



रेल दावा अधिकरण
गुवाहाटी न्यायपीठ

RAILWAY CLAIMS TRIBUNAL

GUWAHATI BENCH

STATION ROAD
GUWAHATI-781001

Coram: Leena Sarma, Member (Technical)
Mahtab Ahmad, Member (Judicial)

OAIlu-51/2022

OA(IIu)/GHY/51/2022

Date of filing of claim application: 04.08.2022

Date of judgement: 28.06.2024

Shri Rinku Das,
Son of Late Kartik Das,
Resident of Village Chandria Rashmela Pathar,
P.O. & P.S. Goalpara,
District Goalpara, Assam

..... Applicants

-Versus -

The Union of India represented by
General Manager, N. F. Railway, Maligaon,
Guwahati-11, Assam

..... Respondent

Present: Mr. J. Hoque, Learned counsel for the applicant
Mr. K. Gogoi, Learned counsel for the respondent

By Mahtab Ahmad, Member (Judicial)

JUDGEMENT

1. The applicant Shri Rinku Das has filed this claim application under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 124/124A of the Railways Act, 1989 for compensation on account of death of his mother Nirmala Das, who is alleged to have died due to amputation of her both legs in an untoward incident on 10.02.2022 at Goalpara Town Railway Station.

2. In brief, the applicant's case is that the deceased Nirmala Das desired to travel on 10.02.2022 by Kavi Guru Express Train from Goalapara Town to Bongaigaon along with her daughter Dipandita Sharma and son-in-law Rajendra

Kumar Sharma. At Goalpara Town Railway Station, as soon as she tried to board the said train, the train suddenly moved with high speed, as a result of which, the deceased fell down from the train, her both legs got amputated and she died on 14.02.2022 during treatment.

3. The respondent has contested the case by filing written statement, in which it is stated that the victim Nirmala Das was not a bonafide passenger of the said train, nor the incident is an untoward incident, as defined in Section 123(c)(2) of the Railways Act, 1989. In fact, she along with her son Rinku Das (applicant) came to Goalpara Station to see off her daughter and son-in-law, who were going from Goalpara to Bongaigaon. Both she and her son (applicant) entered into Goalpara Station premises and also in the train unauthorizedly to see off her daughter and son-in-law, who were going to Rajasthan by 19616 Dn Kaviguru Express. When the train started from Goalpara Station, the victim tried to get down from the running train, due to which she fell down in between the gap of the platform and the footboard of the train, which caused fatal injury and later on she expired in the hospital; therefore the respondent railway is not responsible to pay compensation for her death.

4. DRM Report containing enquiry report, statement of the applicant, his sister Smt. Dipanita Sharma and eye witnesses is also available on the record. Crux of the DRM Report is same as the defence taken by the respondent railway in written statement.

5. On the above pleadings of the parties, the following issues were framed:-

1. Whether the deceased was a bonafide passenger?
2. Whether the death of the deceased was due to an untoward incident as defined under Section 123(c) of the Railways Act, 1989?
3. Whether the applicant is entitled for any compensation? If so, to what sum?
4. Reliefs and costs?

6. In support of the claim application, the applicant Shri Rinku Das as examined himself as AW-1 and has also filed photocopy of documentary evidences along with

the claim application viz. Memo dated 10.02.2022 issued by Station Superintendent, N. F. Railway Goalpara Town to Officer Incharge of RPF/Goalpara Town, FIR, Inquest Report, Postmortem Report, Death Certificate of Nirmala Das, Elector Photo Identity Card, High School Leaving Certificate Examination 2012 Admit Card and Bank Pass Book of Shri Rinku Das.

7. The respondent railway has examined as RW-1 Shri Ramesh Balmiki, MS/PTR of Goalpara Railway Station and relied on documentary evidences collected by the Enquiry Officer during the course of enquiry along with statement of witnesses recorded by him. The enquiry report also contains the above papers, as filed by the applicant, which is not required to be referred here again.

8. We heard the learned counsel for the parties and perused the record.

Discussion and findings on the issues

ISSUE NO.1: *Whether the deceased was a bonafide passenger?*

ISSUE NO.2: *Whether the death of the deceased was due to an untoward incident as defined under Section 123(c) of the Railways Act, 1989?*

9. Since no journey ticket has been recovered from the deceased at the time of subject incident or in the inquest or in the post mortem and the challenge of the respondent is that the deceased neither was a bonafide passenger nor she had fallen down from the running train, but the incident was caused due to her unauthorized entry along with his son, the applicant Shri Rinku Das, into the station as well as in the train and while getting down from the running train at the station after seeing off her daughter and son-in-law; therefore we have to rely upon the evidences as well as surrounding circumstances. As such, these two issues appear intrinsically co-related; therefore are taken up together for discussion.

