

RAILWAY CLAIMS TRIBUNAL

Ernakulam Bench

Dated – 09th February, 2024

Coram

Hon'ble Shri Sanjiv Dutt Sharma

Judicial Member

O.A(IIu)/ERS/33/2019

- 1. Chandri.K, (M/o Late Rajesh V)
Aged 73 years, (W/o. Late Unniyappan)
1 439, Hareeswaram,
Near Beach Road, Parakkal,
Mahe, Pondicherry, Pin - 673 310.**
- 2. Sheeva.V, (S/o Late Rajesh V)
Aged 43 years, (D/o. Late Unniyappan)
1 439, Hareeswaram,
Near Beach Road, Parakkal,
Mahe, Pondicherry, Pin - 673 310**

____ Applicants/claimants

Vs

**Union of India,
Through General Manager,
Southern Railway, Chennai**

____ Respondent

Adv. For the Applicant – Shri. Binoy Ram V and Shri. Dr. Stanly Chazhoor

Adv. For the Respondent Railways – Shri. M N Vedaraj

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, the brother of the applicant no. 2 namely, late Shri. Rajesh V, (**the deceased**), who was allegedly travelling in a train, on 29/03/2018, met with an accident and died.

It is alleged by the claimants that on 29-03-2018, at about 9.45 am the deceased Rajesh.V, accidentally fell down from a train and died. It is also alleged that the deceased was employed in Gulf previously and after returning from Gulf, was engaged in construction work, during the time of incident.

It is alleged that the deceased had gone to Thiruvananthapuram and Thrissur in search of a job, as informed by his friend and the untoward incident occurred, while he was returning to his native place by train, while the train reached near Kodumunda Railway station, the deceased somehow accidentally fell down from the train and died instantaneously.

It is also alleged that The Pattambi police registered the crime as Cr. No. 345/2018 and after the investigation, it was concluded that the deceased while returning from his friend's house to native place by train, accidentally fell down from the train and died due to the same.

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 to the tune of Rs.10,00,000/- from the Railways/respondent.

In reply,

The Respondent denies that the deceased had died due to an accidental fall from a train near Kodumunda Railway station on 29/03/2018.

The Respondent submits that, on 29/03/2018 at 09.35 hrs. The Station Master/Pattambi had issued a message to SI/Pattambi and all concerned that, Shri.

Jolly, Keyman/Pattambi reported that, **one male dead body aged about 45 years was found lying near Kodumunda Halt Station at KM.594/666-700.** However, the alleged incident came to light only when the Keyman noticed the dead body of the deceased and informed the Station Master/Pattambi.

Further, it is alleged by the Railways that the deceased was not a bonafide passenger, since no journey ticket or valid travel authority was recovered from the dead body of the deceased during the inquest. However, the FIR was registered, based on the complaint received from Shri. Unni Krishnan, Ward Member of Muthuthala Grama Panchayath on 29/03/2018 at 10.45 hrs.

The Respondent submits that the Para XXIV of the Inquest report clearly reveals that the dead body of the deceased had sustained injuries and was found mutilated. **The parts of the body had been shredded and scattered and as the dead body was smeared with soot and grease, it is assumed that the death happens in such cases, when the person was hit by a train. The Doctor who conducted a Post-mortem had also opined that the death had happened due to the "train run over".**

The Respondent further submits that, the statement of witnesses enclosed in the Inquest report and para 16 of the final report, also confirms that the deceased was hit by train.

The statutory investigation report of DRM's report done by ASC/RPF/Palakkad has concluded that, no journey ticket or travelling authority was recovered either from the body of the deceased or from the spot of the alleged incident. It is further stated that, there is no material evidence or eye witness to prove that the incident had occurred due to falling down of the deceased from the train.

In view of the above, it is evident that the deceased did not travel in any train and the death of the deceased has occurred due to **hit by the train.** Further, no travel authority was recovered from the dead body of the deceased during the Inquest. Therefore, the alleged incident will not come under the definition of an 'untoward

incident' Hence, the Railway is not liable to pay any compensation under Section 124-A of the Railways Act, 1989.

