

RAILWAY CLAIMS TRIBUNAL, PRINCIPAL BENCH, DELHI
HON'BLE JUSTICE SHRI KANWALJIT SINGH AHLUWALIA,
CHAIRMAN

HON'BLE SHRI VIJAY KUMAR, MEMBER (TECHNICAL)

Case No. : OA/II(U)/DLI/198/2022
Date of filing : 06.09.2022
Reserved on : 22.09.2023
Date of Pronouncement : 10.10.2023

1. Sateesh
S/o Late Daya Chand.
2. Pooja
W/o. Sh. Sateesh.

Both R/o
H.No-342, Railway Station Noli,
New Vikas Nagar, Nani Dehat,
Ghaziabad,
Uttar Pradesh- 201102.

...Applicants

Versus

Union of India through
General Manager,
Northern Railway, Baroda House
New Delhi .

...Respondent

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

Shri Avni Kumar, Counsel for the applicant.

Ms. Jatinder Kaur, Counsel for the respondent.

J U D G M E N T

Kanwaljit Singh Ahluwalia, Chairman

1. Kapil Panwar, aged 21 years resident of Noni Dehat, Ghaziabad on 27th October, 2021, as per the pleadings after purchasing a valid second-class mail/express journey ticket, commenced his journey from Maripat in Hathras-Delhi MEMU Express Special (HRF-DLI) for coming to Delhi Shahdara. In the claim application, it is averred that when the said train was about to stop at Delhi Shahdara railway station, Kapil Panwar (hereinafter called 'deceased') who was standing at the door of the compartment to deboard at the railway station, accidentally fell down from the moving train on railway track between KM Pole 6/16 - 6/18 and died at the spot. In the claim application, it is stated that a handbag containing some clothes, money and a railway journey ticket were lost at the spot. The present claim application has been filed by Sateesh and Pooja, parents of Kapil Panwar, the deceased under Section 16 of the Railway Claims Tribunal Act praying that for the death of the deceased in an untoward incident, compensation be awarded. In the claim application, it is averred that on the day of occurrence, the deceased had gone to meet his Maternal uncle namely Aalok and the nearest railway station to the residence of maternal uncle was Maripat railway station. However, it may

be highlighted that in Para (e) of Column of Part II of claim application it is averred that:

“A MST was recovered from the body of the deceased which was valid for journey from Noli to Shivaji Bridge. But at the time of incident in question the deceased was travelling from Maripat to Delhi Shahdara on the strength of IInd class M/E railway journey ticket which was lost on the spot”

2. Upon notice issued, the respondent railway filed a written statement by way of reply along with the statutory report of DRM Exhibit R-1. In para 4 of the written statement, it is averred that it is a case of a run over as the deceased had collided with train number 04417 and this fact was affirmed by the eyewitness i.e. loco-pilot of train number 04417. It would be apposite here to reproduce para 4 of the preliminary objections raised in the written statement as **under:-**

“That as per the enquiry report, it came on record that on the date of incident, the deceased, after de-boarding the train at Shahdara Station, along with his friends was passing the Railway Line and then collided with train No. 04417 and was run over, which was also confirmed by his friends and family members as well as the eye witness i.e. loco pilot of train no. 04417. As such the case of the applicants is not covered within the definition of Section 123(C) read with Section 124-A of the Railways Act, 1989 because the accident due to the negligence of the deceased, who was unauthorizedly crossing the railway track for going to his place of work and the deceased has violated Section 156 of the Railway Act, hence the claim of the claimants is liable to be dismissed” (Reproduced in Verbatim)

3. In the statutory report of DRM, after thorough investigation by Senior Divisional Security Commissioner, RPF, Northern Railway, Delhi Division, it was concluded as **under:-**

“समस्त साक्ष्यों एवं गवाहों के बयानों के आधार पर वह स्पष्ट हैं कि मृतक व्यक्ति जो कि नियमित ट्रेन से यात्रा करके शाहदरा काम पर आता था शाहदरा स्टेशन से उतरकर अपने दोस्तों के साथ रेलवे लाइनों को पार करते हुए जा रहा था और गाडी सं० 04417 की चपेट में आकर रन ओवर हो गया जैसा कि उसके दोस्त व परिजनों ने बताया और रेलवे चश्मदीद गवाह गाडी सं० 04417 के लोको पायलट व गार्ड ने भी बताया है। अतः मृतक के साथ हुई दुर्घटना के लिए वह स्वयं जिम्मेदार हैं।”

The above conclusion was affirmed by the Divisional Railway Manager, Delhi division.