10. It is not in dispute that on 10.02.2022, the daughter of the deceased and sister of the applicant Smt. Dipandita Sharma and her husband Shri Rajendra Kumar Sharma was scheduled to travel by Train no.19616 Kaviguru Express from Goalpara Railway Station to Rajasthan with a reserved journey ticket. The applicant has built

his case in the claim application stating that her deceased mother Nirmala Das also desired to go to Bongaigaon to visit her relatives along with her daughter and son-in-law. Since due to Covid Lockdown, selling of current general ticket was closed, the applicant had purchased an Excess Fare Ticket from the on duty Train Ticket Collector for his mother and handed it over to her. When the train arrived at Goalpara Town Railway Station, the deceased as soon as she attempted to board the train, the train moved suddenly with high speed, as a result of which, the deceased accidentally fell down from the train. Her both legs were amputated in the incident and during treatment on 14.02.2022 she died. This fact is also not in dispute that the deceased fell down from the train while the train was moving and came under the gap of the platform and the footboard, resultantly her both legs were amputated. But the question is whether she really intended to go to Bongaigaon from Goalpara along with her daughter and son-in-law, who were said to be going to Rajasthan on reserved ticket from Goalpara Railway Station by the said train? It is stated that the said train stopped on its scheduled stoppage at Goalpara Railway Station, and when the deceased tried to board the train, the train moved suddenly with high speed, as a result of which she fell down and in the incident both her legs were amputated and she later died during treatment. She in fact held a railway journey ticket for her alleged intended journey from Goalpara to Bongaigaon. However, before the Enquiry Officer, both the applicant Shri Rinku Das as well as his sister Smt. Dipanita Sharma admitted in their statement that the applicant and their deceased mother had come to Goalpara Railway Station to see off Smt. Dipanita Sharma and her husband, who were going to Rajasthan on the said train on reserved railway journey ticket. Since the daughter and her husband was going on a long journey, the natural course of affairs is that the family members accompany them at departing railway station and even enter into the train and sit with them till the time the train blows horn to start. Sometime before departure time such relative gets down from the train and sometime they try to get down from the train after whistle of the train and many a times it happens that the train begins to move. The applicant is a young man, while the deceased was an aged lady having a married daughter. Therefore, after seeing off her daughter and her in-law, in the course of getting down from the

train which was moving, the deceased fell down from the train and came in between the gap of footboard of the train and the platform. The incident in this case, as appears in its nature, is highly probable of such type of incident. In such a case, it is difficult to believe that the applicant and son of the deceased had purchased an Excess Fare Ticket from the on duty train ticket collector, which could not be recovered from her or her clothes or her belongings. Family members including the applicant was all along with the deceased. This is not a case that a passenger fell down in a lonely place and died, which was noticed after a substantial time gap and the ticket may be left in the train with the belongings or got lost in the incident. Shri Rinku Das, the applicant as AW-1 in his cross-examination by the learned counsel for the respondent Shri K. Gogoi, has admitted by stating that *“After the incident, I deposed before the Railway police and the deposition made by the Railway police is truth”*. The statement of the witness, which is available with the DRM Report, was read over to the witness, who affirmed that he had given that statement to the Enquiry Officer. He also identified his signature. Though he denied this suggestion that his mother tried to deboard from the running train, but his statement available with the DRM Report/Enquiry Report, bearing his signature, is of the fact that while her mother was trying to deboard from the running train, she slipped and fell down between the footboard and the platform and got injured in the form of amputation of both legs. We have also perused the statement of RW-1 Shri Ramesh Balmiki, MS/PTR, who stated that *“On 10.02.2022, I was performing my duty from 18 hours of 10.02.2022 to 6 hours of 11.02.2022 at Goalpara Railway Station. During my duty period, Kobiguru Express DN entered at Goalpara Railway Station at Platform No.1 at about 20:42 PM evening and when the train left Goalpara Railway Station, I heard some hue and cry and saw that one lady was fallen in between platform and footboard of the train and the train was stopped and with the help of other persons, the injured person was rescued and sent to the hospital. In the cross-examination, he has admitted that “I cannot say how the person had fallen down from the running train. After hue and cry, I rushed to the spot and found that one lady was lying between the platform. I have not seen the incident though I was at platform there at the incident happened I was standing in front of the Station Master’s room and only*

after the incident I noticed the incident. I do not mention any one or any Inquiry Officer that the deceased passenger was fallen down from the train when she tried to get down from the running train". The statement available in Inquiry Report was read over to the witness and the witness stated that he had not given any such statement to the Inquiry Officer.

