



रेल दावा न्यायाधिकरण
जयपुर न्यायपीठ
RAILWAY CLAIMS TRIBUNAL
JAIPUR BENCH

Claim Application No. OA-II-27/2020

CORAM: Mr. Virendra Kumar Goyal, Hon'ble Member (Judicial).
Ms. Jhanja Tripathy, Hon'ble Member (Technical).



Date of Registration: 06.02.2020
Date of Judgment: 18.10.2023

1. Jagdeesh son of Shri Prabhu, aged about 49 years.
2. Smt. Bhagavan Deai Bhagwan Devi wife of Shri Jagdeesh, aged about 43 year.

Both are residents of Jatav Basti, Ward No.37, Hindaun City, District Karauli (Rajasthan).

.....Applicants

Versus

Union of India through the General Manager, West Central Railway, Jabalpur (MP).

.....Respondent

Claim for Rs.8,00,000/- along with interest

PRESENT

Mr. Rajesh Panda, learned counsel for the applicants.
Mr. Mohan Lal Rolania, learned counsel for the respondent.

JUDGMENT

Per Virendra Kumar Goyal, Member (J.J.)

1. Case in hand has been preferred before this Tribunal by the parents of the deceased, being the only dependants, under Section 16 of the

Railway Claims Tribunal Act, 1987 read with Section 125 of the Railways Act, 1989 claiming compensation of Rs.8,00,000/- along with interest on account of death of their unmarried son Shri Lokesh in an alleged untoward incident.



2. In a nutshell, it has been averred in the claim application that on 24.8.2019 Shri Lokesh commenced his journey from Bayana to Hindaun City by Train No.54794 holding a valid second class railway journey ticket. Shri Vishnu, elder brother of Shri Lokesh came to see him off at Bayana railway station and ticket was also purchased by him for Shri Lokesh. During journey, Shri Lokesh accidentally fell down from the running train at Dumaria railway station and sustained multiple grievous injuries. Further, the Station Master on receipt of the information about this incident, in turn, informed the Government Railway Police through a Memo. Acting on the same, the Government Railway Police shifted the injured now deceased to the Government Hospital, Bayana from where after administering him first-aid, he was referred to RBM Hospital, Bharat but the injuries suffered by Shri Lokesh ultimately proved fatal and he died during treatment. It has further been averred in the claim application that the Police on receipt of the information about death of Shri Lokesh, registered an FIR bearing No.31/2019 dated 25.8.2019 under Section 174 Cr.P.C. and also completed other requisite formalities including postmortem on the dead body. Following the postmortem, the dead body of Shri Lokesh was handed over to his family members for last rites. It has been stated by the Police that the relevant railway journey ticket on which Shri Lokesh was undertaking his aforesaid journey, was lost during the course of incident and that he was a bonafide passenger of the said train at the material time.

3. To strengthen their claim, the applicants have made available on record certified copies of the Memo, FIR, Fard Panchayatnama & Surat Haal Laash, Postmortem Report, Fard Supurdagi Laash,

statements of Shri Jagdeesh & Shri Vishnu, true copies of the Aadhaar Cards, Family Ration Card and Bank details.



4. On receipt of the notice, the respondent railway administration appeared before the Tribunal and filed its written statement along with the original DRM's Report pleading therein that the copy of Memo issued by the Deputy Station Superintendent indicates that a person fell down from the train in the process of boarding the moving train. It has been pleaded on behalf of the respondent Railway Administration that during query, the injured now deceased admitted the fact that he was not having a ticket. Although the brother of the deceased came to see him off at Bayana railway station, it is not known whether the deceased purchased the ticket. The deceased met with this incident in the process of boarding the moving train. Hence, the alleged incident is covered under clause (c) to the proviso to Section 124A of the Railways Act, 1989 and, therefore, no compensation is admissible to the applicants. The alleged incident is not covered under the definition of an untoward incident within the meaning of Section 123 (c) (2) of the Railways Act, 1989. The burden lies upon the applicants to prove their case. On the basis of these and other pleas, dismissal of the claim application has been sought by the respondent Railway Administration.

