

BEFORE THE RAILWAY CLAIMS TRIBUNAL, JAIPUR BENCH,
JAIPUR

CORAM: SHRI LABH SINGH HON'BLE MEMBER (JUDICIAL)

Original Application: OA/IIU/JP/09/2023

Date of Filing: 25.01.2023

Judgment reserved on: 22.07.2024

Judgment pronounced on: 30.07.2024

1. Surendra alias Surendra Kumar Soni son of Late Shri Banwari Lal Soni, aged about 48 years.
2. Subhash Chandra alias Subhash Soni son of Late Shri Banwari Lal Soni, aged about 48 years.
3. Kaluram alias Kaluram Soni son of Late Shri Banwari Lal Soni, aged about 44 years.

All are residents of Ward No.14, 11 DLP, Dholipal,
Hanumangarh, District Hanumangarh (Rajasthan).

Applicants

Versus

Union of India represented by the General Manager, North-
Western Railway, Jaipur.

Respondent

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

Present:

For the applicant: Mr. Hansraj Devanda Learned Advocate

For the respondent: Mr. Mohan Lal Rolania Learned Advocate

J U D G M E N T

1. This claim application has been preferred before this Tribunal by the sons of the deceased, being the only dependants, under Section 16 of the Railway Claim Tribunal Act 1987 read with Section 124-A of the Railways Act 1989 seeking compensation for an amount of Rs. 8,00,000/- (Rupees eight lakh only) along with interest and cost thereon for the death of Shri Banwari Lal Soni (hereinafter to be referred "the deceased") arising out of an untoward accident.
2. Briefly stated the facts of the case are that on 04.9.2022 the Station Superintendent, Narwasi informed the Government Railway Police, Sadulpur (hereinafter to be referred "GRP Police") through a Memo that a dead body is lying at Narwasi railway station short to Home Signal between Kms.162/7 and 162/8. This information was conveyed by the Guard of Train No.04763 on VHF Set. Acting on the same, the GRP Police made an entry in the General Diary at 13.33 hours and reached the site of incident. The GRP Police further made another entry in the General Diary that the deceased was Shri Banwari Lal son of Shri Pura Ram, aged 72 years and his family members reached the site of incident and a written request was made by them to hand over the dead body to them without getting the postmortem conducted on the dead body. The GRP Police

Registered a Marg Report No.08/2022 dated 04/9/2022 at 20.35
hours and after completion of certain requisite formalities,
handed it over to the family members for cremation of the
dead body.

3. The case of the applicants is that on 03.9.2022 the deceased
along with his grandson Shri Ankit Soni commenced their
journey ex. Jaipur to Gogamedi by Train No.14702 Amarpura -
Aravali Express. The deceased was travelling on a second
class railway journey ticket bearing No.UDA-70814736 whereas
his grandson was travelling on a separate ticket. It has
further been averred in the claim application that the said
train was permitted to be halted at Gogamedi railway station
those days on account of Gogamedi Mela. During journey, in
the intervening night of 3/4-9-2022 when the said train was
passing through Narwasi railway station, the deceased while
going towards the toilet, accidentally fell down from the
running train between Kms.162/7-8. Since there was grass and
bushes at the site of incident, the deceased was not spotted
by anyone. Since Shri Ankit Soni was sleeping inside the
coach, he could not come to know about occurrence of the
incident. Later, The Guard of Train No.04763 after getting
information regarding lying of a dead body near Narwasi
railway station by some unknown person, in turn, informed
the Station Master, Narwasi about the same. Acting on the
same, the Station Master, Narwasi sent the Pointsman at the

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site of incident and also informed the GRP Police through a Memo regarding the same. It has also been averred in the claim application that when Shri Ankit awoke, he tried to locate the deceased but to no avail. In the meantime, the train had reached Gogamedi railway station. Shri Ankit Soni got down from the train and again tried to locate the deceased and when he did not find him, he informed his Uncle Shri Kaluram. Later, they came to know about death of the deceased due to a fall from the running train near Narwasi railway station by the Police.

4. Further, the family members made a written request to the Police to hand over the dead body of the deceased without getting the postmortem conducted on the same. Thus, the GRP Police registered a Marg Report and also completed certain requisite formalities under Section 174 Cr.P.C. and handed it over to the family members for final rituals of the deceased. It has also been averred in the claim application that the relevant railway journey ticket on which the deceased was performing his aforesaid journey, was kept by the Police in its custody after recovery from the person of the deceased and that the deceased was a bonafide passenger of the train in question at the relevant time.
5. The applicants have also stated that they have not claimed or obtained any compensation with regard to death of the

deceased in the untoward incident. Therefore, the present original application may be allowed.