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 19/12/2019

- 1. Whether the deceased was a bonafide passenger?***
- 2. Whether the deceased died due to an untoward incident, within the meaning of Sec. 123(c)(2) of Railways Act, 1989?***
- 3. Whether the applicants are the only dependents of the deceased? Any other dependents?***
- 4. reliefs***

In this case, the applicants in support of their claim application have tendered into evidence the affidavit of applicant no.2 and have marked the same as Ex.A-1. They have also submitted other documents and have marked the same as Ex. A2 to A12 and have closed their evidence. The applicant no.2 was examined as AW-1. Shri. Abhilash CV, friend of the deceased is also examined as AW-2, his affidavit is marked as Ex.A-13.

On the other hand, the Railway has submitted the DRM report and has marked the same as Ex-R-1 and has examined Shri.Sanjay Panicker, ASC/PGT as RW-1 AND also the ADRM/II PGT as RW-2, his affidavit is marked as Ex.R-2 was cross examined as witnesses.

To clear some ambiguities this court has examined Shri. Velayudhan, Retired SI/Pattambi(CW-1), the document submitted by him is marked as Ex.CW1/A, was also cross examined.

In order to avoid repetition of appreciation of evidence, and for the purpose of brevity, issue No. 1 & 2 are taken up together for the purpose of discussion and orders.

Issue No. 1 & 2

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 an admitted fact that only the body of the deceased was found on the Railway track and it was cut into pieces and Greece marks were also found on the body of the deceased. As per the postmortem report the death of the deceased was due to train run over. It is also an admitted fact that no travelling authority was found during the physical search of the deceased or of the spot.

It is also on the file that from the spot, where the body was lying in mutilated condition, a purse and mobile was found and the deceased was identified on the basis of the documents in the purse and the mobile. In such a peculiar situation the initial onus to prove that the deceased was a bonafide passenger definitely lies on claimants. In this case only the body was found and that too in various body parts. It is also on the file that nobody has seen the deceased either entering any platform, purchasing any ticket or boarding any train.

The applicants have alleged in the claim petition that the deceased, on 29/03/2018 , had gone to Thiruvananthapuram and Thrissur was returning to his native place and then might have fallen from the train. As per the FIR, the body of the deceased was found lying on the southern side of the Railway station and it has come in the statement of one Shri.Unnikrishnan who firstly saw the body , reported to the police that the deceased was hit by some train, the body was crushed and mangled and was unrecognisable. Further, the Doctor who conducted the autopsy, also gave the opinion that the deceased was run over by some train.

In the inquest report, it is clearly mentioned that the body was mutilated with flesh lost and no identification marks were available.

In order to prove their case, the claimants filed the affidavit of the Smt. Sheena V, the applicant no.2, she was cross examined AW-1 and 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 him entering the platform, purchasing the ticket and boarding the train

Ans.3. at the time the alleged incident my brother was not working in gulf

Ans.4. it is correct that Rajesh is my brother

Ans.5. he was doing some mason work

Ans.6. the name of his friend in Trivandrum, to whom he has gone is Abhilash

Ans.7. the name of my elder brother is Balan

Ans.8. mother lives with Balan and wife of Balan

Ans.9. no friend of my brother lives near Kodumunda Railway Station

Ans. 10. it is correct that one Abhilash and one Suresh and a relative had gone to collect the dead body of my brother, self-stated that Abhilash is the husband of my sister

Ans.11. it is correct that before his death he was doing some construction work in Vadakara

Ans. 12. my brother left home on 27.03.2018.

Ans.13. it is correct that nothing was recovered from him.

ans. 14. Suresh is the friend of the deceased and Abhilash is the brother-in-law of the deceased

Cross examination by Railway advocate

ans.15. there was no quarrel in our house on the date of missing

Que 16. why did you told Abhilash through phone, friend of the deceased, that if your brother (deceased) is there, please stop him there

ans. 16. my brother was missing at that time, so i told him like that

ans. 17. i do not know whether my brother had any friends near Kodumunda

ans. 18. it is incorrect that some relative of the deceased was living near the place of alleged incident

ans. 19. it is incorrect that he took some work near to the place of incident

ans.20. i do not have any job, i have some Anaemia issue

ans.21. my brother is taking care of me

ans. 22. my brother was living with me, i am physically unwell

Ans.16. it is incorrect that i am deposing falsely

ANS.17. It is incorrect that i was tutored to say so”

This witness had admitted in her cross examination that she had not seen him either entering the platform, purchasing the ticket or boarding any train. Further she had stated that Shri Abhilash whom she examined as a witness had gone to collect the dead body of the deceased and is the husband of her sister(Brother in law).