5. Based on the pleadings of the parties and material made available on record, following issues were framed by the Tribunal on 25.6.2021:

- 1- *Whether the deceased was a bonafide passenger of the alleged train at the relevant time?*
- 2- *Whether the deceased died as a result of an untoward incident due to a fall from the passenger carrying train and whether the present case is covered under the definition of Section 123 (c) (2) of the Railways Act, 1989?*

3- *Whether the applicants are the sole dependants of the deceased and are entitled to compensation as claimed under Para-16 of the claim application?*

4- *Relief?*

6. In the evidence, applicant No.2 Shri Bhagavan Deai alias Bhagwan Devi has filed her examination-in-chief on affidavit. The documents filed along with the claim application, were got exhibited by her as A/1 to A/10. Besides, examination-in-chief on affidavit of Shri Vishnu has also been filed on behalf of the applicants. They were cross-examined by learned counsel for the respondent Railway Administration on 27.9.2022 and 07.11.2022.



The respondent railway administration in its evidence, has filed examination-in-chief on affidavits of Shri Gopilal Meena, Deputy Station Supdt., Dumaria and Ghughria Meena, Guard. Relevant documents were got exhibited by Shri Gopilal Meena as Ex.R/1 to R/6. They were cross-examined by learned counsel for the applicants on 22.2.2023 and 26.7.2023 respectively.

FINDINGS

8. We have carefully gone through the pleadings of the parties, material made available on record, evidence adduced by them and heard the arguments advanced on behalf of both the sides by their counsels. Our findings on the aforesaid issues are as follows:

Issue No.1 -

9. Applicant No.2 Smt. Bhagavan Deai alias Bhagwan Devi has deposed by way of her affidavit that on 24.8.2019 her son Shri Lokesh commenced his journey from Bayana to Hindaun City by Train No.54794 holding a valid second class railway journey ticket. She has further deposed that her elder son Shri Vishnu went to see off Shri Lokesh at Bayana railway station and ticket was also purchased by him for Shri Lokesh. During journey, Shri Lokesh

accidentally fell down from the running train at Dumaria railway station and sustained multiple grievous injuries. Further, the Station Master on receipt of the information about this incident, informed the Government Railway Police through a Memo. The Government Railway Police shifted the injured now deceased to the Government Hospital, Bayana from where after administering him first-aid, he was referred to RBM Hospital, Bharatpur where he died during treatment. Subsequent to the death of Shri Lokesh, the Police completed certain requisite formalities including postmortem on the dead body and handed it over to the family members for last rites. It has further been deposed by her that the relevant railway journey ticket on which her son Shri Lokesh was travelling at the material time, was lost during the course of incident and that he was a bonafide passenger of the said train at the time of occurrence of the incident. During her cross-examination nothing contradictory has come out. Applicants' witness Shri Vishnu has also deposed the same facts by way of his affidavit and during cross-examination, his testimony remained unshaken throughout.



10. *Per contra*, learned counsel for the respondent has argued that deceased was not a bonafide passenger of the alleged train at the relevant time within the meaning of Section 2 (29) read with Section 124A of the Railways Act, 1989 as on query, he himself stated that he was not having any ticket. Besides, during search made on the person of the injured, no ticket was recovered. It has also been argued by him that the said fact stands corroborated with the testimonies of both the witnesses of the respondent Railway Administration and the original DRM's Report. Hence, the claim application filed by the applicants deserves to be dismissed summarily with costs.
11. We have given our careful consideration to submissions made by both the sides and also perused the material made available on record by them.

