



रेलवे दावा न्यायाधिकरण, प्रधानपीठ
RAILWAY CLAIMS TRIBUNAL, PRINCIPAL BENCH

HON'BLE JUSTICE SHRI K. S. AHLUWALIA, CHAIRMAN
HON'BLE SHRI VIJAY KUMAR, MEMBER (TECHNICAL)

Claim Application No. : OA/II(u)/DLI/272/2022
Date of Filing : 02.12.2022
Date of Decision : 20.09.2023

Sh. Vivesh Kumar, S/o Sh. Fulan Singh.

R/o 36, Gangora, Bajhera,
Bharthana Kushna,
Etawah,
Uttar Pradesh - 266242.

....APPLICANT

Versus

Union of India, through
General Manager,
North Central Railway,
Allahabad.

....RESPONDENT

Claim for Rs. 8,00,000/-

Smt. Ashima Sood, Counsel for the Applicant

Ms. Jatinder Kaur, Counsel for the Respondent

J U D G M E N T

By Shri Vijay Kumar, Member (Technical)

1. Sh. Vivesh Kumar, father filed the present claim application under Section 16 of Railway Claims Tribunal Act praying that for the death of his son Achendra Yadav, aged 24 years in an untoward incident on 14.05.2022,

compensation be awarded. It is the case of the applicant that Achendra Yadav (hereinafter called 'deceased') was undertaking journey by a train from Bhartahana to Etawah and he had an accidental fall as a result of which he died on the spot. Applicant has further averred that incident had occurred at KM 1150/30 and the journey ticket of the deceased was lost in the incident. It is further the case of the applicant that he had to further take a train from Etawah for going to Dadra Nagar Haveli where he was working as a Security Guard and he had come home to attend a marriage ceremony on 02.05.2022. Applicant has further averred that deceased had told his father about the journey before leaving his house. Panchayatnama and Post mortem was conducted by police officials and thereafter the body was handed over for cremation. Mother of the deceased had predeceased her son.

2. Pursuant to notice issued, respondent filed their initial reply by way of Written Statement along with Report of DRM (Ex. R-1). Respondent has vehemently denied the claim in their Written Statement stating vide Para 3, 4 & 5 as under:-

“3. That as per the enquiry report, it came on record that the deceased was not a bonafide passenger of any railway train as no journey ticket or pass has been recovered from the possession of the deceased. Further Mr. Arun Kumar, the brother of the deceased, during enquiry had given his written statement as tehreer to Inspector GRP Etawah, in which he disclosed that on 14.05.2022 in the night, his brother (Achendra Yadav)

was crossing railway line under Farukhabad bridge and then suddenly train came and he suffered injuries, which resulted into his death. As such it is a clear cut case of unauthorized trespassing, hence the claim of the applicant is liable to be dismissed.

4. That the claim petition filed by the applicant is not liable to be considered as during the enquiry, the statement of the Loco Pilot of train No.19037, who was the informant, was recorded and he has stated that on 14.5.2022 he was duty on Train No. 19037 as Loco Pilot along with co-pilot Jihender from Tundla to Kanpur and the train was running timely and at KM No. 1155/30 he saw a dead body and he informed the same to DY/SS/ETW. The Loco Pilot further stated that there was no MRO with his train, the dead body was lying at main ride, for which he given information. As such it was concluded that the incident took place with some unknown train, while the deceased was crossing the railway line, hence the applicant is not entitled to any compensation and claim application of the applicant deserves to be dismissed.

5. That when Sub Inspector Shri Sandeep Kumar Thana GRP Etawah and RPF staff Etawah attend incident place found that the deceased dead body was found in two parts, his foots are found separated from his upper body in mid of the railway track (going towards Kanpur) i.e Down line, though as per the statement of deceased's father statement deceased was travelling from Bharthana to Etawah i.e. Up line. Moreover, during enquiry contradiction has been observed in the statement of deceased father and brother, as per statement of deceased's father he went to GRP Etawah with his son Arun Kumar, whereas the deceased's brother stated that he has not given any tehreer to GRP Etawah, but two tehreer signed by the deceased's brother Arun Kumar addressed to Inspector Thana GRP Etawah is annexed with investigation report. Hence, the claim of

the applicant deserves dismissal being based on fictitious and fabricated grounds.
(Reproduced in verbatim)

3. DRM Report has also drawn similar conclusion as under:-

श्रीमान जी उपरोक्त मामले की जाँच करने पर निम्न तथ्य प्रकाश में आये जो निम्न है-

01. उक्त घटना की जाँच करने पर मृतक अचेन्द्र यादव के पास यात्रा सम्बन्धी कोई रेल टिकट का बरामद होना नहीं पाया गया।

