

RAILWAY CLAIMS TRIBUNAL

Ernakulam Bench

Dated – 05th February, 2024

Coram

Hon'ble Shri Sanjiv Dutt Sharma

Judicial Member

O.A(IIu)/ERS/12/2020

- 1. Rajan V.P, (F/o Late Nidhin Raj)
Aged 62 Years, S/o Kanaran,
"Sree Nilayam" Chathoth thazha,
Memunda, P.O.Memunda,
Villiappilly Amsom, Memunda Desom,
Vadakara Taluk, Kozhikode-673104**
- 2. Anitha P.P, (M/o Late Nidhin Raj)
Aged 49 Years, W/o Rajan,
"Sree Nilayam" Chathoth thazha,
Memunda, P.O.Memunda,
Villiappilly Amsom, Memunda Desom,
Vadakara Taluk, Kozhikode-673104**
- 3. Neethu Raj R, (Sister of Late Nidhin Raj)
Aged 24 Years, D/o Rajan,
"Sree Nilayam" Chathoth thazha,
Memunda, P.O.Memunda,
Villiappilly Amsom, Memunda Desom,
Vadakara Taluk, Kozhikode-673104**

____ Applicants/claimants

Vs

**Union of India,
Through General Manager,**

**Southern Railway, Chennai
&
Central Railway, Mumbai**

____ Respondent

Adv. For the Applicant – Shri. U P Balakrishnan

Adv. For the Respondent Railways – Shri. Anish Jain

JUDGEMENT

The claimants/applicants have preferred the present claim application, against the Railways/respondent, under section 16 of Railway Claims Tribunal Act, 1987, for seeking compensation, from the Railways/respondent, on account of death of the son of the applicant no.1 & 2 and the brother of the applicant no. 3 namely, late Shri. Midhun Raj, (**the deceased**), who was allegedly travelling in a train, on 17/05/2019, met with an accident and died.

It is alleged by the claimants that on 17.05.2019 at about 09.15 am a dead body of an unidentified person was found between Thane and Mulund Railway stations, under Kopri Bridge near KM No.31/13.

On enquiry it was found that the deceased had fallen down from the train, while he was travelling as a passenger, from **"Thalassery to Thane."** It is alleged in the claim application that due to the accidental fall from the train, the deceased had sustained serious injuries on his head and succumbed to injuries.

The body was identified by the relatives of the deceased as Nidhin Raj, who had gone to bombay to attend an interview. It is also alleged in the claim application that the deceased was working as an Engineer.

Therefore in the interest of justice it is most humbly prayed that just and reasonable compensation of Rs.25,00,000/- may be awarded to the petitioners on account of the death of their sole breadwinner, Nidhin Raj, who died in an untoward incident on 17.05.2019 on the way to Thane by travelling in Ernakulam- Pune Express from Thalassery.

Thus, alleging that the deceased was a bonafide passenger and a sufferer of an untoward incident, as such, the claimants are entitled to a compensation from the Railways/respondent.

In reply,

At the very outset the Respondent submits that the present Application is frivolous, vexatious, bad in law, the same is not maintainable and deserves to be dismissed with costs. At the further outset, the Respondent denies each and every statements, allegations and averments contained in the Application and nothing contained therein shall be deemed to be admitted unless otherwise specifically admitted herein.

The Respondent submits that the alleged incident does not fall within the meaning of untoward incident as defined under Section 123 (C) of the Railways Act 1989. Hence the present Application deserves to be dismissed.

The Respondent submits that the DRM's report reveals that on 17.5.2019 around 08.35 hours Dy. S.S. Thane issued a memo bearing number 027423, informing that one unidentified male was found injured between Thane and Mulund station near KM No. 31/13. The injured was taken to Thane civil hospital and was declared dead around 9.55 hours.