12. First witness of the respondent Railway Administration Shri Gopilal Meena, Deputy Station Superintendent has deposed by way of his affidavit that on 24.8.2019 he was on duty at Dumaria railway station in the shift of 14.00 hours to 22.00 hours. During his working, Train No.54794 arrived at Dumaria railway station on the Loop Line No.4 at 16.11 hours and it departed from there at 16.12 hours. He has further deposed that after departure of the train, he was informed by the Guard of the said train on walkie-talkie that a person has fallen down in the process of boarding the moving train. On this, he asked Shri Virendra Singh, Pointsman to reach the site of incident. The Guard issued a Memo with regard to the said incident. On query, the injured told that he was not having any ticket. Further, he was shifted to the Hospital by 108 Ambulance Service. A Mobile and a sum of Rs.100/- were found at the site of incident. It has also been deposed by him that the injured now deceased was not a bonafide passenger at the material time and he met with this incident in the process of boarding the moving train. Hence, the applicants are not entitled to receive any compensation from the respondent Railway Administration. Relevant documents were got exhibited by him as R/1 to R/6. During cross-examination, he has stated that the Memo issued by him to the GRP and RPF does not have a mention that the injured was not having a ticket.

13. Second witness of the respondent Railway Administration Shri Ghugharia Meena, Guard of the train in question has not deposed anything with regard to the ticket.

14. The first witness of the respondent Railway Administration has deposed by way of his affidavit that the injured now deceased has admitted before him that he was not having any ticket and also during search no ticket was found. It has also been deposed by him that a Mobile and a sum of Rs.100/- were found lying near the injured. This witness of the respondent Railway Administration has

not deposed that an extensive search was also made at the site of incident to locate the ticket or other personal belongings of the injured now deceased. Hence, in view of the testimony of Shri Vishnu, elder brother of the deceased who came to see him off at Bayana railway station and also purchased a ticket for him, the possibility of missing ticket at the site of incident, in our considered view, cannot be ruled out. It is pertinent to state that the testimony of Shri Vishnu remained unrebutted and unchallenged throughout.



We feel it pertinent to state that nobody can enter into the railway station or into the train without having a valid ticket as at all entry points, Railways have deputed its staff to check authorized/unauthorized person and even in train, TTE has been deputed to check such person who does not possess a valid ticket. Thus, if a person is travelling by a train, it is presumed that he/she is travelling with a valid ticket and onus lies upon the railway authority to prove that such person was not having a ticket and as such he or she is not a bonafide passenger.

16. In the present case, the respondent Railway Administration in view of the law and principle laid down by the Hon'ble Supreme Court in the case of *Union of India v. Rina Devi 2018 SCC OnLine SC 507*, has failed to discharge the burden of proof *prima facie* shifted upon them to prove by way of sufficient evidence that deceased Shri Lokesh at the material time, was not having a valid ticket.
17. The Hon'ble Rajasthan High Court, Jaipur Bench while deciding an SB Civil Misc. Appeal No.4618/2016 on 09/11/2021 in the case of *Union of India v. Smt. Neeri Devi*, has observed under Para-15, 16 and 17, as under :-

"15. Guided by the aforesaid judgment, if we look at the statement of the PW4, this Court is satisfied that he has discharged the burden by filing an affidavit to the effect that the deceased passenger was carrying a ticket and it was, therefore, on the

railways to disprove the affidavit. However, conspicuously there is no such attempt on their part and, therefore, the affidavit stands proved. This Court also finds that the Tribunal has also opined that there is always a possibility of losing of ticket which cannot be doubted. Accident of falling from train and also of losing of ticket or losing of baggage as in the present case, are all possibilities which go in favour of the claimants. Fact of deceased travelling and falling enroute is not doubted.

16. Keeping in view the beneficiary purpose of the provision of grant of compensation, the law has to be interpreted accordingly.

17. In view of the above, this Court holds that the passenger would have to be treated as a bonafide passenger. He has fallen from a running train and an affidavit has been filed by the claimants stating that he was travelling with a ticket and other relevant circumstances also show that he was a bonafide passenger."



18. Reliance is also place on the judgment passed by the Hon'ble Rajasthan High Court in the case of *Union of India v. Hari Narayan Gupta and Anr.* dated 15/11/2006.