She has further admitted that her brother, the deceased, was missing from home, and she told Abhilash that in case he comes to him, you should stop him there and should

not allow him to go anywhere. I have also perused the cross examination of Shri.Abhilash, who has filed his affidavit in support of the claim application that is Ex.A-2. He has stated in the cross examination that he had never met the parents of the deceased in his life, even he had not seen the house of the deceased and the deceased had visited his house only once before his death, he even did not go to the house of the deceased to pay condolences and he even doesn't know the name of the parents of the deceased.

He had further stated that the sister of the deceased called him and informed him that the deceased left home 2 days ago and further told him over phone to keep the deceased in custody and not to allow the deceased to leave his house.

He has further admitted that there was some problem in the house and that is why the sister of the deceased told him not to leave the deceased or allow him to go anywhere. He has further admitted that the deceased was unemployed for the last many years.

He has further admitted that the sister of the deceased also disclosed that the deceased was missing and a case was registered with Mahe police and police also visited him, and interrogated him. However he has stated that he cannot say what was the problem in the house of the deceased. His cross examination is reproduced as under;

“Cross examination by Railway advocate.

I was in Dubai. I know Rajesh, the deceased.

It is correct that Rajesh was room mate for 5 years in Dubai.

He was unmarried. I have never met his parents. I have not seen his house.

I do not remember his mobile contact number. It has got deleted from my mobile phone.

I was called by the court. My house is in Trivandrum.

The house of the deceased was in Mahi as per my knowledge.

The deceased has visited my house only once before his death.

When my child was born, he came to my house. Now my child is 6 years old

Cross examination by Railway Advocate.

I don't have any contact with the relatives of Rajesh.

I have read the affidavit.

Rajesh's sister has called me once.

I did not go to his house to pay my condolence

I do not know the names of the Rajesh's parents.

The advocate for the applicant has drafted the affidavit.

The proof affidavit is prepared on my instruction.
 Sister called me and informed that Rajesh has left the two day ago.
 It is correct that I have not seen the deceased either entering the platform or boarding the train.
 The deceased didn't tell me that why he came. Again said that he had come to see me.
 The deceased was working with me in same company in Dubai.
 Rajesh didn't ask me any financial help from me. He didn't say anything.
 I have asked him this much early morning why he came. He said he had just come to see me.
 He said he had no problem when he came to me. I also did not ask him. He was carrying his clothes in a plastic cover.
 I didn't notice anything unusual with him.
 I was not tutored today by some one to say so
His sister told me in phone to keep him in custody not let him to leave your house.
It is correct that there was some problem and that is why his sister told me not to leave him.
 Sister called me in the morning.
 I was told to keep and not to let him go but before that I dropped him off at the bus stand at Vembayam Trivandrum. Again said that the deceased called me on phone and disclosed that he reached Trivandrum Railway station.
 It is incorrect that I am deposing falsely.
It is correct that he was unemployed for the last many years. He had no financial problem.
 I do not know when he left the job in Dubai. (Again after looking at his mobile he said he left Dubai in 2018.)
The sister disclosed that he is missing and the case is registered with Mahi police station regarding his missing.
After that Police visited my house. the police had interrogated me.
The police has come to me. it is incorrect that Police had doubt on me,
When the deceased left my house at 07:30 am, after that the police also had called from Mahi
My number was given to the police by my friend Vineet.
 The Police had called me only once.
 It is incorrect that the deceased was mentally depressed
 It is incorrect that I have not left him to bus station,
I have not brought any telephonic prove that he called me from the Traivandrum Railway station
I cannot say what was the problem and I don't know why his sister asked me to keep him in my house.
 When Rajesh reached the bus stand. Vineet called me at 08:30.
Vineet told me that the deceased has been missing for the last two days. Vineet also doesn't know what was the reason.
The deceased after leaving hishouse and gone to somewhere else and then came to my house.
 The deceased never told me anything about his problem and never said that he doesn't want to live.
 I came to know about his death after two days.
 The deceased told me that he is going to his house.