4. The Tribunal on 13th December, 2022 formulated the following issues for adjudication:

1) Whether the deceased was a bona fide passenger in the train in question at the time of incident?

2) Whether incident of death of the deceased falls under the ambit of an untoward incident as defined U/S Section 123(c) read with Section 124-A of Rlys. Act, 1989?

3) Whether the applicant(s) is only dependent(s) of the deceased?

4) Relief if any?

5. Sateesh, father of the deceased tendered his affidavit towards examination- in-chief. He was examined as AW-1. In his affidavit filed towards examination-in-chief, in para 4, it was stated that the incident in question was witnessed by Rohit, son of the Nabab Singh who was a daily passenger from Noli to Shivaji Bridge. It was further affirmed in Para 5 of the affidavit that the guard of the train had informed about the incident in question to Deputy Station Superintendent, who in turn, had informed the matter to GRP and RPF, Delhi Shahdara railway station. In the affidavit, in Para 6, it was stated that Sateesh and Pooja, being

parents, are the only dependents of the deceased. In an answer to the Court question, Sateesh AW-1 when stepped into the witness box deposed that neither he had seen his son purchasing the ticket nor boarding the train nor falling from the train. In the cross-examination, the witness stated that his son was working at Vishvasnagar whereas he was residing at Loni. His son used to commute daily from Loni to his workplace. The witness admitted that his son was having an MST (monthly railway pass) and this was recovered during the personal search of the deceased. The witness further stated that Pankaj is not known to him and he cannot say whether Pankaj, on the day of occurrence, was travelling with his son or not. The witness further stated that he is not aware that Pankaj on the day of occurrence was an eyewitness of the incident. The witness in the cross-examination further deposed that he cannot tell as to how his son had died as he was not present at the spot. The witness admitted that he is not aware as to what is written in the affidavit filed towards examination-in-chief. The witness told that the affidavit was prepared by his counsel and he has signed the same without understanding the contents of the same. The witness disclosed that he had met his son in the evening one day before the occurrence.

6. On 6th January, 2023 when Sateesh AW-1 was examined, on the same day, another witness Rohit, AW-2 also tendered his affidavit towards

examination-in-chief. The witness, Rohit AW-2 affirmed in his affidavit that on 27th October, 2021 he was travelling from Noli to Delhi Shahdara by Shamli-Delhi DMU train. When the witness got down at Delhi Shahdara and was passing through platform number 4, he saw that one boy was standing at the door of the compartment of Hathras Delhi MEMU train and he accidentally fell down from the moving train and died on the spot. It is further disclosed that he was having a railway identity card but he is not having MST as the same had been thrown in the dustbin after expiry period. It would be apposite here to reproduce para two of the affidavit of AW-2 Rohit **as under:-**

“That on 27.10.21 the deponent was travelling from Noli to Delhi Shahdara by Shamli Delhi DEMU Train. When the deponent get down at Delhi Shahdara and was passing through at P.F. No. 4. Then he saw a boy who was standing at the door of the compartment of Hathras Killah MEMU train accidently tel down from the moving from Train and died on the spot. The deponent was having his I. Card and MST. Journey from Noli to Shivaji Bridge. The deponent is having railway I. card issued on 20.10.21 but is having no MST because the same had been throw in dustbin after expiry period. Even till date the deponent is travelling on the strength of MST. Journey from Noli to Shivaji Bridge. The fair of MST for Noli to Shivaji Bridge and Noli to Delhi Shahdara is same. Hence usually the concerned railway staff by itself issue MST for Noli to Shivaji Bridge. “ (Reproduced in verbatim)

7. In cross examination, the witness stated that he is doing the work of an electrician and he used to commute daily from Noli to Shahdara. On the day of occurrence, he was travelling in the train which comes to Delhi Shahdara from Shamli and Saharanpur. The witness stated that on the day

of occurrence, he had alighted from the train at platform No. 2. He had seen Kapil, the deceased falling from the train. The deceased was travelling in a train coming from Hathras. The witness further told that the said train after stopping at the platform was moving slowly. The deceased had fallen between platform No. 3 and 4 at the place where the platform begins. On the day of travel, he was having MST. The witness stated that he had alighted at platform number 2 and was going out of the railway station from platform number 4. The witness stated as **under:-**