6. Respondent railway appeared in pursuance of notice issued by this Tribunal and filed its written statement along with the DRM's report replying therein that present claim application has been filed un-necessarily with an intention to get undue monetary benefit. The facts mentioned therein are false and baseless. There is no wrongful act on the part of the respondent Railway Administration. Hence, it is established that the alleged incident is not covered under the definition of an untoward incident within the meaning of Section 123 (c) of the Railways Act, 1989. It has further been replied by the respondent Railway that the alleged incident took place due to negligence of the deceased himself. When Shri Ankit Soni, co-traveller with the deceased, did not find his grandfather at Gogamedi, he should have informed the GRP Police but he informed his Uncle. This act of Shri Ankit Soni creates doubt.

7. It has also been pleaded on behalf of the respondent Railway that during investigation, it could not be disclosed as to how the alleged incident took place as there is no eye-witness to the incident. Shri Ankit Soni and Shri Kaluram Soni have stated in their Report submitted before the Police that the deceased was got down from the moving train because

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of sleepwalking ailment. Hence, the alleged incident is covered under clause (d) to the proviso to Section 124A of the Railways Act, 1989 for which the respondent Railway is absolved from its liability to pay compensation to the applicants. The purpose behind the request made by the applicants for not conducting the postmortem on the dead body, was to conceal the disease by which the deceased was suffering.

8. It has further been replied by the respondent Railway that Shri Satyaveer, Pointsman was sent to the site of incident and during search made on the person of the deceased, no ticket was found. Hence, the deceased was not a bonafide passenger at the relevant time. Since the present incident is covered under clause (b) to the proviso to Section 124 of the Railways Act, 1989, the applicants are not entitled to get any compensation from the respondent Railway. 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 prayed on behalf of the respondent Railway Administration.
9. Based on the pleading of the parties, the following issues were framed by the Tribunal vide order dated 22.3.2023 for just and proper adjudication of the claim application:-

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(i) Whether the deceased was a bonafide passenger of Train No.14702 at the time of incident?

(ii) Whether the deceased died in an untoward incident as defined under Section 123(c) (2) of the Railways Act, 1989?

(iii) Whether the applicants are the dependants of the deceased and are entitled to compensation as claimed in the claim application?

(iv) Relief?

10. The applicant No. 2, in order to prove the case, examined himself as AW/01 by filing his affidavit of evidence Exh. AW1/1 in his examination in chief and reiterated the same facts as pleaded in the original claim application which are not reproduced here for the sake of brevity and he was duly cross examined thereon. He further tendered certain documents in his documentary evidence as Exh. A/1 to Exh. A/16.

11. Besides, the applicants examined Shri Ankit Soni as AW/02 by filing his affidavit of evidence Exh. AW2/2 in his examination in chief. He was cross-examined at length by learned counsel for the respondent Railway on 03.10.2023.

12. Respondent Railway, in its oral evidence, examined Shri Satyaveer Singh, Pointsman, Narwasi as RW-1 and Shri Mahesh Kumar, Enquiry Officer as RW-2. They were cross-examined by

learned counsel for the applicants on 01.11.2023 and 13.3.2024 respectively.

13. Respondent Railway has further relied upon its certified DRM report Exh. R/01 along with annexure which is already placed on record. Respondent Railway has also filed investigation report of Enquiry Officer, Railway Protection Force which is the part of the original DRM report.

14. I have gone through the case file carefully and perused the pleadings of the parties and documents placed on record by the parties and heard the arguments put forth by the Learned Counsel for both the parties; and after hearing Learned Counsel for the parties, I shall now proceed to consider the claim application on its merits, specifically within the ambit of issues framed in the present case.