The DRM report further states that the deceased fell down from the train as he was travelling on the footboard of the train. **The deceased was not a bonafide passenger of that particular train.**

The DRM report also confirms that the deceased was guilty under Section 137 and 156 of the Railways Act.

The Respondent submits that the alleged incident is not an untoward incident and does not fall under the purview of Section 124 -A of the Railways Act 1989 and hence the present Application ought to be dismissed in limine.

It is submitted that the deceased was travelling on the footboard of the train and he fell down from the running train due to his own negligence and died due to self-inflicted injuries. Travelling on the footboard of a train is fatal and regular announcements are made at the Railway stations as well as in trains to create awareness among the public.

The Respondent shall not be held liable for the negligence of the deceased and the application deserves to be dismissed with costs.

It is denied that the deceased was a bonafide passenger.

The ticket recovered from the deceased was from Thalassery to Thane Railway station. The incident occurred in between Thane and Mulund Railway station, which is beyond Thane Railway station.

Hence the deceased was not a bonafide passenger at the time of incident.

Thus, the Railway has prayed for the dismissal of the claim application.

I have pursued the claim application as well as the written statement filed by the Railways. Based on the above said pleadings, and material evidence placed on record, the following issues were framed for determination and adjudication in this case on 13/12/2021

- 1. Whether the applicants are the only dependents of the deceased?***
- 2. Whether the deceased was a bonafide passenger as alleged?***
- 3. Whether the incident, in which the deceased allegedly lost his life is an untoward incident, within the meaning of Sec. 123(c)(2) of Railways Act, 1989?***
- 4. Whether the applicants are entitled for compensation as claimed and other relief if any?***

In this case, the applicants in support of their claim application have tendered into evidence the affidavit of applicant no.1 and have marked the same as Ex.A-1. They have also submitted other documents and have marked the same as Ex. A2 to A16 and have closed their evidence. The applicant no.1 was examined as AW-1. Applicant no.2 was examined as AW-2 and they were also cross examined.

On the other hand, the Railway has submitted the DRM report and has marked the same as Ex-R-1 and has not examined any witness.

During the pendency of the present claim application the Ld.Advocate for the applicant sought amendment on the claim application, the Railway advocate has strongly opposed the application and filed the counter statement. Later, on 16/10/2023, applicant advocate withdrew the amendment petition for the reasons best known to him only.

In order to avoid repetition of appreciation of evidence, and for the purpose of brevity, issue No. 2 & 3 are taken up together for the purpose of discussion and orders.

Issue No. 2 & 3

It is pertinent to mention here that after the filing of the claim application, Railway files the written version and the report of the DRM. The copy of the DRM report and the copies of the entire record, on which the Railways relies upon, are supplied to the applicants/claimants, through their advocate.

After getting the version of the Railways along with the DRM report, applicants were given an opportunity to file a proof affidavit and their entire documents, which they intended to file, in support of their claim application, and this was also done in this case.

It is pertinent to mention here that admittedly the deceased was travelling from his home at Thalassery in a train up to Thane. This train starts from Ernakulam and completes its journey at Pune, for which the deceased had the proper ticket and was travelling on the strength of it. **He had completed his journey on the strength of this ticket up to Thane.**

It is again important to mention here that allegedly he was to go for an interview at Mulund, which is only 3 KM's away from Thane Railway station. The alleged train in which the deceased was travelling was not going towards Mulund side. The body of the deceased was found between Thane and Mulund at KM 31/13 and the train in which the deceased was travelling from his home has no connection with the spot where the body of the deceased was found. **It is mentioned in the synopsis, submitted by the claimants along with the claim application that the deceased was travelling in Ernakulam-Pune Express from Thalassery on 17/05/2019.**

The advocate for the applicant while submitting the written arguments has mentioned that the deceased was travelling 22114, KCVL-LTT superfast , which suits the claimants the most to get the claim. This is not in consonance with the claim application or with any documentary evidence submitted by the claimants. There is no evidence that from where the

advocate for the applicant has derived this information at the time of submitting the arguments.

