



रेल दावा न्यायाधिकरण
जयपुर न्यायपीठ
RAILWAY CLAIMS TRIBUNAL
JAIPUR BENCH

Claim Application No.: OA-II-78/2019

CORAM: Ms. Jhanja Tripathy, Hon'ble Member (Technical).

Date of Registration: 26.03.2019

Date of Judgment: 05.12.2023

Smt. Kela wife of Late Shri Arjun, aged about 56 years, resident of Village Moroli Khurd, Post Moroli Kalan, District Bharatpur (Rajasthan).

.....Applicant

Versus

Union of India through the General Manager, North Central Railway, Allahabad (UP).

....Respondent

Claim for Rs.14,00,000/- along with interest

PRESENT

Mr. Chandra Shekhar Goyal, learned counsel for the applicant.
Mr. Dinesh Kumar Verma, learned counsel for the respondent.

JUDGMENT

1. Claim application being disposed of by this order, has been preferred before this Tribunal by the widow mother of the deceased, being the sole dependant, under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 125 of the Railways Act, 1989 claiming compensation of Rs.14,00,000/- along with interest on account of death of her unmarried son Shri Pradeep in an alleged untoward incident.

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2. In a nutshell, it has been averred in the claim application that on 20.3.2018 Shri Pradeep commenced his journey from Bharatpur to Agra by a passenger train named Ahmedabad – Agra Express holding a valid second class railway journey ticket. There was rush of passengers in the general coaches of the said train. During journey, when the said train was running between Bharatpur and Nohabachabri railway stations, Shri Pradeep due to a sudden jerk of the train and resultant push of fellow coach passengers, accidentally fell down from the running train, suffered grave injuries and died on the spot. Further, the Government Railway Police, Bharatpur on receipt of the information about this incident, registered a Marg Report bearing No.02/2018 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 Pradeep was handed over to the family members for final rituals. It has further been averred in the claim application that the relevant railway journey ticket on which Shri Pradeep was performing his aforesaid journey, was lost during the course of incident. Besides, a bag which he was carrying with him at the material time, also remained untraceable.

3. In support of her claim, the applicant has made available on record certified copies of the Marg Report bearing No.02/2018, Fard Naksha Mauka, Fard Panchayatnama & Surat Haal Laash, Fard Shinakhti Laash, Fard Supurdagi Laash, Postmortem Report, true copies of the Family Ration Card, Aadhaar 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 no such incident as alleged in the claim application, took place on that day. As per the railway record, on 20.3.2018 Shri Purn Singh, Gateman posted at Level Crossing No.40, was informed about lying of a dead body between Kms.52/9-10 by a resident of nearby area. Shri Purn



Singh, in turn, informed the on duty Station Master, Railway Protection Force and Government Railway Police about the same. Further, the Police reached the site of the incident and Shri Harpal Singh searched the dead body but no ticket or any other travelling authority was recovered from the dead body. The family members of the deceased were available at the site of incident as the deceased was a resident of nearby area. It has further been pleaded on behalf of the respondent Railway Administration that as per the crew members of the alleged train, none fell down from their train on that day. As per the railway record and Police proceedings, death of Shri Pradeep happened due to a hit by some train. The said train departed from Bharatpur railway station at 6.56 hours whereas the information about lying of the dead body near the railway track, was received by the railway officials at 7.55 hours. During this period, eight trains were passed through the site of incident. Thus, it is proved that no such incident as alleged on behalf of the applicant, took place by the said train. Since the death of Shri Pradeep happened due to a hit by the train, the alleged incident is covered under clause (a), (b) and (c) to the proviso to Section 124A of the Railways Act, 1989 for which no compensation is admissible to the applicant and the present claim application *prima facie* deserves to be dismissed. The burden lies upon the applicant to prove her case. On the basis of these and other pleas, dismissal of the claim application has been sought on behalf of the respondent Railway Administration.

5. Based on the pleadings of the parties and material made available on record, following issues were formulated by the Tribunal on 06.12.2019:

- 1) Whether the deceased was travelling on a valid railway journey ticket and was a bonafide passenger of the train in question at the relevant time?



- 2) *Whether the deceased met with an untoward incident due to fall from the passenger carrying train, suffered injuries and died as a result thereof and 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 applicant is the sole dependant of the deceased and is entitled to compensation as claimed under Para-16 of the claim application?*
 - 4) *Relief?*
6. In the evidence, applicant Smt. Kela 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/8. She was cross-examined by learned counsel for the respondent Railway Administration on 05.1.2023.
7. The respondent Railway Administration in its evidence, has filed examination-in-chief on affidavit of Shri Ramesh Chand, Investigation Officer. He was cross-examined by learned counsel for the applicant on 18.4.2023.