“मैं प्लेटफार्म के नीचे उतरकर और पटरी पार करके अपने काम पर जाता हूँ वहाँ पर एक गली बनी हुई है और बाकि लोग भी ऐसे ही जाते हैं ”

8. The admission made by the witness that from the platform he alighted on the railway line and was crossing the same and in the same manner every commuter does so has been highlighted by the counsel for the respondent during the course of arguments to contend that the residents of Loni who daily commute after alighting at the railway station step down from the platform and walk through the railway lines. Counsel for the respondent submitted that since the deceased was also a daily commuter, he was also crossing the railway lines while he was run over by the train. On 6th January, 2023 after Sateesh and Rohit were examined, counsel for the applicant closed evidence on behalf of the applicant and the case was

adjourned for respondents' evidence. The order dated 6th January 2023 is reproduced as **under:-**

“Sh. Sateesh and Sh. Rohit have tendered their affidavits towards examination-in-chief as Applicant Witness 1 and 2 respectively_ and were duly cross-examined by Sh. Mohit Sharma on behalf of Ms. Jatinder Kaur, Counsel for the Respondent. Counsel for the Applicant has closed applicant evidence on behalf of the applicants. Counsel for the Respondent prays for an adjournment to produce respondent evidence.

Witnesses are discharged. List on for 10.02.2023 RE.”

9. On 10 February 2023 the respondent examined the Dinesh Kumar, loco-pilot of train number 04217. He was examined as RW-1 and was duly cross-examined by counsel for the respondent.
10. In the affidavit filed, Dinesh Kumar, loco-pilot RW-1 stated that on 27th October 21, he was manning train number 04417 as loco-pilot. After observing all the safety measures when the train was about to enter Shahdara railway station, he was giving a horn for entering the railway station then suddenly at K.M 06/17-18, one person struck against his train. He informed about the incident to the on-duty station master, Delhi Shahdara. He further affirmed in the affidavit that he is an eyewitness to the incident as he was on duty as loco-pilot of the train which was involved in the incident. The witness also tendered the loco pilot/driver's notebook as Ex. RW1/2 in which it is specifically stated that there was a man run over at K.M. 06/17-18. In the loco-pilot book, the following note has been appended:-

“DSA-MRO at K.M no- 06/17-A. Train Stop at PF 06/11.

Check and found normal. Informe to train guard, SM/DSA and TLC/NDLS (Time- 9/42)” (Reproduced in verbatim)

11. On the date of incident, the loco pilot gave a note in the loco pilot book which is an entry within the ambit of Section 191 of the Railways Act 1989. In an answer to the Court question, the witness stated that on walkie-talkie, he informed the station master. The witness was cross-examined by Shri Avni Kumar, counsel for the applicant. The witness stated that train number 04417 was coming from Hathras Quila. When the occurrence took place, the train was entering the station and it was having a speed of 40/45 KM per hour. The occurrence had taken place before the platform. The deceased was hit on the North side. After the occurrence, the train had stopped for two minutes at Shahdara railway station. After informing the station master, under the directions of the station master, he proceeded with the train to the further station of destination. The Guard had informed him that it was the dead body of a male person. The witness stated that he had not seen the dead body, but he had seen one man colliding with his train. The witness denied the suggestion that he had not informed the station master, Shahdara about the collision of the man with his train. He also denied the suggestion that the guard of the train had given information to the station master.

12. After Dinesh Kumar, loco-pilot, RW-1 was examined, the respondent closed its evidence and the case was fixed for arguments. Then the applicant side filed an application for further examination of applicant No. 2, Smt. Pooja, mother of the deceased and wife of the applicant no. 1. The Tribunal vide order dated 26th June 2023 accepted the prayer made by counsel for the applicant and permitted Pooja, applicant no. 2 to step into the witness box. The order dated 26th June 23 is reproduced below:

“An application has been filed by counsel for the applicant praying that since applicant No. 1, who had appeared as AW-1, was not of sound mind, an opportunity be granted to examine applicant No. 2 Smt Pooja, wife of applicant No. 1 as another witness on behalf of the applicant.

Counsel for the respondent who has filed reply to the application, during the course of arguments, submitted that examination of applicant No. 2 as another witness is nothing but a ploy to fill up the lacunas which have emerged in the prosecution evidence.