19. In view of the judgments quoted above, our discussions in foregoing paras and looking at the peculiar facts and circumstances of this particular case, it is held that deceased Shri Lokesh was a bonafide passenger of the train in question within the meaning of Section 2 (29) read with Section 124A of the Railways Act, 1989. Accordingly this issue is decided in favour of the applicants and against the respondent.

Issue No.2 -

20. Applicant No.2 Smt. Bhagavan Deai alias Bhagwan Devi has deposed by way of her affidavit that on 24.8.2019 her son Shri Lokesh while travelling from Bayana to Hindaun City by Train No.54794, accidentally fell down at Dumaria railway station, suffered grave injuries and died subsequently during treatment at RBM Hospital, Bharatpur. She has further deposed that her elder son Shri Vishnu went to see off Shri Lokesh at Bayana railway station and ticket was also purchased by him for Shri Vishnu.



Subsequent to the death of Shri Lokesh, the Police after completion of certain requisite formalities including postmortem on the dead body, handed it over to the family members for last rites. During cross-examination nothing contradictory has come out. Applicants' witness Shri Vishnu has also deposed the facts by way of his affidavit and during his cross-examination nothing contradictory has come out which could lead us to doubt his testimony. Applicant No.2 Smt. Bhagavan Deai alias Bhagwan Devi got the relevant documents exhibited as A/1 to A/10 filed along with the claim application.

21. Learned counsel for the respondent on the other hand, has argued that the alleged incident is not covered under the definition of an untoward incident within the meaning of Section 123 (c) (2) of the Railways Act, 1989 as the deceased met with this incident in the process of boarding the moving train. This act of the deceased is a criminal act within the meaning of Section 156 of the Railways Act, 1989 and, therefore, the alleged incident is covered under clause (c) to the proviso to Section 124A of the Railways Act, 1989 for the purpose of denying compensation to the applicants. It has further been argued by him that the said fact stands corroborated with the testimonies of both the witnesses of the respondent and the original DRM's Report. Hence, the claim application filed by the applicants is liable to be dismissed with costs.
22. First witness of the respondent Railway Administration Shri Gopilal Meena, Deputy Station Supdt., Dumaria has deposed by way of his affidavit that the deceased suffered injuries in the process of boarding the moving train. During cross-examination, he has stated that it is true that he was informed by the Guard of the train on the walkie-talkie about falling down of a person from the train. It has also been stated by him that he reached the site of incident after 4-5 minutes.



23. Second witness of the respondent Shri Ghugharia Meena, Guard has deposed by way of his affidavit that on 24.8.2019 he was working as Guard on Train No.54794 from Mathura Junction to Gangapur City. He has further deposed that after departure of the train from Dumaria railway station at 16.12 hours, a person in the process of boarding the moving train, fell down. On this, he applied the emergency brakes and after stopping the train he saw that the person suffered injuries as a result of falling down from the train. He informed the on duty Deputy Station Superintendent, Dumaria on walkie-talkie about this incident and thereafter, he started his train from there for the onward journey. Relevant entry was also made by him in the Guard's Rough Journal which is available with the DRM's Report. During cross-examination, he has stated that his statements were recorded by the RPF after a period of nine months and prior to that his statements were also recorded by the Government Railway Police. He saw the deceased lying between the platform and the railway track. It is true that he stopped the train after hearing the noise of the passengers that a person hanging on the moving train, fell down.
24. From the testimonies of both the witnesses of the respondent Railway Administration, it is amply clear that they are not the witness to the incident. Hence, relying upon their testimonies, in our considered view, shall not be justifiable to draw an adverse inference particularly when falling down of deceased Shri Lokesh from the train in question, has not been denied by the respondent Railway Administration.
25. For the sake of arguments, we feel it pertinent to state that the said incident took place soon after the departure of the train from Dumaria railway station and the said train was on the platform itself at that time. A criminal act envisaged under clause (c) to the proviso to Section 124A of the Railways Act, 1989, must have an element of malicious intent or *mens rea*. In the present case respondent has

not adduced any evidence which could prove that there was any malicious intent or *mens rea* of the deceased behind boarding the slowly moving train at platform itself.