Issue No. (i) & (ii)

15. Both these issues are being dealt with and decided together being inter-linked with each other.

16. The applicant no. 2, in order to prove the fact that the deceased was travelling as a bonafide passenger of the train in question and met with an untoward incident as a result of a fall from the moving train, while filing his affidavit of evidence Exh. AW1/1, has deposed that on 03.9.2022 the deceased along with his grandson Shri Ankit Soni were travelling from Jaipur to Gogamedi by Train No.14702 holding

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a valid second class railway journey ticket bearing No.UDA-70814736 where Shri Ankit Soni was travelling on a separate ticket. The said train was having a scheduled halt at Gogamedi during those days because of Gogamedi Mela. During journey, in the intervening night of 3/4-9-2022 when the said train was passing through Narwasi railway station, the deceased while going towards the toilet, accidentally fell down from the running train between Kms.162/7-8. The falling down of the deceased could not come in the notice of Shri Ankit Soni as he was sleeping inside the coach. Since there was grass and bushes at the site of incident, the dead body of the deceased could not be spotted by anyone. Later, the Guard of Train No.04763 after getting information regarding lying of a dead body near Narwasi railway station by some unknown person, in turn, informed the Station Master, Narwasi about the same. Acting on the same, the Station Master, Narwasi sent the Pointsman at the site of incident and also informed the GRP Police through a Memo regarding the same. He has further deposed that Shri Ankit Soni after coming out of his sleep, tried to locate the deceased but to no avail. In the meantime, the train had reached Gogamedi railway station. Shri Ankit Soni got down from the train and again tried to locate the deceased and when he did not find him, he informed his Uncle Shri Kaluram. Later, they came to

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know about death of the deceased by the Police due to a fall from the running train near Narwasi railway station. OA/1111/19/09/2023

17. Further, the family members made a written request to the Police to hand over the dead body of the deceased without getting the postmortem conducted on the same. The GRP Police registered a Marg Report and also completed certain requisite formalities under Section 174 Cr.P.C. and handed over the dead body of the deceased to the family members for final rituals of the deceased without postmortem on the dead body. It has also been deposed by him that the relevant railway journey ticket on which the deceased was performing his aforesaid journey, is in the custody of Police and that the deceased was a bonafide passenger of the train in question at the relevant time.

18. During cross-examination, he has stated that it is true that he did not go to the Gogamedi station after being informed by his nephew. It is true that he was not accompanying with his father at the time of incident. The facts mentioned in the affidavit that as to how the said incident took place, were as per the story narrated by his nephew to his younger brother. Ankit is not a witness to the incident. Since the GRP Police was not handing over the dead body, they did not get the postmortem conducted on the dead body. It is not so that his father was not a bonafide passenger of the train in question at the relevant time. 12

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9. The applicant's witness Shri Ankit Soni, co-traveller with the deceased, in order to prove the fact that the deceased was travelling as a bonafide passenger of the train in question and his death happened as a result of an untoward incident due to a fall from the passengers carrying train, while filing his affidavit of evidence Exh. AW2/2, has deposed that on 03.9.2022 he and his deceased grandfather commenced their journey from Jaipur to Gogamedi by Train No.14702. His grandfather was travelling on a valid second class railway journey ticket No.UDA-70814736 whereas he was travelling on a separate ticket. The said train was having a schedule halt at Gogamedi railway station those days on account on Gogamedi Mela. He has further deposed that during journey, he felt asleep and when he awoke and did not find his grandfather, he tried to locate him in the coach. On 04/9/2022 when the said train reached Gogamedi railway station, he got down there and further tried to locate his grandfather. When he did not find him there, he rang his Uncle Kaluram Soni and told him about the same. Later, they approached the Police and subsequently, they came to know by the Police that a dead body after falling down from some train, is lying near Narwasi railway station. On this, they reached the site of incident and found the dead body of their grandfather. After making a request for not to conduct



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postmortem on the dead body, the Police handed over the same to them for final rites of the deceased.

20. It has further been deposed by him that during search made on the person of the deceased, the Police after recovery of the aforesaid ticket, kept the same in its custody. It was told by the GRP Police that the death of the deceased happened due to a fall from the running train.

21. During cross-examination, his testimony remained unshaken and nothing contradictory came out which could lead me doubt his testimony.

22. The applicants have relied upon the certified copy of railway journey ticket Exh.A/1 having an endorsement made by the Police that the said ticket was recovered from the left pocket of the Kurta of the deceased.

23. The fact that the said ticket was recovered from the person of the deceased, further stands confirmed from the certified copy of Fard Surat Haal Laash Exh.A/9 as it has specifically been mention therein by the Police that during search made on the deceased, the aforesaid ticket was recovered.

