



रेल दावा न्यायाधिकरण
जयपुर न्यायपीठ

RAILWAY CLAIMS TRIBUNAL
JAIPUR BENCH

Claim Application No. OA-II-59/2019

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

Date of Registration: 21.02.2019

Date of Judgment: 15.03.2024

1. Smt. Munni Bai wife of Late Shri Rajesh Kumar, aged about 33 years.
2. Santosh alias Sheetal Mahawar daughter of Late Shri Rajesh Kumar, aged about 10 years.
3. Radhika daughter of Late Shri Rajesh Kumar, aged about 05 years.

Applicants No.2 and 3 being minor hence, through their natural guardian and mother Smt. Munni Bai wife of Late Shri Rajesh Kumar.

All are residents of Ward No.11, Atru, District Baran (Rajasthan).

.....Applicants

Versus

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

....Respondent

2. Smt. Prem Bai wife of Late Shri Mannalal, aged about 66 years, resident of Ward No.11, Atru, District Baran (Rajasthan).

.....Proforma respondent

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

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PRESENT

Mr. Rajesh Panda, learned counsel for the applicants.

Mr. Mohan Lal Rolania, learned counsel for the respondent.

JUDGMENT

Per Ms. Jhanja Tripathi, Member (T.),

1. This claim application has been preferred before this Tribunal by the wife, minor daughters and widow mother 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 Shri Rajesh Kumar in an alleged untoward incident.

2. In short, it has been averred in the claim application that on 15.2.2018 Shri Rajesh Kumar commenced his journey from Kota to Ramganj Mandi by a passenger train named Janta Express holding a valid second class railway journey ticket. His younger brother Shri Pramod Kumar came to see him off at Kota railway station. During journey, in the wee hours of 15.2.2018 Shri Rajesh Kumar accidentally fell down from the running train at Dakania Talav railway station due to loss of balance, suffered grave injuries and died during treatment at MBS Hospital, Kota. It has further been pleaded on behalf of applicants that the S.H.O., Government Railway Police, Kota on receipt of the information about death of Shri Rajesh Kumar, registered an FIR bearing No.17/2018 dated 16.2.2018 under Section 174 Cr.P.C. and also completed other mandatory formalities including postmortem on the dead body. Following the postmortem, the dead body of Shri Rajesh Kumar was handed over to his family members for final rituals. It has been stated by the applicants that the relevant railway journey ticket on which Shri Rajesh Kumar was undertaking

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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. In support of their claim, the applicants have made available on record certified copies of the FIR, Fard Shinakhti Laash, Fard Naksha Mauka, Fard Surat Haal Laash & Panchayatnama, Postmortem Report, Fard Supurdagi Laash, statements of Shri Pramod Kumar & Smt. Munni Bai, true copies of the Aadhaar Cards, Family Ration Card and Bank details of the applicants.

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 denying all the averments made in the claim application filed by applicants. It has been pleaded on behalf of applicants that on 16.2.2018 deceased Shri Rajesh Kumar was found in injured condition on the left side of Down Line at Kms.912/6. He was shifted to the MBS Hospital, Kota where he died during treatment. The distance between the Down Line and UP Line is 100 - 150 meters. Hence, it is not possible that the person fell down from a train passed through UP Line, was found on the Left Side of the Down Line. As per the statement of Shri Satyanand, Gangman, the deceased found on the left side of Down Line, was got hit by some train passed through the Down Line. The deceased did not fall from Train No.19024. During search made on the person of the deceased, no ticket was recovered. Hence, it is proved that he was not a bonafide passenger at the material time. The applicants have not produced any documentary evidence which could establish the fact that Shri Pramod Kumar came to see him off at Kota railway station. The distance between UP Line and Down Line is 100 - 150 meters and, therefore, it is not possible that a person claimed to have been fallen down on the UP Line, will be found near the Down Line.

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The burden lies upon the applicants to prove their own 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 amended issues were formulated by the Tribunal on 26.12.2023:

- 1- *Whether the deceased was travelling on a valid railway journey ticket and was a bonafide passenger at the relevant time?*
- 2- *Whether the deceased met with an untoward incident due to fall from the running train, suffered injuries and died as a result thereof and if the present case is covered under the definition of Section 123 (c) (2) read with Section 124A 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-VII of the claim application?*
- 4- *Amount of relief, if any admissible?*

6. In the evidence, applicant No.1 Smt. Munni Bai has filed her own examination-in-chief on affidavit. The documents filed along with the claim application, were got exhibited by her as A/1 to A/13. Besides, examination-in-chief on affidavit of Shri Pramod Kumar has also been filed on behalf of the applicants. They were cross-examined by learned counsel for the respondent Railway Administration on 19.11.2019 and 11.12.2023 respectively.

