he turned to his siding camp beside the Pipulbahal railway track and while he was crossing the railway line he was accidentally dashed against one running goods train and was thrown outside the track. It is mentioned that the GROP/KBJ has submitted the final report wherein it is clearly indicated that the

cause of death of the deceased is due to accidentally dashed against any running goods train, which cannot be ruled out. He lastly submitted that the place of occurrence is very close to the working place of the deceased, which also proves that it is a case of suicide or run over or dashed by any train while trespassing on the railway track, which are covered under sub Section (a) to (e) of exceptions under Section 124-A of the Railways Act and prayed for dismissal of the claim application.

7.3. The DRM's statutory investigation report shows that based upon the information of Govt. Hospital, Kantabanji, the GROP/KBJ has registered a UD case bearing No. 48/2018 dated 13/12/2018 and conducted enquiry about the case. In this case there was a selective loss of the ticket whereas one adhaar & Voter ID card and money purse containing of Rs. 600/- was found on his possession, which gives rise to doubt regarding his being a bona fide passenger of any train in question. Both the AW1 & AW2, are neither the co-passengers with the deceased nor they were an eye witness to the alleged incident. As per original claim application, the deceased had purchased a journey ticket before boarding the train at Harishankar Road railway station but the said ticket was lost in the alleged incident along with bag of the deceased. From the affidavit in evidence of AW 2, it is observed that at para No. 2, he has stated that he had seen the deceased purchasing the journey ticket for himself at Harishankar Road railway station for travel to Bhubaneswar railway station but the Applicants have not filed any cogent or concrete evidence to establishes that on the date of incident the AW2 had accompanied the deceased and had seen the deceased purchasing a journey ticket for himself. Hence, the evidence led by AW2 is an afterthought and not tenable in the eyes of law and the testimony of witness AW2 cannot be believed.

7.4. In so far as the incident is concerned, the Applicants have come up with the plea that the deceased in course of his journey by Durg-Puri express train just ahead of Harishankar railway station, he accidentally fell down from the train due to sudden jerk of the compartment and push and pull of passengers inside the compartment, but this is not supported by any tangible evidence and it is rather proved beyond doubt with the direct evidence that, it is a case of dashing against

one goods train that had indeed occurred. More particularly, it is not clear from the documents that how the incident was happened and there is no such report of falling down of any person from the on duty crew members of the train and also no diary entries were made by any Station Master of Harishankar, Turekela Road and KBJ railway stations or from any other railway authorities about the alleged falling down incident, which clearly establishes that the alleged incident did not happen. No documents have been filed by the Applicants to rely upon their claim that the deceased had travelled in the train and had died due to an accidental fall from a running train and also there are no direct witnesses to the alleged falling down incident at all. The final report clearly indicated that it is an accidentally dashed against any running goods train, which cannot be ruled out. Therefore, it is held that the deceased was not a bona fide passenger of the train in question. 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 (b) 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. The testimony of AW1 & AW2 are not sufficient to belie or outweigh the evidentiary value of the said documents. The Applicants has failed to establish that on the date of incident the deceased was a bona fide passenger and victim of an untoward incident. 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.

7.5. Based on the above discussion, it is clear from the documentary evidence that the falling down of the deceased during course of his purported journey from any angle is not established and the deceased is not a victim of any untoward incident and therefore this case does not come under the ambit of section 123 (c) (2) of the Railways Act. Also, the attending circumstances in this case clearly point to a

preponderance of probability that the death of the deceased arose out of one of the exceptions under proviso of Section (a) to (c) of section 124-A of the Railways Act 1989. In the absence of any journey ticket or even an iota of evidence in support of the averments of the Applicants that the deceased was a victim of falling down from a running train a benefit of doubt cannot be accorded in this case. We infer that the deceased was neither a bona fide passenger nor a victim of untoward incident, therefore, the Applicants are not entitled to get compensation under section 124-A of the Railways Act 1989. These issues are therefore answered against the Applicants.

8. **Issue No. 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 05/06/2024.

(Ajoy Kumar Behera)
Member (Technical)
Dt: 05/06/2024

(Virendra Kumar Goyal)
Member (Judicial)
Dt: 05/06/2024