02. उक्त घटना को 01/01/2020 संदीप कुमार थाना जी०आर०पी० इटावा व रे०सु०ब० स्टाफ इटावा द्वारा अटैण्ड करने पर पाया गया कि मृतक का शरीर धड़ से कटा हुआ दो भागों में व पैर रेलवे पटरी के अन्दर (कानपुर की तरफ जाने वाली) डाउन रेलवे लाइन पर पड़े मिले। जबकि मृतक के पिता द्वारा पुत्र अचेन्द्र यादव को भरथना से इटावा आना बताया है जो अप लाइन से सम्बन्धित है।

03. उक्त घटना की जाँच में मृतक के पिता द्वारा अपने पुत्र के पास यात्रा बाबत कोई टिकट का न मिलना और नाही यात्रा से सम्बन्धित गाड़ी बताया गयी है। जबकि मृतक के पास तलासी में (पर्स आधार कार्ड, बैंक ए०टी०एम० कार्ड तथा मोबाइल फोन) आदि घटना के समय मिले पाये गये।

04. उक्त घटना की जाँच में पाया गया कि मृतक के पिता विवेश कुमार द्वारा ली गयी अरूण कुमार के नाम से लिखित तहरीर पर हस्ताक्षर होना पाया गया और विवेश कुमार से पूछताछ करने पर हस्ताक्षर करना तो स्वीकार किया गया है लेकिन बताया गया कि मैने बगैर पढ़े और जवान लडके की मृत्यु से मानसिक रूप से परेशान होने पर हस्ताक्षर करना बताया ।

05. उक्त घटना में भाई अरूण कुमार पुत्र विवेश यादव से थाना जी०आर०पी० इटावा में दी गयी लिखित तहरीर के बारे में पूछा गया तो बताया कि मेरे द्वारा जी०आर०पी० इटावा थाने में किसी भी प्रकार की कोई लिखित तहरीर नहीं दी गयी थी और ना ही मेरे द्वारा कोई हस्ताक्षर किया गया।

06. उक्त घटना में मृतक के भाई अरूण कुमार ने अपने बयान में पिता विवेश कुमार को इटावा जी०आर०पी० में अकेला जाना बताया गया है जबकि पिता विवेश कुमार

द्वारा अपने बयान में अरूण कुमार को साथ लेकर इटावा जी०आर०पी० थाना बताया गया। जो दोनों बयानों में भिन्नता दर्शाता है।

07. उक्त घटना का कोई प्रत्यक्षदर्शी साक्षी नहीं है।

08. उक्त घटना में उ०नि० संदीप कुमार द्वारा शव शिनाख्त के समय ली गयी तहरीर में मृतक के भाई अरूण कुमार द्वारा मृतक अचेन्द्र यादव को फर्रुखाबाद पुल के निकट इटावा में ट्रेन की चपेट में आने से मृत्यु होना बताया गया है जिस पर पोस्टमार्टम कराने वाले डॉक्टर के हस्ताक्षर प्रमाण है। तत्पश्चात उ०नि० संदीप कुमार द्वारा जाँच के दौरान पीडित परिवार से पुनः सम्पर्क कर तहरीर प्राप्त की गयी। जिसमें मृतक की मृत्यु रेलवे लाइन पार करते समय किसी ट्रेन से टकराकर होना दर्शाया गया है। जो जाँच रिपोर्ट का आधार है।

परिस्थितिजन साक्ष्यों व बयानातों से स्पष्ट है कि मृतक अचेन्द्र यादव पुत्र विवेश कुमार जो किसी ट्रेन से यात्रा नहीं कर रहा था, जिसकी मृत्यु डाउन मेन लाइन पर किमी स० 1155/30 इटावा- इकदिल के मध्य अनाधिकृत रूप से रेलवे लाइन क्रॉस करते समय अज्ञात किसी ट्रेन की चपेट में आकर हुई है।

4. On 15.05.2023 Tribunal framed 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 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?*

4. Sh. Vivesh Kumar, father of the deceased tendered his affidavit towards examination in chief and appeared before the Tribunal on 10.07.2023. He was examined as AW-1. He was duly cross examined by Ms. Jatinder Kaur, counsel for the Respondent.
5. Thereafter, the case was listed for arguments.