7. Respondent Railway Administration in its evidence, has filed examination-in-chief on affidavits of Shri Ramesh Chand Nagar, Senior Pointsman and Shri Babu Lal, HATC (Halting). Relevant documents were got exhibited by them as R/1 and R/2. They were

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cross-examined by learned counsel for the applicants on 14.7.2022 and 23.8.2023 respectively.

FINDINGS

8. We have carefully gone through the pleadings of the parties, material made available on record, evidence adduced by them, certain case laws filed by the learned counsel for the applicants 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 & 2 –

9. Both these issues are being taken up and decided together.
10. Applicant No.1 Smt. Munni Bai has deposed by way of her affidavit that on 15.2.2018 her husband Shri Rajesh Kumar commenced his journey from Kota to Ramganj Mandi by a passenger train named Janta Express holding a valid second class railway journey ticket. Her brother-in-law Shri Pramod Kumar went to see him off at Kota railway station. During journey, in the intervening night of 15/16.2.2018 her husband Shri Rajesh Kumar accidentally fell down from the running train at Dakania Talav railway station due to loss of balance, suffered grave injuries and died during treatment at MBS Hospital, Kota.-She has further deposed that the S.H.O., Government Railway Police, Kota on receipt of the information about death of Shri Rajesh Kumar, completed certain requisite formalities under Section 174 Cr.P.C. including postmortem on the dead body and handed it over to the family members for last rites. It has also been deposed by her that the relevant railway journey ticket on which Shri Rajesh Kumar was performing 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. During cross-examination, she has stated

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that she is unable to tell the distance between UP and Down Lines. She is not aware if any ticket was recovered from the person of the deceased. The documents filed along with the claim application, were got exhibited by her as A/1 to A/13.



Applicants' witness Shri Pramod Kumar has deposed by way of his affidavit that deceased Shri Rajesh Kumar was his elder brother and on 15.2.2018 he was to go to Ramganj Mandi to attend a marriage and, therefore, he went to see him off Kota railway station. He has further deposed that on 15.2.2018 his elder brother Shri Rajesh Kumar was travelling from Kota to Ramganj Mandi by a passenger train named Janta Express holding a valid second class railway journey ticket. He returned to his home after seeing off his brother. It has further been deposed by him that during journey, in the intervening night of 15/16.2.2018, his elder brother Shri Rajesh Kumar accidentally fell down from the running train at Dakaniya Talav railway station. Further, he was shifted to MBS Hospital, Kota where he died during treatment. The Police after completion of certain mandatory formalities including postmortem on the dead body, handed it over to him for last rites. Shri Pramod Kumar has further deposed that the relevant railway journey ticket on which Shri Rajesh Kumar was travelling at the relevant time, was lost during the course of incident. During cross-examination, he has stated that he did not see the deceased purchasing the ticket but his deceased brother went to purchase the same in his presence. It is true that he did not see him boarding the train. It is true that he did not lodge any complaint with the Police regarding missing of bag of the deceased.

12. *Per contra*, learned counsel for the respondent Railway Administration has argued that deceased at the material time, was not a bonafide passenger within the meaning of Section 2 (29) read



with Section 124 of the Railways Act, 1989 as during search no ticket was recovered from his possession. He has further argued that death of Shri Rajesh Kumar did not happen due to alleged untoward incident as he was found lying in injured condition on the left side of Down Line at Kms. 912/6 whereas the alleged train passed through the UP Line. The distance between the UP and Down Line is 49 meters. Hence, it is proved that he was not travelling by the alleged train and, therefore, his death did not happen as a result of an untoward incident due to a fall from the passenger carrying train as defined under Section 123 (c) (2) read with Section 124A of the Railways Act, 1989. He has further argued that the said fact stands corroborated with the testimonies of both the witnesses of the respondent and the original DRM's Report. In the end, he has prayed for dismissal of the claim application with costs.

13. First witness of the respondent Railway Administration Shri Ramesh Chand Nagar has deposed by way of his affidavit that he was on duty as Senior Pointsman at Dakaniya Talav railway station in the intervening night of 15/16.2.2018. During his duty hours, he was informed by the on duty Station Master that an injured person is lying at Kms.912/06 on the Down Line. On this, he reached the site of incident along with on duty RPF staff and brought the injured to the station and subsequently shifted him to the MBS Hospital, Kota by an Ambulance. It has further been deposed by him that Train No.19024 was passed through the off side of the Dakaniya Talav in his presence and none fell down from the train on that day. The injured was found on the left side of the Down Line whereas the alleged train was passed through the UP Line. The distance between both the lines is about 100 - 150 meters. No ticket was found with the deceased during search. His statements are Ex.R/1 with the DRM's Report. During cross-examination, he has stated that he is not a witness to the

incident. It is true that the injured was alive at the time when he was brought to the station. He is unable to tell if the said person fell down from some train. He was at Station and he did not make any query from the injured. None of the Driver informed him about dashing of any person from his train. He is not aware as to when the injured sustained injuries. He is not aware that the injured after falling down from the train, walked and fell down onwards.