We have given thoughtful consideration to the rival submissions of the parties. Applicant No. 2 is equally entitled to receive compensation. Nothing detrimental to her interest can be allowed to happen without affording an opportunity to her. Therefore, to ensure fair play and in the interest of justice, we allow the application and permit Pooja, applicant No. 2, wife of applicant No. 1 to appear as another witness on behalf of the applicant.

Shri Avni Kumar undertakes to examine Pooja, applicant No. 2 at his own responsibility on 14.07.23 towards evidence of the applicant. Needless to say that the respondent will have equal opportunity to rebut the evidence of applicant No. 2, if need be, by examining evidence on behalf of the respondent.”

13. Thereafter Pooja appearing as AW-3 tendered her affidavit towards examination-in-chief and she was duly cross-examined by Ms. Jatinder Kaur, counsel for the respondent. In her affidavit tendered towards

examination in chief, Pooja, AW-3 reiterated the same facts. However, in cross examination, she admitted that she is not an eyewitness of the occurrence. She had neither seen her son purchasing the ticket nor boarding the train nor falling from the train. She further stated that from the spot somebody had informed regarding the occurrence.

14. We have heard Shri Avni kumar, counsel for the applicant and Ms. Jatinder Kaur, counsel for the respondent. Vide Dairy no. 2432 dated 21st September 2023, counsel for the applicant had filed written arguments and the same were taken on record.

FINDINGS: -

Issue Nos. 1 and 2: -

15. In the written arguments filed it was urged that the loco-pilot of train number 04417 is not an eyewitness of the incident. It was highlighted that the matter was reported to Deputy Station Master, Delhi Shahdara railway station by the guard of the train in question and the Deputy Station Master nowhere mentions in the memo that the matter was informed by the loco-pilot to the guard and then the guard informed the Station Master. It is contended that the statement of the Deputy Station Master, Delhi Shahdara in writing is at page 37 of the DRM report and the same confirms the contents of the memo where it is recorded that an information was relayed by the guard of train number 04417 i.e Ashish

Kumar Meena. It is further stated that the loco-pilot of the train made a statement on 30th December 2021 to ASI, RPF and there also, it is not recorded that he had informed the Deputy Station Master. Thus, according to counsel for the applicant as to who relayed information, there are two versions. According to counsel for the applicant, the deceased was found lying in the platform track between line Nos. 3 and 4. Therefore, according to the counsel for the applicant, the loco-pilot could not see the collision of the train with the deceased. The counsel referred to the post-mortem report to contend that it is not a case of run over. The statement of loco-pilot has been criticised on the ground that in the loco-pilot diary, there is no mention that RW-1 Dinesh Kumar , loco-pilot had applied emergency brakes. It is further stated that train number 04417 arrived at 09:44 hours and departed at 09:46 hours. It is impossible that within two minutes, the driver shall complete all the formalities. It is contended that the driver, being a railway official, is not telling the truth and has created a version. To counter the written arguments and the submission advanced by Shri Avni kumar, during the course of arguments, Ms. Jitender Kaur, counsel for the respondent has placed reliance upon the statement of Pankaj Kumar recorded by the investigating officer in the DRM report. It is contended that Pankaj Kumar is an eyewitness who used to daily commute with his friend, the deceased Kapil, and he has stated that along with Kapil, he was crossing

the railway line when Kapil was hit by the train. It is true that the statement of Pankaj Kumar was recorded during the investigation, but we cannot read and rely upon the same as the statement made during investigation is a previous statement and hence the same can be used only to corroborate or confront a witness. The respondent has not examined Pankaj Kumar. Thus, the statement made by Pankaj Kumar, during the investigation, is not a substantive piece of evidence.

16. Having given our thoughtful consideration to the rival submissions, we have to examine as to which version is correct. Counsel for the applicant has submitted that on the day of occurrence, the deceased was coming from the house of his maternal uncle Aalok in Hathras Delhi MEMU special train from Maripat railway station. We find that the story that the deceased was coming from the house of his maternal uncle surfaced for the first time in the claim application filed. This version was created to justify the presence of dead body on the railway track at pole KM number 6/16 - 6/18. It is admitted fact that the deceased used to commute from his village to his place of work and for that he was having a monthly season ticket. It is pleaded in column 2, E of the claim application that a monthly season ticket was recovered from the body of the deceased which was valid for journey from Noli to Shivaji Bridge. It has also come in the evidence that AW-2, Rohit another persons who used to commute from Noli to Shivaji Bridge after alighting at platform number 2, crossed

the railway lines to go to the place of work. The presence of monthly season ticket from jamatalashi of the deceased justifies the stand of the respondent that the deceased after disembarking from the train was walking through the railway lines when he collided with train number 04417. Sateesh AW-1 has admitted that the deceased was residing with him and daily from Noli, he used to go to his place of work. To explain the presence of the dead body at the spot, a story was created later that the deceased was coming from the house of his maternal uncle, as otherwise, being a daily commuter his dead body could not be found between KM 06/17-18.

