

RAILWAY CLAIMS TRIBUNAL, PRINCIPAL BENCH, DELHI

**Mr. JUSTICE KANWALJIT SINGH AHLUWALIA, HON'BLE
CHAIRMAN**

Case No. : OA/II(U)/DLI/124/2024
Date of filing : 15.02.2024
Date of Decision : 28.11.2024

Sh. Raj Kumar,
S/o Sh. Dayanand,

Smt. Mithlesh Kumari,
W/o Sh. Raj Kumar,

Smt. Sarita,
W/o Sh. Arvind Kumar

All R/o Murgi Farm Wali Gali,
Rajeev Gandhi Nagar,
Mainpuri, Mainpuri,
Uttar Pradesh - 205001.

...Applicants

Versus

Union of India,
Represented through:
General Manager,
Northern Central Railway,
Prayagraj.

...Respondent

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

Sh. BS Mahur, counsel for the applicant.

Smt. Vinita Bakshi, counsel for the respondent through hybrid mode.

J U D G M E N T (oral)

1. Arvind Kumar, aged 28 years, on 16th December, 2022 allegedly undertook journey from Shikohabad to Mainpuri in some Express train. It is the case of the applicant that the Rail journey ticket purchased by the deceased was lost during the incident. As per the applicants, the occurrence took place during the course of journey between KM 1253/16. It is averred that the deceased was a bonafide passenger and he died as a result of fall from the train.
2. The present claim application has been preferred by parents, namely Sh. Raj Kumar father, Smt. Mithlesh Kumari mother and Smt. Sarita, wife of the deceased under Section 16 of the Railway Claims Tribunal Act praying that compensation be awarded for the death of Sh. Arvind Kumar (hereinafter called '*deceased*').
3. Notice of the claim application was issued. Respondent filed Written Statement along with the statutory report of DRM, Ex.R-1, wherein investigation was carried in consonance with the *Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2020*.

4. In the Written Statement filed, the respondent took a categorical stand that the deceased was run over while he was sitting on the Railway track and had not moved from the same even though constantly horn was blown by the Loco-Pilot. It would be apposite here to reproduce Paras 5 to 9 of the Preliminary Objections taken in the Written Statement:-

"5. That in the present matter, the preliminary enquiry was conducted, and per the evidence and statements collected, this fact has come to light that on 16.12.2022, the deceased Arvind Kumar aged 24 years old, son of Sh. Raj Kumar. Aged 40 Years old, a resident of village Hasanpur, PS Bhogaon District Manपुरी. He was informed by the local police about the sudden demise of his son, (from his son's phone) due to a train accident. According to the statement of the locopilot Devinder Swaroop of the train no. 05419 "Skb Passenger Express" who was posted as the locopilot from Shikohabad to Farrukhabad said, that he saw an unknown person sitting on the Railway track near KM no. 1253/16 and despite repetitive horns to alert him and vacate the track but the unknown person did not budge, as the result the pilot initiated the breaks but due to the short distance between the train and the unknown person he was run over (MRO) by the train.

6. The locopilot immediately informed about the incident to the on- duty guard, the Deputy Station Superintendent (Station Master) Manपुरी and the (Traction Locomotive Controller (TLC) of Tundla, that an unknown person was run over by the train bearing no.05419 near KM.no 1253/16. Then the office of the Station Master issued a memo at 17:40 regarding the incident informing the local police of Manपुरी and the on-duty RPF.

7. Then the police reached out to the family of the deceased through his mobile phone, later the family arrived on a motorcycle at the location of the incident further the dead body was taken into the custody of the Civil police thanna of Manपुरी and according to the statement given by the friend of deceased Brijindra Singh he himself made sure that the deceased Arvind Kumar was on the train travelling from Shikohabad to Manपुरी and on investigating of the incident no ticket was found on the deceased nor in the close proximity of the body. Therefore, the deceased was not a bona fide passenger of the train.

8. That the Panch Nama proceeding was conducted by P.S. Dhanhar Distt Manपुरी, Civil Police and then post-mortem was conducted the very next day on 17.12.2022 at the local Hospital Manपुरी and found that the deceased died due to hemorrhagic shock Due to Ante Mortem Injuries, MLC report is attached with the following DRM report.

9. That during the initial phase of the investigation, the first arrival to the known location of the dead body was CT. Ravinder of the RPF / SKB. As no ticket was found on the body or in the close proximity of the deceased Arvind Kumar, Therefore the deceased was not a bona fide passenger of train no. 05419, later his family was telephonically informed about his accidental demise and were called upon." (reproduced in verbatim)

5. In the statutory DRM Report, it was concluded as under:-

"निष्कर्ष: घटना के सम्बन्ध में की गई जांच के दौरान दर्ज बयानात व एकत्रित दस्तावेजी साक्ष्यों के अनुसार स्पष्ट है। कि दिनांक 16.12.2022 को अरविन्द कुमार पुत्र श्री राज कुमार उम्र 24 वर्ष जाति जाटव निवासी हसनपुर थाना भोगांव जिला मैनपुरी उ०प्र० की मृत्यु कोसमा मैनपुरी के मध्य किमी० नं० 1253/16 पर ट्रैक पर अनाधिकृत रूप से बैठने के कारण गाड़ी सं० 05419 शिकोहाबाद-कासगंज पैसंजर से टकराकर हुई है।

