

RAILWAY CLAIMS TRIBUNAL

Ernakulam Bench

Dated – 04th December, 2023

Coram

Hon'ble Shri Sanjiv Dutt Sharma

Judicial Member

O.A(IIu)/ERS/09/2021

1. Dhanya. R (W/o. Late Saraschandran Nair. B)
Aged 43 years
Kunnathiri PO,
Athavanad,
Pin- 676 301
Malappuram District, Kerala State.
2. Athul Krishna. S (S/o. Late Saraschandran Nair. B)
Aged 16 years
(Rep. by guardian & mother) Dhanya. R
Kunnathiri PO,
Athavanad,
Pin- 676 301
Malappuram District, Kerala State.
3. Anagha. S (D/o. Late Saraschandran Nair. B)
Aged 13 years
(Rep. by guardian & mother) Dhanya. R
Kunnathiri PO,
Athavanad,
Pin- 676 301
Malappuram District, Kerala State.
4. K. Sumangala Devi, (M/o. Late Saraschandran Nair. B)
Aged 61 years
W/o. Late S. Bhaskaran Pillai
Lakshmi Vilasom,
Vallom PO.
Kottarakkara-691506
Kollam District, Kerala.

____ Applicants/claimants

Vs

**Union of India,
Through General Manager,
Konkan Railway, Navi Mumbai**

____Respondent

Adv. For the Applicant – Shri. Sankaran T R

Adv. For the Respondent Railways – Shri N B Sunil Nath

JUDGMENT

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 the death of the husband of applicant no.1, the father of applicant no. 2&3 and the son of applicant no.4, namely late Shri. Saraschandran Nair. B, (the deceased), who was allegedly traveling in an unknown train, on 24/02/2018, from Goa to Mumbai and met with an accident.

It is alleged that the deceased was a Junior Telecom officer in BSNL at Mumbai. It is also alleged that the deceased was traveling from Kerala to Mumbai on 22.02.2018, after his leave and had gone to Goa on 23.02.2018, because he had some work at Ponda Telephone Exchange, where he had worked before and also had some work at Kankavli Telephone Exchange, there also he had worked earlier.

It is alleged in the claim application that he was traveling from Goa to Mumbai on 24.02.2018 and according to some telephonic talks, the applicants came to know that the deceased was traveling in a fully crowded general coach and when the said train was passing between Sawantha- wadi road and Kudal station, due to sudden jerk and push from the co-passengers, the deceased might have fallen down from the running train at Zarap, near Kudal and sustained severe injuries and succumbed to injuries.

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 of Rs.8,00,000/- with interest from the Railways/respondent.

In reply,

The railway has strongly "denied" that the deceased was a bonafide passenger. The Respondent/Railways have denied all the averments and allegations in the application, except those which are specifically admitted herein, have stated in the written statement that the applicants be put to strict proof of the same.

The Respondents submits that there is no eyewitness to substantiate that the death occurred due to falling from the train. As such, the alleged incident dated 24/02/2018 cannot be termed as an untoward incident and as such, the same does not fall within the purview of Section 123-C of the Rly Act, 1989.

The Respondents submits that the deceased was not a bonafide passenger at the time of alleged incident, as two tickets were recovered from his pocket, one is General Ticket no. 83097934 dated 24/02/2018 from Karmali to Sawant-wadi and another one is a reserve ticket of train no 11004 (Tutari Express) dated 25/02/2018 from Sawant-wadi to Dadar [Bombay].

The spot where the dead body was found is between Kudal and Zarap station, which is beyond Sawant-wadi station towards Mumbai. Applicants do not produce the authority to travel like Railway pass or Ticket beyond Sawant-wadi station towards Mumbai.

The Respondents submits that the Applicants have no personal knowledge about the incident. The Respondents deny that the Applicants are dependents and entitled for compensation as alleged. Further the Applicants have not produced documents to show that the applicants are the legal dependents of the deceased, hence the applicants are put to strict proof thereof.

The Respondent would like to submit that as per the DRM report given by Inspector, RPF/KKW, the incidence of death occurred due to passenger's own negligence and

Railway cannot be held responsible in such cases. It is notified everywhere on station, in the train compartment that passengers should not board the running train, should not travel on foot board of the compartment, even then passengers at their own risk without any valid ticket chose to travel on foot board of the compartment and fell down due to jerk at stations or at signals. Therefore the present incident does not come under the untoward incident, where the Railway Administration is responsible for payment of compensation. Copy of DRM report is annexed and marked as Exhibit -R1 collectively.

At the time of Police investigation, Railway tickets were found with the dead body of the deceased, considering the date and location of the Incidence, it does not clarify through which train the victim had fallen down. It is also clarified about the availability of tickets in the DRM Report. Hence there is scope to reveal that the victim was a trespasser.

The Claim Application is not maintainable U/sec 124 and/or U/sec 124-A of the Railway Act 1989, as the applicant have failed to make out a case as per the said provisions and as such the applicants are not entitled to any relief or compensation and therefore the application deserves to be dismissed with cost.

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 12/09/2022

- 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 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?***

The applicants in support of their application have tendered into evidence affidavit A-1 and other documents Exhibit A-2 to A-22 and the applicant no.1 (AW-1) was also cross examined by the Railway advocate.

On the other hand, Railway has submitted the DRM report and has marked the same as Exhibit.R1. The Railway has examined one witness, Shri. Rajesh Madhusudan Desai(RW1) , Commercial supervisor , Belapur, Navi Mumbai, who while deposing before this tribunal has submitted the site plan of the place, where the body of the deceased was exactly found and Konkan Railway system map. Both the documents are taken up on the file, as exhibited RW 1/a and RW 1/b.