24. Thus, it has been proved on record by the applicants that the deceased was a bonafide passenger of the Train No. 14702 on the date of incident within the meaning of Section 2 (29) read with Section 124A of the Railways Act, 198 as he was travelling from Jaipur to Gogamedi on a valid second class railway journey ticket and his death happened due to an

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untoward incident as a result of a fall from the train in question.

25. Thus, the applicants have discharged the burden placed on them to prove the fact that the deceased while travelling as a bonafide passenger from Jaipur to Gogamedi, died as a result of an accidental fall from the moving Train No. 14702. The onus has now been shifted upon respondent railway to disprove the case of the applicants.

26. Respondent railway has taken a plea that during investigation, it was revealed that the deceased was not a bonafide passenger of the alleged train and he met with this incident as he was suffering from sleepwalking ailment and because of the same, he got down from the running train, suffered injuries and died. Hence, it is proved that the deceased was not a bonafide passenger at the relevant time and the alleged incident is not covered under the definition of an untoward incident but the same is covered under clause (b) and (e) to the proviso to Section 124A of the Railways Act, 1989 for which no compensation is admissible to the applicants.

27. Respondent Railway, in order to substantiate its plea, has examined Shri Satyaveer Singh, Pointsman, Narwasi railway station as RW/1 and Shri Mahesh Kumar, Enquiry Officer as RW/2. RW/1 Shri Satyaveer Singh has deposed by way of his

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affidavit that on 04.9.2022 he was working as Pointsman at Narwasi railway station in the shift of 8.00 hours to 14.00 hours. During his shift, at about 12.50 hours, he was informed by Shri Nitin Kumar, Station Master that inside the Home Signal of Narwasi railway station, a dead body is lying between Kms.162/7-8 near the railway track and this information has been received by him by the Guard of Train No.04763. On this, he reached the site of incident and found the dead body lying about 4 meters away from the railway track. Later, Shri Anup Singh, ASI, GRP Police along with his staff also reached the site of incident. The dead body was lying there with amputated hand his wounds were dry. During search made in his presence, no ticket was recovered from the deceased. Further, the Police took away his dead body to Sadulpur for further formalities. During search made on the person of the dead body, no ticket or Identity Card was found. His statement are available as RW/1 with the DRM's Report (Ex.R/1).

28. During cross-examination, when he was shown his statement, he recognized his signature put thereon. It was stated by him that the said statement was given by him ten days after the occurrence of the incident. When he was shown Ex.A/9, he also recognized his signature. It has also been stated by him that he is not aware if anyone was travelling with the deceased.

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29. The testimony of this witness of the respondent RW/1 is not reliable keeping in view the fact that Ex.A/9 having his signature, has a clear cut mention regarding recovery of the aforesaid ticket from the person of the deceased. During cross-examination, this witness of the respondent Railway has admitted the fact that he signed the said document.



30. RW/2 Shri Mahesh Kumar, Enquiry Officer has deposed by way of his affidavit that enquiry in the present matter, was conducted by him and during enquiry on the basis of record and evidence, it was found that on 04.9.2022 the dead body of the deceased was found lying near the Home Signal of Narwasi railway station between Kms.162/7-8. There is no eye-witness to the incident. As per the Shri Kalu Ram Soni, son of the deceased, the deceased was suffering from sleepwalking ailment and he met with this incident due to said ailment. There is no wrongful act on the part of the respondent Railway Administration.

31. During cross-examination, he has stated that during enquiry, he recorded the statement of Shri Ankit Soni, co-traveller with the deceased which is the part of the Enquiry Report. As per the son of the deceased, the deceased was suffering from Asthma and sleepwalking ailments. The deceased and his co-passengers were fetching some medicines.

32. Although the RW/2 Shri Mahesh Kumar has deposed that the deceased was suffering from Asthma and sleepwalking and his

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death happened due to the same, no medical evidence has been placed on record that the deceased was suffering from the this ailment and there is a direct nexus between the said ailment and fall of the deceased from the running train resulting in his instantaneous death. Hence, his testimony, in my considered view, is of no help to the respondent Railway to rebut the case of the applicants.

33. On the other, recovery of a valid ticket from the person of the deceased is the concrete evidence that he was on the train going to towards Gogamedi station at the relevant time. Besides, the testimony of Shri Ankit Soni also remained unrebutted and unchallenged throughout as the respondent Railway has failed to prove him a planted witness of otherwise.