FINDINGS

6. Today, we have heard arguments advanced by both the learned counsels, gone through the pleadings made in the report of DRM and also gone through the evidences brought before us by both the learned counsels. Our findings on the issues framed are as under:-

Issue No. 1 & 2

7. We shall take up both the issues together as they are inter related.
8. It is an undisputed fact that no journey ticket was recovered from the body of the deceased or from site of the incident. Applicant has averred that journey ticket was lost in the incident. Respondent has however brought out during investigation that on 14.05.2022 loco-pilot of train no. 19307 informed Station Master, Etawah that at KM 1155/30 a dead body was lying between Dn and Up track. Based on this information, a memo was issued at 23 hours to RPF by Dy. SS, Etawah. Memo was also issued to GRP which was received at 23:28 hours and they conducted the Panchayatnama between

23:30 hours of 14.05.2022 till 09:05 hours of 15.05.2022. As per the Panchayatnama the dead body was lying on Dn track with half of his body outside the railway track and head portion inside the track with body divided in two parts at abdomen. A black purse was recovered containing his Aadhar Card, Vijaya Bank ATM Card, Admit Card of High School Examination, one loan application to Security Company Civil Protection Force, Dadar Nagar Haveli, one Rs. 1,000/- currency note, 15 Passport size photographs and a mobile phone lying slightly away from the body. Based on the Aadhar Card and the address therein family members were informed and his brother Arun Kumar was present when the Panchayatnama was prepared. Cause of the death as per Panchayatnama was train accident. We have seen the Post mortem report where his injuries have been noted which are crushed injuries of head with brain matter coming out, multiple contusion on both upper limbs with underlined bone fracture, lower part of chest badly crushed and lacerated, viscera missing, abdomen badly crushed and lacerated and separated from the body, body divided into two parts and right lower limb badly crushed and lacerated.

9. Counsel for the respondent referred to the application (Page 22/32 of DRM report) given by brother of deceased Arun Kumar to Officer In-charge, GRP, Etawah which states that deceased got run over while crossing the railway

track below Etawah, Farukkhabad Bridge. She further referred to another application which is also filed as part of the DRM Report (Page 22/32) where also it is stated that deceased had left home at 07:30 and at 11 when he tried to contact his brother, his phone was not picked up. Thereafter family members went to search for him and were informed that one person had died due to run over near Farukkhabad Bridge at Etawah. Thereafter he along with his cousin Ashish went to Etawah and identified the dead body. Father of the deceased during his testimony before the Tribunal on 10.07.2023 filed his affidavit towards examination in chief where he stated that deceased had left home in evening of 14.05.2022, 6 PM and had boarded train from Barthana to Etawah and informed him after boarding. However, in reply to a court question, deponent stated that he had gone to Bharthana and had seen his son purchasing the ticket at around 09:30 PM and after his purchasing ticket deponent had come back home. On 15.05.2022 he was informed by GRP about the accident of his son. During cross examination by counsel for the respondent about his contradiction with respect to purchase of ticket as stated in reply to Court question vis a vis his statement in the examination in chief, deponent stated that the affidavit was prepared by his counsel.

10. In the present case we find that neither any train no. has been indicated anywhere nor has it has been mentioned anywhere by which train deceased was undertaking journey. Moreover, it is also not mentioned as to which train he had to take for going from Etawah to Dadara and Nagar Haveli where he was working as a Security Guard. About the journey ticket also for the first time deponent who is also applicant and father of the deceased gave a statement before the Tribunal that he had seen his son buying the ticket whereas his affidavit is contradicting to what he has stated. Further, to that, we find that the injuries sustained by him as mentioned in the Panchayatnama and Post Mortem are such that it cannot usually happen in case of accidental fall. Division of the body in two parts, location of the body on the other track with half body inside the railway track and divided in two parts are also indicative of a case of run over. This is further fortified with the application of brother of the deceased which is in his own hand writing had given tehreer to Police Officials of GRP, Etawah stating that his brother had died while crossing the track and not as a result of accidental fall. Taking the totality of the circumstances we find that applicant's version in course of his deposition before the Tribunal is totally contrary to what was stated in the claim application and also in his examination in chief. The

testimony of the witness AW-1 is full of contradiction and difficult to rely upon. Finding it highly unreliable it needs to be discarded.

11. Relying upon the available evidences brought before us by both the learned counsels we are unable to accept the version of the applicant and are inclined to go with the findings of DRM Report that deceased was not a bona fide passenger and he had not died as a result of accidental fall.

12. Accordingly, we decide both issue no. 1 of bona fide and 2 of untoward incident against the applicant and in favour of the respondent.

ISSUE No. 3:-

13. Applicant being the father of the deceased his dependency on the deceased is established.

ISSUE No. 4 & 5 :-

14. Having decided the issue of bona fide and untoward incident against the applicant, he is held not held to be eligible to receive any compensation.

ORDER

13. The claim application being devoid of merits is dismissed without any order as to costs.

(VIJAY KUMAR)
MEMBER TECHNICAL

(JUSTICE K. S. AHLUWALIA)
CHAIRMAN