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

Issue No. 2 & 3

Surprisingly, no cogent evidence is brought on record by the applicants, from the alleged office of the deceased, that deceased was on leave from a specific period to a specific period and was to join his duty in a specific office of the BSNL, situated at a particular place.

It is on the file that the deceased had already traveled from his alleged parental house, i.e, Kollam to Madagaon on 22.02.2018 to 23.02.2018 on the strength of a valid reserved ticket and had reached Madgaon on 23.02.2018.

It is pertinent to mention here that he had another reserved ticket to travel from Sawant-wadi to Dadar (Bombay), for 25.02.2018. But it is alleged by the Railways that there is nothing on record to prove how the deceased reached from Madgaon to Karmali on 24.02.2018. There is nothing on record whether he stayed for the night in Madgaon or in Karmali, the applicants have not stated anything in the claim application.

Surprisingly, he was to travel from Sawant-wadi to Dadar on 25.02.2018, on a reserved ticket and it was definite that he must have planned his night stay in Sawant-wadi town or somewhere around on 24.02.2018 ,so that he could go to Dadar. But as per the version of the claimants and the Railways, his body was found on 24.02.2018 between Kudal and Zarap, i.e, towards the Mumbai side. As per the version of applicants, the deceased traveled from Karmali to Sawant-wadi on 24.02.2018 on a General ticket, but his body was found towards the Bombay side between Kudal and Zarap, which is beyond his alleged destination.

It is stated by one Shri.Vipin Kumar Kannothe Nair that the deceased was his friend, he was informed that the deceased was going to Kudal for work. But surprisingly no such witness or his affidavit was produced by the applicants. Even if it is believed that the deceased was going to Kudal for official work, in that event he must have purchased a ticket for Kudal, which was never found, but other tickets were found. This shows that he was a created witness.

The applicants have stated that he had official work at Ponda and Kankavali. Surprisingly, no such record or evidence in the shape of an affidavit is produced that the deceased had any official work at Ponda or Kankavali. The applicant was an officer of BSNL, but no official of the office of the deceased has come forward to prove the same.

It is also on the file that no ticket was found from the dead body for any such alleged destination, his general ticket was only up to Sawant-wadi. Further it is also not made clear, since he was to travel from Sawant-wadi to Dadar on 25.02.2018, and that too on a reserve ticket, then why will he travel towards Bombay side, to Kudal on 24.02.2018 in advance and moreover, there is no clarity qua the fact that what official work he had in Kudal. No affidavit of any of his BSNL officials is filed by the applicants to prove the same as already stated above.

The FIR was lodged on the statement of Santhosh Balakrishna Rane, who on 24.02.2018, at 02.15PM who received a phone call from JTO BSNL Manju nath, regarding the lying of body of the deceased on the Kudal - Zarap Railway station track, who was further told to check and inform him, he later found the body of the deceased surrounded by a crowd on the spot.

It is pertinent to mention here that where the body of the deceased was found, Shri.Santhosh Balakrishna Rane also resides there, in Kudal BSNL quarters and already knew the deceased personally, also did not file any affidavit that the deceased was to visit that place on that day.

The distance between the Kudal and Zarap is only 10KM and Zarap falls under Tehsil/Block Kudal of district Sindhudurg. This witness also informed the JTO of his office and went to the police station to inform about the death of the deceased.

It is writ large on the file that only the body of the deceased was found near the Railway track between Kudal and Zarap station. It is an admitted fact that there is no evidence on the file to prove that any one has seen him either boarding the train, purchasing any ticket or falling from the train.

The Panchanama prepared by the police is showing that the track where the body of the deceased was found is a track from Bombay to Goa side like from north to south. It is also on the file that the deceased was earlier working in Kudal. The deceased was transferred from Kudal to Mumbai about 2 years ago, and was sick as such, had gone to his village in Kerala. It is mentioned in the police report that his friend Radhakrishnan Bhaskar was informed by one Shri.Saraschandran Nair, (the deceased) on phone that he will go to Kudal office from Karmali. **It is pertinent to mention here that no affidavit of this vital witness who was trying to justify the journey of the deceased up to the place where his body was found, is filed by the applicants.**

Even in the conclusion of the RPF enquiry report, it is clearly mentioned that there is nothing about the recovery of that particular Railway ticket from the belongings of the deceased as per the physical search.

It is writ large on the file that the applicants are not uneducated and even the deceased was an officer of the BSNL, but to my surprise the applicants have failed to bring any cogent or reliable or trustworthy evidence on the file to prove that the deceased was a sufferer of an untoward incident and a bonafide passenger.

I feel that the applicants have suppressed the truth in this case and have twisted the origin and genesis of the whole case, they have intentionally suppressed the material witnesses and have not brought their affidavits on record to twist the actual happening.

It is on the file that the deceased was on medical leave, but no such record was produced to prove what kind of ailment he was suffering from, and due to which, he had to take one month's leave.

It is pertinent to mention here that the deceased and his wife are educated persons and the deceased was working in a public limited company his wife is also an employee. It is argued that if the deceased had any work at Ponda telephone exchange or in Kankavli telephone exchange, the applicants in that event, must have brought evidence from the BSNL office to this tribunal to prove the same. By not bringing such vital evidence on the file definitely cuts the route of applicants' cases.

Moreover there is no proof that the deceased was carrying a bag while traveling and had intended to reschedule his Bombay journey via Kudal, instead of doing his journey on the reserved ticket on the next day, i.e, 25.02.2018.

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.

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

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 04th day of December 2023.

(Sanjiv Dutt Sharma)
Judicial Member