घटना के सम्बन्ध में मृतक के पिता व मित्र द्वारा मृतक को गाड़ी सं० 05419 शिकोहाबाद-कासगंज पैसंजर से टिकट लेकर यात्रा करना दर्शाया गया है, लेकिन टिकट उपलब्ध कराने से मना किया और ना ही मौके की कार्यवाही में टिकट बरामद हुआ तथा प्रत्यक्षदर्शी गाड़ी सं० 05419 के लोको पायलट द्वारा एक अज्ञात व्यक्ति ट्रेक पर बैठा हुआ बताया गया, जिसे सचेत करने के लिए लगातार हॉर्न बजाया, लेकिन यह व्यक्ति नहीं हटा और कम दूरी होने की वजह से रन ओवर होना बताया गया। रिपोर्ट सेवा में सादर प्रेषित है।” (reproduced in verbatim)

6. The Tribunal on 17th May 2024 formulated following issues for adjudication:-

- 1) Whether the deceased was a bona fide passenger of the train in question at the time of incident?*
- 2) Whether there was any untoward incident as is defined under the provisions of Section 123(c) of Railways Act, 1989?*
- 3) Whether the applicant(s) is/are dependent(s) of the deceased?*
- 4) Whether the applicant(s) is/are entitled for any relief and interest as prayed for in the application?*
- 5) Relief if any?*

7. Sh. Raj Kumar, father of the deceased, appeared before the Tribunal. He tendered his affidavit towards examination-in-chief. He was duly cross-examined by Smt. Vinita Bakshi, counsel for the respondent. In an answer to the Court question, Sh. Raj Kumar specifically admitted that he was not an eyewitness of the occurrence. He had neither seen his son purchasing the ticket nor boarding the train nor falling from the train. He admitted that at the time of occurrence, he was at his house. In cross-examination, he admitted that the place of occurrence is at a distance of 7 KMS from his house. The witness admitted that page no. 17 of the DRM report contains his statement and the same was signed by him.

8. The Respondent examined Sh. Devendra Swarop, Loco-Pilot, who on the date of occurrence was manning Shikohabad Passenger train. He filed an affidavit towards examination-in-chief. He was examined as RW-1. The

Paras 2 and 3 of the affidavit filed before the Tribunal towards examination-in-chief read as under:-

"2. That the Deponent is very well conversant with the facts and circumstances involved in the present case and is therefore duly competent to swear this evidentiary affidavit on behalf of the Respondent regarding the incident dated 16.12.2022.

3. That to the deponent is a loco pilot (eyewitness) of train no. 05419, "Skb Passenger Express," who was posted as the locomotive pilot from Shikohabad to Farrukhabad, he saw an unknown person sitting on the railway track near KM no. 1253/16 between Koshma and Mainpuri. Despite repetitive horns to alert him and vacate the track, the unknown person did not budge. Even after repeated and continuous honking. As a result, the pilot initiated the brakes, but due to the short distance between the train and the unknown person, he was run over (MRO) by the train. The information about the incident was communicated to the DY/SSNO and the Guard of the train via VHF and UOG, were informed via TLC/TDL. The statement of deponent was recorded by RPF."
(reproduced in verbatim)

9. The witness was duly cross-examined by counsel for the applicant. He admitted that he had departed from Shikohabad at 16.13 hrs and he had reached the place of occurrence at 17.28 hrs when the deceased collided with his train. He had stopped the train and remained at the place of occurrence for two minutes, and at 17.30 hrs, he proceeded for his onward journey. He further told that Sh. Rajesh Kumar Meena was his Co-Loco Pilot and he had relayed information on VHF to the Guard and the Station Supdt.

10. Today, I have heard Sh. BS Mahur, counsel for the applicant and Smt. Vinita Bakshi, counsel for the respondent, who has joined the proceedings virtually.

FINDINGS: -

Issue Nos. 1 & 2: -

11. In the present case, Sh. Devendra Swaroop, RW-1 is an eyewitness of the occurrence. His presence is stamped at the place of occurrence. As per the duty roster, he was officially deputed to man Shikohabad Passenger train no. 05419 from Shikohabad to Farrukhabad. Thus, as per the time table, he was supposed to be at the place of occurrence. He has specifically stated that the deceased was sitting on the track and in spite of his blowing the horn constantly, the deceased had not moved from the spot and was hit by the engine. Immediately, he had recorded this information in the Loco-Pilot's Book and spontaneously, information was relayed on the wireless set to the Guard and the Station Master concerned. The Station Master issued a memo to the GRP and RPF. The said memo corroborates the testimony of Sh. Devendra Swaroop, RW-1. Even otherwise, the entries made in the Loco-Pilot's Book are admissible under Section 191 of the Railways Act, 1989.
12. The testimony of Sh. Devendra Swaroop, Loco-Pilot, RW-1 is free from the blemish of consultations, deliberations and improvements.. The deposition of Sh. Devendra Swaroop, RW-1 inspires confidence.
13. The only arguments advanced by Sh. BS Mahur, counsel for the applicant that the Loco-Pilot is a Railway official and is an interested witness is not tenable as in the course of official duties, Loco-Pilot manning and running the train has no personal grudge or animus against the applicants. Relying upon the testimony of RW-1, Sh. Devendra Swaroop, especially when Sh.

Raj Kumar, father of the deceased, AW-1 admitted that he was not an eyewitness of the incident and he was at his house at the time of the incident, I find no merits in the case. Thus, Issue nos. 1 and 2 are decided against the applicants and in favour of the respondent.

Issue Nos. 3, 4 & 5 :-

14. Having decided issues nos. 1 & 2 against the applicants, adjudication qua issue nos. 3, 4 & 5 pales into insignificance and is not required.

ORDER

15. In view of the discussion held above, the claim application, being devoid of merits, is hereby dismissed with no order as to costs.

(Kanwaljit Singh Ahluwalia)
Chairman