14. Second witness of the respondent Railway Administration Shri Babulal, HATC (Halting) has deposed by way of his affidavit that on 16.2.2018 he was on duty at Dakaniya Talav railway station and he was informed by the Deputy Station Supdt., Dakaniya Talav that a person is lying in injured condition on the left side of the Down Line. On this, he along with Shri Purushottam and Shri Ramesh Chand Nagar reached the site of incident with a Stretcher and brought the injured to the station from the left side of the railway track at Kms.912/6. The injured was not in a position to speak. During search, no ticket was found with him. Further, on the basis of the number found in the Diary of the deceased, they informed Shri Girraj Mahawar, brother of the deceased about this mishap. Later, the injured was shifted to MBS Hospital, Kota by 108 Ambulance Service. His statements recorded by the Police, are Ex.RW/2 with the DRM's report (Ex.R/1).-
- 15 We have carefully heard the submission made by both the parties and also perused the material made available on record by them.
15. Merely finding the injured lying near the railway track, does not tantamount to say that he fell down from a passenger carrying train.

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16. In the instant case, the injured was found on the left side of Down Line whereas the alleged train passed through the UP Line on that day. As per the Joint Inspection and Site Plan filed on behalf of the respondent Railway Administration as per the enclosed list, the distance between the UP and Down Line is 49 meters. Looking to the distance between the UP and Down Line, we are of the considered view, that it is not possible for a person ^{with} sustained multiple grievous injuries to reach the left side of the Down Line after covering a long distance. Besides, no ticket was found with the deceased during search. Hence, it is proved that he was not a bonafide passenger at the material time and, therefore, falling down from the train in question, in our considered view, does not arise.

18. The DRM's Report filed on behalf of the respondent Railway Administration, also indicates that the deceased did not fall from the alleged train passed through the UP Line on that day. It is pertinent to state that the deposition made by applicant No.1 Smt. Munni Bai and Shri Pramod Kumar are not accepted being affected and interested parties.

19. The Hon'ble Supreme Court while delivering judgment in the case of *Union of India v. Rina Devi* 2018 SCC OnLine SC 507, under Para-10, has observed that –

"With regard to the strict liability, it is submitted that a distinction has to be drawn between an 'untoward incident' and a 'run over'. It is submitted that in view of Kamrunissa (supra) claimants should be put to strict proof of liability.....There are 68,000 kilometers of railway track which are porous/unmanned resulting in untoward incidents for which liability ought not to be fastened on the Railways without valid proof of its liability. Andhra Pradesh

High Court in Union of India versus Kurukundu Balakrishnaiah rightly held that norms of evidence cannot be completely ignored.



20. Hence, the applicants 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 (supra)* have failed to discharge the initial burden of proof which was cast upon them to prove that the deceased was a bonafide passenger at the relevant time and his death happened as a result of an untoward incident due to a fall from the passenger carrying train.
21. The case laws relied upon by learned counsel for the applicants have no relevance with the instant case being not identical in nature. Hence, the same are of no help to the applicants.
22. In view of the judgment quoted above, our discussions in foregoing paras and looking at the peculiar facts and attending circumstances of this particular case, it is held that the deceased was not a bonafide passenger at the material time within the meaning of Section 2 (29) read with Section 124A of the Railways Act, 1989 and his death did not happen as a result of an untoward incident due to a fall from the passenger carrying as defined under Section 123 (c) (2) of the Railways Act, 1989. Accordingly, both these issues are decided against the applicants and in favour of the respondent.

Issue No. 3 –

24. In view of our findings on Issue No.1 and 2 above, this issue has become redundant and, therefore, needs no further deliberation.

Issue No.4 -

25. In view of our findings on Issue No.1 and 2 above, the applicants are not entitled to any relief whatsoever from the respondent railway administration.

ORDER

26. The claim application of the applicants fails and is hereby dismissed.
No order as to costs.

27. Judgment pronounced, signed and sealed in open Court today i.e.
15.03.2024.

(Umesh Kumar Sharma)
Member (Judicial)
RCT/Jaipur

(Jhanja Tripathy)
Member (Technical)
RCT/Jaipur