It is suspected by the GRP that the deceased might be travelling in a local train and had fallen from it, since he might be travelling on the footboard etc of some local train.

It is an admitted fact that during the physical search of the deceased, his travelling ticket from his home place to Thane, was found along with one Samsung mobile, Adhar card, driving license, SBI bank ATM card and an amount of Rs.380/- along with other company cards but no local journey ticket was found from Thane to Mulund.

It is also an admitted fact that no one has seen him either purchasing any ticket for the local train boarding any local train or falling from the local train. Only his body was found near the local train track between Thane and Mulund.

If it is presumed that he was travelling on the local train, then it is to be seen whether he was having a journey ticket from Thane to Mulund and also why he was travelling on the footboard. It is pertinent to mention here that as in the claim application as well as the in the evidence it has come that the deceased was to attend an interview at Mulund, but surprisingly no evidence is brought on record to prove this fact by the applicants, no interview letter or any other evidence is produced by the applicants. I have also perused the cross examination of Smt. Anitha, her cross examination is reproduced as under.

“Court Questions:

Ans. 1. It is correct that I have not seen the incident.

Ans 2. It is correct that I have not seen my son purchasing the local ticket or entering the local train

Ans 3. I do not know where exactly the office was where my son was going to attend the interview. Self-stated that all details were in mobile.

Ans.4.I have not produced any interview letter of my son where exactly my son was going to attend interview

Ans.5.I have only hearsay information that accident occurred in place called Mulund

Ans. 6. During physical search of my son damaged Mobile phone. purse. Adhar Card, driving licence, ATM card and train ticket from Thalassery to Thane and Rs.350/- were recovered.

Ans. 7. I called my son on 17th morning and he said that train is about to reach Thane and he said that after purchasing local ticket from thane to Mulund and after having breakfast, I will call you back and he added that only 3 kms from Thane to Mulund to travel where interview is to be attended.

Railway Advocate

Q.1. How much money your son was carrying?

Ans. my son was carrying Rs.7000/- with him

Ans. 2. My husband was NRI at that time. Self-stated that now he has returned forever. Ans.3. My son was looking after the family.

Ans.4. The name of son is Nitin Raj, he was 26 years old and completed B-tech

Ans.5. It is incorrect that I am deposing falsely.

Ans.6. It is incorrect that my son was traveling without any legal authority in local train Ans. 7. It is incorrect that he was not going for any interview.

Ans.8. It is incorrect that I have changed the actual facts and have suppressed the actual story."

It is again important to mention here that the journey ticket produced by the applicants has no relevance as the deceased had completed the journey and the incident took place afterwards on some different track, 3 KM away from Thane near Mulund.

It is also stated by the claimants that he was to go for an interview near Mulund, but there is no evidence as such on the file.

The clothes of the deceased were found intact. Even his mobile phone was recovered along with ATM card, purse, the earlier journey ticket which he had done from his home place to thane, other cards and Rs.380, but no journey ticket of any local train was found during his physical search from thane to Mulund.

It is writ large on the file that everything was found from the deceased except any journey ticket between Thane to Mulund of any train.

It is also on the file that only the dead body of the deceased was found near the Railway track. There is no evidence on the file that he ever boarded any local train, purchased any ticket and had fallen from the train. There is no evidence brought on record by the applicants regarding the purpose of his journey.

Mere presence of the dead body near the Railway track without any evidence will not cover the claim of the claimants on the point that the

deceased was travelling in the train and had fallen from the train or was a bonafide passenger etc. In the claim application it is claimed that the deceased had fallen from the train which was coming from Ernakulam and the deceased was to complete his journey at Thane.