FINDINGS

8. I 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. My findings on the aforesaid issues are as follows:

Issue No.2:

9. Since this issue was argued at length by the learned counsels for both the sides and it appears to be an important one to decide the fate of the case, the same is being dealt with and decided first.
10. Applicant Smt. Kela has deposed by way of her affidavit that on 20.3.2018 her son Shri Pradeep was travelling from Bharatpur to Agra by a passenger train named Ahmedabad - Agra Express



holding a valid second class railway journey ticket. There was rush of passengers in the train. During journey, when the said train was running between Bharatpur and Nohabachabri railway stations, Shri Pradeep due to a sudden jerk of the train and resultant push of fellow coach passengers, accidentally fell down from the running train, suffered grave injuries and died on the spot. Further, the Government Railway Police, Bharatpur after completion of certain requisite formalities including postmortem on the dead body, handed it over to the family members for final rituals. It has further been deposed by her that the relevant railway journey ticket on which Shri Pradeep was performing his aforesaid journey, was lost during the course of incident. During cross-examination, she has stated that she is not aware about the ticket. The documents filed along with the claim application, were got exhibited by her as A/1 to A/8.

11. *Per contra*, learned counsel for the respondent has vehemently argued that death of Shri Pradeep did not happen due to alleged untoward incident within the meaning of Section 123 (c) (2) of the Railways Act, 1989. He has further argued that the certified copy of Postmortem Report has been filed by the applicant as Ex.A/6 and perusal of the same indicates that postmortem on the dead body of Shri Pradeep was conducted at 10.48 hours on 20.3.2018. It has specifically been mentioned therein by the Doctors that death of Shri Pradeep happened within 12 to 24 hours before the postmortem. Hence, it is established that death of Shri Pradeep did not happen due to alleged untoward incident as the alleged train departed from Bharatpur railway station at 6.56 hours and dead body was spotted at about 7.55 hours. Meaning thereby the postmortem was conducted within 4 hours from the death of the deceased according to the applicant. It has also been argued by him that this fact stands corroborated with the testimony of the witness of the respondent Railway Administration and the original DRM's Report. In the end, it has been prayed by him that the claim

application filed by the applicant, deserves to be dismissed with costs on this ground alone.

12. I have carefully heard the submission made by both the parties and also perused the material made available on record by them.



The witness of the respondent Railway Administration Shri Ramesh Chand, Investigation Officer has deposed by way of his affidavit that enquiry in the present matter was conducted by him. During enquiry, statements of the crew members of the alleged train, were recorded and they have denied occurrence of any such incident on that day. Besides, alarm chain of the alleged train, was also not pulled on that day by any of the passengers. He has further deposed that during search made on the person of the deceased, no ticket was recovered from the person of the deceased. During cross-examination, he has stated that he is not a witness to the incident.

14. Ex.A/6 is the certified copy of Postmortem Report and perusal of the same indicates that the postmortem on the dead body was conducted at 10.48 AM on 20.3.2018 at District Hospital, Bharatpur. It has also specifically been mentioned therein that the death of Shri Pradeep happened between 12 hours to 24 hours. In the instant case, as per the extract of Station Diary and Charge book (available at Page-6 of the DRM's Report), the train in question departed from Bharatpur railway station at 6.56 hours. The information regarding lying of the dead body near the railway track, was received by the railway officials at 7.55 hours. It means the postmortem on the dead body was conducted within four hours from the death of Shri Pradeep. Hence, the approximate time of death i.e. 12 - 24 hours mentioned in the Postmortem Report clearly establishes the fact that death of Shri Pradeep had happened much prior to the departure of the said train from Bharatpur. This forensic evidence compels me to believe that death of Shri Pradeep did not happen due to a fall from the alleged train.

15. 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.

16. In the instant case although the applicant has discharged the initial burden of proof by filing her affidavit in view of law and principle laid down in *Union of India v. Rina Devi* (supra), simultaneously it is also true that her testimony cannot be taken into consideration being an affected and interested party particularly in view of the attending circumstances of the case in hand.
17. Hence, 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), the respondent Railway Administration while discharging the burden of proof *prima facie* shifted upon them, has succeeded in establishing the fact that death of Shri Pradeep did not happen as a result of an untoward incident due to a fall from the alleged train as defined under Section 123 (c) (2) of the Railways Act, 1989.
18. In view of the judgment quoted above, my discussions in foregoing paras and after taking into consideration the attending circumstances of the case, it is held that death of Shri Pradeep did

not happen due to alleged untoward incident as a result of a fall from the passenger carrying train as defined under Section 123 (c) (2) read with Section 124A of the Railways Act, 1989. Accordingly this issue is decided against the applicant and in favour of the respondent.

Issue No. 1 & 3 -

In view of my findings on Issue No. 2 above, both these issues have become redundant and hence, needs no further deliberation.

Issue No. 4 -

20. In view of my findings on Issue No. 2 above, the applicant is not entitled to any relief whatsoever from the respondent Railway Administration.

ORDER

21. The claim application of the applicant fails and is hereby dismissed. Parties to bear their own costs.
22. Judgement pronounced, signed and sealed in open Court today i.e. 05.12.2023.

(Jhanja Tripathy)
Member (Technical)
RCT/Jaipur