34. Therefore, in view of the facts and circumstances of the present case and law applicable thereon, it has been proved on record that the deceased while travelling as a bonafide passenger of the Train No.14702 on the date of incident, died as a result of a fall from the running train which is an untoward incident within the meaning of Section 123 (c) (2) read with Section 124-A of the Railway Act 1989. Hence, both these issues are decided in favour of the applicants and against respondent railway.

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35. Both these issues are being taken up and decided together.

36. In order to prove their identity, status and relation with the deceased, the applicants have relied upon their Aadhaar Cards and of the deceased as Exh. A/22 to A/25. The applicants have further relied upon their Ration Cards Exh. A/26 and A/26. Apart from that, the applicants have also filed the Death Certificate of the wife of the deceased as Exh.A/21. There is nothing on record to disbelieve the said evidence of the applicants to establish their relation with the deceased. The applicants being sons of the deceased are the only dependent of the deceased within the meaning of Section 123 (b) (i) of the Railway Act 1989.

37. This case pertains to an untoward incident occurred after amendment of the Railway Accidents and Untoward Incidents (Compensation) Rules 1990 vide G.S.R No. 1165(E) dated 22.12.2016 which is applicable with effect from 01.01.2017 and hence, the applicants are entitled for an amount of Rs. 8,00,000/- (Rupees eight lakh only) as compensation. The applicant no. 2 examined himself on the first date fixed by the Tribunal without any fault upon him. Therefore, applicants are also entitled for interest from date of incident i.e. 04.9.2022 till date of decision.

38. Therefore, in view of the above, the original application deserves to be allowed for an amount of Rs. 8,00,000/- and

as such the original claim application is allowed for Rs. 8,00,000/- along with interest @ 9% per annum from date of the incident i.e. 04.9.2022 till the date of judgment with no order as to cost.

O R D E R

- 1) The applicants are entitled for an amount of Rs.8,00,000/- (Rupees eight lakh only) as compensation along with interest @ 9% per annum from the date of incident i.e. 04.9.2022 till the date of award.
- 2) The respondent Railway Administration is hereby directed to deposit the amount awarded with the Additional Registrar of this Tribunal within a period of 30 days from the date of receipt of the copy of the judgment failing which the applicants shall also be entitled to receive interest @ 9% per annum from the date of judgment till the actual date of depositing the amount with the Additional Registrar.
- 3) The whole amount of compensation and interest accrued thereon, shall equally be distributed amongst all the three applicants.
- 4) Further, all the three applicants are permitted to withdraw 10% of the amount awarded to them from the total amount of compensation.

5) The balance amount of compensation along with whole amount of proportionate interest payable to each of the applicant, shall be kept in Fixed Deposit for a period of three years in any Nationalized Bank.

6) 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.

7) 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.

8) The monthly interest be credited by Electronic Clearing System (ECS) in the said Saving Bank Accounts of the applicants.

9) The maturity amount of the FDRs will be credited by Electronic Clearing System (ECS) in the Saving Bank Accounts of the applicants.

10) No loan, advance, withdrawal, or premature payment be allowed on the fixed deposits without permission of the Tribunal.

11) The concerned Bank shall not issue any cheque book and/or debit card to the applicant. However, in case the debit card and/or cheque book have already been issued, the Bank shall cancel the same before the disbursement of the award amount.

12) The Bank shall freeze the account of the applicants so that no debit card be issued in respect of their accounts. The Bank shall make an endorsement on the passbooks of the applicants to the effect that no cheque books and/or debit cards have been issued or will be issued without the permission of the Tribunal and the applicants shall produce the passbooks with the necessary endorsement duly signed and stamped by the Bank before the Additional Registrar of this Tribunal.

13) The Bank is further directed to permit the applicants to withdraw money from their Saving Bank Accounts by means of a withdrawal form only.

14) The Respondent Railway Administration is also directed to place on record the proof of deposit of the award amount with up to date interest, if any along with a calculation sheet and the same shall be filed with the Additional Registrar.

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15) Registry is directed to send a free certified copy of this judgment directly to the applicants at their postal address mentioned in the claim application by Speed Post in view of Rule 34 (3) of the Railway Claims Tribunal (Procedure) Rules, 1989.



Pronounced in open Court

Date: 30.07.2024


Labh Singh
Member (Judicial)

(The Judgment has been dictated in open Court and consists twenty one pages and each page has been checked and signed by me)


Labh Singh
Member (Judicial)