But as I have mentioned above the body of the deceased was not found on that track from where the deceased was coming, rather it is found between Thane to Mulund near a local train track. **The train in which the deceased was travelling from Thalassery to Thane has got nothing to do with the spot where the body of the deceased was found as this train doesn't go to that side.**

To my mind, the applicants did not know where actually the deceased was going, the applicants appear to be educated and do not even know about his interview for which he was allegedly going. Surprisingly the claimant changed her version in her proof affidavit and stated that her son was travelling in train no.22114 KCVL-LTT Express train, probably after knowing that the train Ernakulam to Pune which is mentioned in the claim application does not go on Thursdays and without pressing the amendment application chose to change her version in the proof affidavit. It appears that the complainants have suppressed the true and correct facts from this tribunal.

The initial onus to prove that the deceased was a bonafide passenger definitely lies on the claimants, since in this case, only the body of the deceased was found near a Railway track and there is no evidence that anybody saw him boarding any train between Thane and Mulund or even purchasing the ticket.

In this regard I am equipped with the judgement of Hon'ble Delhi High court in FAO No.149/2017 titled Rekha and another Vs. Union of India.

Again I am equipped with another judgement of hon'ble justice Shri.V.J.Mehta in case titled Ramdesh and another Vs. Union of India dated 24/01/2017.

There is another judgement of Delhi high court in a case titled kiran Vati and or Vs. Union of India in FAO no.78/2017.

It is also not the case of the claimants that the deceased boarded a local train and under compelling circumstances had to travel on the footboard and in the process, due to crowd, he had fallen from the train. But surprisingly the claimants are claiming that he was travelling in the train which starts from Ernakulam and passes through Thane. It is not their case that this train goes through Mulund.

The judgements cited by the Ld.Advocate for the applicant are not applicable in the present case.

From the perusal of the entire file it is proved that the deceased was not a bonafide passenger since no journey ticket or any legal authority to travel in the train was recovered. It is also on the file that nobody has seen the deceased doing any journey; only his body was found. No purpose of journey is proved on the file.

From the inquest panchnama it is clear that his clothes were intact and despite the recovery of a number of articles including mobile, cash etc, no journey ticket was recovered from the deceased except a ticket for a journey from his home, Thalassery to Thane, which he had already completed.

In order to make improvements in the claim application the claimants even changed their stand and moved an amendment application and later withdrew the same.

I feel when a contradictory and shifting stand has been taken in the original and amended applications, then it is difficult to believe the contents of the claim application. I also feel that it is highly improbable that everything was recovered and only the journey ticket which the deceased was doing from Thane to Mulund was lost.

Except the bald statement of the applicants there is no other evidence brought on record to show that the deceased had boarded any train from Thane to Mulund. Even in their statement they have nowhere claimed that the deceased was travelling from

Thane to Mulund in a local train or touching the spot where the dead body of the deceased was found.

I also doubt the conduct of the police officer who has concluded in a vague manner that the deceased might have fallen from a local train.

No doubt the train ticket is lost in many cases of untoward incident and the non recovery of the train ticket is not conclusive of the aspect as to whether a person is or is not a bonafide passenger, however from the facts of this case it is clear that he was not a bonafide passenger, further it is also not proved that why he was going to Mulund.

As per the postmortem it is possible that the deceased might be walking from Thane to Mulund on the side of the Railway track and got hit by some local train as he had to attend an interview in Mulund which was very near to that place Thane, as one could go by walking.

In view of my above discussion i am of the view that the claimants have failed to prove that the deceased was a bonafide passenger or sufferer of an untoward incident or the purpose of his journey. Accordingly both the issues are decided against the applicants.

Since the issue no. 2 & 3 is decided against the applicants and in the favour of the Railways, as such, it will be a redundant exercise to adjudicate qua the remaining issues.

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

Accordingly, the claim application is dismissed. However, there is no order as to cost. File be consigned to records. The copy of this order be sent to the parties free of cost.

Pronounced in the open Tribunal, on this, the 5th day of February 2024.

(Sanjiv Dutt Sharma)
Judicial Member