*Then I found his phone was switched off.
I am not depositing falsely.
I am not tutored to say so”.*

On the other hand, the Railway has submitted a detailed report of DRM and is claiming that he was run over by the train and was not travelling in any train. Except the bald statement of the applicant there is no other evidence brought on record to show that the deceased had boarded any train from a particular destination to a particular destination.

To ascertain the truth the investigating officer of the police was called as CW-1 and was cross examined. His cross examination is reproduced as under;

“Court Questions:

Ans. 1. It is correct that the FIR was lodged on the statement of Unni Krishnan

Ans.2. It is correct that he disclosed that the deceased was hit by some train near Kodumunda Railway station and is lying there on 29/03/2018 at 10:45 a.m. hours.

Ans.3 I went on the spot. When I went on the spot the body was not removed by the RPF.

Ans.4. it is correct that the body was crushed and mangled and was unrecognizable

Ans.5, the clothes on the body were shattered and torn.

Ans.6. I did not prepare any document for the identification of the body.

Ans. 7. The uncle of the deceased identified the body by recognising his shirt and pants.

Ans.8.. The clothes were shattered. I did not find anything from the body.

Ans.9.It is incorrect that the body was in the middle of the track. Again said it was on the side of the track.

Ans. 10. It is correct that his uncle disclosed that the deceased was missing from his home and a missing case was also lodged regarding his missing in Mahi police station.

Ans. 11. it is was brought to my notice by his uncle that the deceased left home in order to search a job.

Ans. 12. I did not collect any chemical analysis report after the postmortem of the deceased.

Ans . 13. I did not prepare any site plan. photos are all in police station.

Ans. 14. I was not provided with the original case file. I was given only copy. I asked for the photo. They did not provide.

Ans. 15. It is correct that during the inquest the body was not identified and it is mentioned that he was hit by the train.

Ans.16. it is correct that in my investigation there is no evidence who has seen the deceased entering the platform purchasing ticket or boarding the train.

Ans. 17. I recorded the statement of Dr.Bashir

Ans. 18. As per statement of Dr. Bashir, the deceased was hit by the train and then was run over.

Ans. 19. it is incorrect after taking bribe from the applicant aside the statement of Dr. Bashir and gave my own opinion and mentioned as he had fallen from the train. It is incorrect that this kind of practise is going with the GRP in a big way. (At this stage, photo copy of the statement recorded by this witness of Dr. Bashir is taken on the file AND MARKED AS Exhibit Z-1. Mr. Velayudhan has admitted his sign in Z-1 which is in blue circle.

Cross examination by Railway Advocate:

Ans.1. There is a slope from the track to the surface land.

Ans.2. Distance between the track and the body was about 20 feet, about 6 meters.

Ans.3. The distance from station to the spot of accident was about 6 kms.

Ans.4. it is incorrect that the deceased committed suicide.

Cross examination by Applicant's Advocate:

Ans. 1. My conclusion after investigation I have mentioned that the deceased was coming from his friend's house to his native place. His friend was living in Trivandrum. The deceased was coming from Trivandrum to mahi which is the native place of the deceased

Ans.2.As per my final conclusion, the deceased had accidentally fallen down from the train

Ans.3.It is incorrect that I am deposing falsely.

Ans.4. It is incorrect that I am tutored to say so”.

No doubt the train tickets are lost in many cases of untoward incident and the non-recovery of the ticket is not conclusive, as to whether a person is or is not a bonafide passenger however in this case his purse, his mobile was found, but no journey ticket was found.

As per the postmortem report, it is writ large that the deceased might be walking on the Railway track and got hit by some train the same opinion is given by various people.

The missing complaint against the deceased and further the act and conduct of the sister/claimant by stopping the friend Abhilash to not to allow the deceased to leave house creates doubt on the version of the claimants.

It appears that the claimants have suppressed the true and correct facts from this tribunal and have not approached this tribunal with truth.

In view of my above discussion the applicants have failed to prove to the satisfaction of this tribunal by bringing satisfactory evidence that the deceased was a bonafide passenger and a sufferer of an untoward incident. Accordingly, both these issues are decided against the applicant.

Since the issue no.1 & 2 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 9th day of February 2024.

(Sanjiv Dutt Sharma)
Judicial Member