26. The Railways Act, 1989 is a social beneficial piece of legislation to protect the bonafide travellers who have a valid ticket or authority as per the definition of Section 2 (29) read with Section 124A of the Railways Act, 1989. The action claimed under Section 124A of the Railways Act, 1989 is, thus, maintainable and it has been held to be in a form of a strict liability for which the Railways are liable to pay compensation and an action is liable to be maintained on that account and compensation is to be paid.



27. Reliance is placed on the judgment passed by the Hon'ble Supreme Court in the case of *Union of India v. Rina Devi (supra)*.

28. In view of the judgment quoted above, our discussions in foregoing paras and looking at the peculiar facts and circumstances of this case, it is held that death of Shri Lokesh happened as a result of an untoward incident due to an accidental fall from the passenger carrying train and the instant case is fully covered under the definition of Section 123 (c) (2) of the Railways Act, 1989. Accordingly, this issue is decided in favour of the applicants and against the respondent.

Issue No.3 & 4 -

29. Both these issues are being dealt with and decided together.
30. This claim application has been filed before this Tribunal by the parents of the deceased being the only dependants. Applicant No.2 Smt. Bhagavan Deai alias Bhagwan Devi vide Para-5 of her affidavit, has deposed that the deceased was her unmarried son and the present applicants are the only dependants of the deceased. To prove their dependence, copies of the Aadhaar Cards have been filed

by the applicants as Ex.A/9 and A/10. On the contrary, the respondent railway administration has not adduced any evidence whatsoever to rebut the dependence of the present applicants. Moreover, during pendency of the claim application, none else appeared before the Tribunal claiming himself/herself as one of the dependants or the sole dependant of the deceased.

31. Applying the principles laid down in *Rina Devi (supra)* in the present case, it is held that present applicants being the only dependants of the deceased within the meaning of Section 123 (b) (i) of the Railways Act, 1989, are entitled to get an amount of Rs.8,00,000/- as compensation as prescribed under Part-I of the Schedule appended to Rule 3 (3) of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 as amended on 22/12/2016 along with interest @ 9% per annum from the date of incident i.e. 24.8.2019 till the date of award. Both these issues are decided accordingly.

ORDER

32. The claim application is allowed in favour of the applicants. The respondent railway administration is directed to pay Rs.8,00,000/- to them as compensation along with interest @ 9% per annum from the date of incident i.e. 24.8.2019 till the date of award.
33. The payment shall be made to the applicants in the manner described as under:-

Name of the applicants	Amount to be paid to the applicants immediately through ECS by NEFT/RTGS to the SB Account	Amount to be invested in fixed deposit scheme of Nationalized Bank and monthly interest to be credited to the SB Account
Jagdeesh (father of the deceased)	Rs.40,000/- (Rs. forty thousand only) along with proportionate interest.	Rs.3,60,000/- (Rupees three lakh sixty thousand only). This amount will be kept in



		the form of fixed deposit for a period of three years. However, the monthly interest accrued on this amount, shall be credited to his SB Account.
Smt. Bhagavan Devi Bhagwan (mother of the deceased)	Rs.40,000/- (Rs. forty thousand only) along with proportionate interest.	Rs.3,60,000/- (Rupees three lakh sixty thousand only). This amount will be kept in the form of fixed deposit for a period of three years. However, the monthly interest accrued on this amount, shall be credited to her SB Account.

34. The respondent Railway Administration is hereby directed to deposit the amount awarded with the Additional Registrar of this Tribunal within a period of 60 days from the date of judgment failing which the applicants shall also be entitled to receive interest @ 9% per annum from the date of award till the actual date of depositing the amount with the Additional Registrar.
35. The applicants are hereby directed to submit the details of their Aadhaar linked Bank accounts of a Nationalized Bank situated nearest to their place of residence to the Additional Registrar of this Tribunal.
36. The Bank shall not permit any joint name(s) to be added in the saving Bank accounts or fixed deposit accounts of the applicants i.e. their Saving Bank Accounts shall be an individual Saving Bank Account and not a Joint Account.