11. If we take both the statements of this witness of examination in chief and cross-examination, it is no doubt that he had not seen how the deceased had fallen down from the train. But his chief examination statement that *"During my duty period, Kobiguru Express DN entered at Goalpara Railway Station at Platform No.1 at about 20:42 PM evening and when the train left Goalpara Railway Station, I heard some hue and cry and saw that one lady was fallen in between platform and footboard of the train and the train was stopped and with the help of other persons, the injured person was rescued and sent to the hospital"* is uncontroverted from his statement in the cross-examination. The above statement of this witness, clearly establishes that after the scheduled stoppage at Goalpara Station, when the Kabiguru Express, by which the daughter and son-in-law of the deceased was said to leave for Rajasthan, started to depart from Goalpara Station, the incident happened. If this statement is taken together with the case set up by the respondent on the basis of Enquiry Report, it is supporting the defense's case with preponderance of probabilities. Here, it is noticeable that the applicant Shri Rinku Das also entered into the premises of the Railway station without any platform ticket. His presence in such manner along with his mother, and his sister and brother-in-law, who were set out on their journey from Goalpara to Rajasthan, also carry us to the highly probable conclusion that both the applicant and his mother (the deceased) were at the station without any platform or journey ticket, who were there just to see off Smt. Dipandita Sharma and her husband. They went inside the train also and while deboarding from the moving train, the deceased became a victim of this fateful incident.

12. With this conclusion, the deceased's status is neither proved to be a bonafide passenger for alleged journey or otherwise, nor she was a victim of an untoward incident as defined in Section 123(c)(2) of the Railways Act, 1989. In fact, her act to

try to deboard from the moving train in view of her age, simply appears an act, to which she must have conscious knowledge that she would probably fell down from the train and get not only injured, but could also die.

13. Accordingly this case, in our view, is a case of death of a person due to self-inflicted injury. Further, the applicant also appears to be doing criminal act by trespassing into railway premises as well as in passenger train. Since both the acts fall under exceptions enumerated in Section 124-A (b) and (c) of the Railways Act, 1989 i.e. (b) self-inflicted injury; and (c) his own criminal act, the respondent railway is not liable to pay compensation for the death of the deceased.

14. For the above discussion and the reasons stated above, both the above two issues are decided negatively against the applicants and in favour of the respondent railway.

ISSUE NO.3: *Whether the applicant is entitled for any compensation? If so, to what sum?*

15. The applicant Shri Rinku Das has filed this claim application as son of the deceased. His father was no more at the time of incident, but his sister Dipandita Sharma was alive. Though she is married, she was dependant, as defined in Section 123(b)(i) of the Railways Act, 1989, as per which, the wife, husband, son and daughter are the dependant of the deceased passenger. She was not joint applicant. So Shri Rinku Das cannot be said to be a sole dependant of the deceased within the ambit of Section 123(b)(i), but his sister Dipandita Sharma is also a dependant of the deceased, who is entitled to get compensation, if the case is allowed.

16. However, in view of the conclusion arrived at Issue nos.1 and 2, since the deceased Nirmala Das is not proved to be a bonafide passenger and the incident is also not found of the nature of untoward incident within the ambit of Section 123(c)(2) of the Railways Act; and further, the cause of death also falls under exceptions of Section 124-A (b) and (c) of the Railways Act, 1989 i.e. (b) self-inflicted injury; and (c) his own criminal act, therefore, the applicant is held not

entitled to get any compensation. Accordingly this Issue no.3 is also decided negatively against the applicants and in favour of the respondent.

17. ISSUE NO.4: Reliefs and costs?

On our discussion and findings on the above three issues, the applicant is not entitled to any relief in this claim application. Accordingly this issue is also decided negatively against the applicant and in favour of the respondent.

CONCLUSION

On the above findings on issues framed in this case, it is evident that the claim application is liable to dismissed and we hold so.

ORDER

- I. Thus the net result of our findings above is to hold that application lacks merits. As such it is dismissed. However, there will be no order as to costs.
- II. Registry is directed to send a copy of this judgement to the claimant through speed post.
- III. This original application stands disposed of accordingly.
- IV. Let the case file be consigned to the record room after due compliance.

(Mahtab Ahmad)
Member (Judicial)

(Leena Sarma)
Member (Technical)

Guwahati
Dated: 28.06.2024