17. We find that the statement of AW-2. Rohit is not reliable. It is too big a chance that too at the nick of time while crossing the railway line, he had seen the deceased falling from the train on the side of platform No. 4. Rohit before the court deposed that he had disembarked from train at platform No. 2 thereafter from platform No. 4 while he was going outside the railway station, while crossing the railway lines he saw the deceased falling from the train. It is too big a chance thus it is not safe to rely upon the testimony of Rohit AW-2, who is a convenient witness introduced at a highly belated stage. The version given by Rohit had not seen the day of light before his appearance before the Court. Rohit has admitted that the police had neither taken his statement nor he had signed any statement. The admission in the cross examination that the deceased was not known

to him and upon a phone call from the father of the deceased he came into contact with claimants. His candid admission that he cannot tell as to why and how he met the father of the deceased speaks volumes about the credentials of Rohit AW-2. It is sufficient for us to hold that Rohit AW-2 is a wholly unreliable witness. We discard the testimony of Rohit AW-2 by coming to the conclusion that he is not an eyewitness of the occurrence.

18. Admittedly, AW-1. Sateesh and AW-3, Pooja are not eyewitnesses of the occurrence. Therefore, no reliance can be placed upon their testimony, as to how the occurrence took place.

19. Dinesh Kumar RW-1 as per the duty chart issued was manning train No. 04417. Immediately after the occurrence, he made entries in the driver's notebook. It is recorded in the loco-pilot's diary that he had given information to the train guard and the Station Master, Delhi Shahdara railway station and TLC, New Delhi railway station. It is accepted conduct of the loco-pilot who as per the railway rules and norms is expected never to leave the loco engine unmanned. As per rules and norms in practice, the loco-pilot has to relay information to the guard and the concerned Station Master. In an answer to the Court question, the loco-pilot specifically stated that he relayed information to the Station Master, Delhi Shahdara on walkie-talkie. Walkie-talkie is provided to the driver to relay information to the guard and the Station Master. The entry

in the loco-pilot book proves that he had relayed information to the guard of the train. It is sufficient to blunt the arguments raised in the written arguments as to how the guard had informed the Station Master. The entry in the loco-pilot book leads to a safe inference that after the loco-pilot had informed the guard, the guard had given information further to the Station Master. The entries made in the loco- pilot book are admissible under Section 191 of the Railways Act, 1989. The entries have been made spontaneously immediately after the occurrence and on the basis thereof, information had been relayed to the Station Master. Thus, in the totality of circumstances, it cannot be said that the loco-pilot is an interested witness. Utmost he is an official witness and every official witness can not be termed an interested witness unless or until any animus or other motive is attributed to such a witness. Loco-pilot has stated that he had blown horn and applied emergency brakes, yet the deceased was hit by the train manned by him. Considering that on the day of occurrence loco- pilot was posted and manning the train with which the deceased collided we rely upon the testimony of RW-1, loco-pilot Dinesh Kumar which is corroborated by the documentary evidence on record. Thus, we can safely hold that the deceased after completing his journey being a daily commuter from his village Noli was crossing the railway track when he was hit by the train in which he was not travelling. Thus, the deceased was neither a bonafide passenger nor he died in an

untoward incident as it is a case of run over by the train. The testimony of the loco-pilot, RW-1 inspires confidence. Consequently, Issue Nos. 1 and 2 are decided against the applicants and in favour of the respondent.

Issue No. 3: -

19. Having decided issues nos. 1 and 2 against the applicant, adjudication qua issue no. 3 pales into insignificance and is not required.

Issue No. 4 & 5 :-

20. In view of our findings qua issue no. 1 and 2, this issue is decided against the applicant and in favour of the respondent, by holding that no relief can be granted to the applicant and claim application is liable to be dismissed.

ORDER

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

(Vijay Kumar)
Member (Technical)

(K.S. Ahluwalia)
Chairman