



रेल दावा न्यायाधिकरण
जयपुर न्यायपीठ
RAILWAY CLAIMS TRIBUNAL
JAIPUR BENCH

Claim Application No.: OA-II-93/2020

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

Date of Registration: 13.08.2020

Date of Judgment: 10.10.2023

1. Smt. Hura wife of Late Shri Ralu alias Ralu Damor, aged about 40 years.
2. Matiyas Damor son of Late Shri Ralu alias Ralu Damor, aged about 25 years.
3. Manji Damor son of Late Shri Ralu alias Ralu Damor, aged about 22 years.
4. Meera Damor daughter of Late Shri Ralu alias Ralu Damor, aged about 19 years.

All are residents of Village Mohkadi Falia, Loharia, Post Kalyanpura, Jhabua, District Jhabua (Madhya Pradesh).

.....Applicants

Versus

1. Union of India through the General Manager, North Western Railway, Jaipur (Rajasthan).

.....Respondent

2. Smt. Huma alias Huma Damor wife of Late Shri Heera, aged about 67 years, resident of Mokhda, Mundat, Jhabua, District Jhabua (Madhya Pradesh).

.....Proforma respondent

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

PRESENT

Mr. Rajesh Panda, learned counsel for the applicants.

Mr. Tikam Chand Sharma, learned counsel for the respondent

JUDGMENT

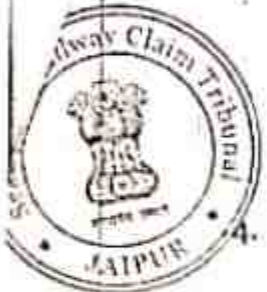
1. This claim application has been preferred before this Tribunal by the wife, children and widow mother of the deceased being the only dependants under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 125 of the Railways Act, 1989 claiming compensation of Rs.8,00,000/- along with interest on account of death of Shri Ralu alias Ralu Damor in an alleged untoward incident.

2. It is the case of the applicants that on 20.10.2019 Shri Ralu alias Ralu Damor along with his wife and grandson (aged 03 years) were to travel from Ajmer to Ratlam by a passenger train on a valid second class railway journey ticket, valid for two adults. The said ticket was purchased by the Contractor Shri Puran Singh who came to see them off at Ajmer railway station. When a passenger train named Varanasi - Ahmedabad arrived at Ajmer railway station, Shri Ralu alias Ralu Damor inadvertently boarded an overcrowded coach of the said train. After coming to know the fact that the said train does not go to Ratlam railway station when Shri Ralu alias Ralu Damor was getting down from the train, the train suddenly started moving as a result thereof he lost his balance and accidentally fell down from the moving train. Due to fall from the moving train, he entangled between the train and face of the platform and suffered grave injuries. Further, he was shifted to JLN Hospital, Ajmer by 108 Ambulance Service where he died during treatment on 21.10.2019 as a result of injuries sustained by him in the said untoward incident. Further, the Police on receipt of the information about death of Shri Ralu alias Ralu Damor, registered a Marg Report under Section 174 Cr.P.C. and also completed other requisite formalities including postmortem on the dead body and handed it over to the family members for final rituals. It has been stated by the applicants that the relevant railway journey ticket which the deceased was having at the material time, was lost during the course of incident and that he was a bonafide passenger at the time of occurrence of the incident.



3. In support of their claim, the applicants have made available on record certified copies of the Marg Report, Fard Naksha Mauka, Fard Surat Haal Laash, Fard Panchayatnama, Postmortem Report, Fard Supurdagi Laash, statements of Shri Bhanwarlal, Shri Sumerchand, Smt. Hura, Shri Puran Singh & Shri Matiyas Damor, Final Report, true copies of the Aadhaar Cards 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 present claim application has been filed by the applicants on the basis of false averments with an intention of take undue monetary benefit. Hence, the same *prima facie* deserves to be dismissed. It has been pleaded on behalf of the respondent Railway Administration that no such untoward incident as alleged, took place on that day. There is no witness to the incident. During search made on the person of the deceased, no ticket was recovered. Hence, it is established 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. The alleged incident is not covered under the definition of Section 123 (c) (2) of the Railways Act, 1989. It is wrong to say that ticket for the deceased and his wife, was purchased by the Contractor Shri Puran Singh. Also it is wrong to say that deceased boarded a wrong train and fell down while getting down from the same. It was stated by Shri Puran Singh before the GRP that he purchased a ticket from Ajmer to Ratlam whereas he has stated before the RPF that ticket was purchased by him from Ajmer to Indore. Hence, the statements made by Shri Puran Singh are not reliable being contradictory. 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 issues were formulated by the Tribunal on 25.6.2-21:

- 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-VII of the claim application?*
- 4- *Relief?*

6. In the evidence, applicant No.1 Smt. Hura has filed her own examination-in-chief on affidavit along with certified copy of Family Ration Card. The documents filed along with the claim application, were got exhibited by her as A/1 to A/19. She was cross-examined by learned counsel for the respondent Railway Administration on 27.7.2022.

7. Respondent railway administration in its evidence has filed examination-in-chief on affidavits of Shri Amar Singh Meena, Investigation Officer and Shri Shailendra Mahavar, Station Master, Ajmer. They were cross-examined by learned counsel for the applicants on 20.9.2022 and 19.1.2023 respectively.

FINDINGS

8. I have carefully gone through the pleadings of the parties, material made available on record, evidence adduced by them, case laws filed by learned counsel for the applicants and heard the arguments advanced on behalf of both the sides by their counsel. My findings on the aforesaid issues are as follows:

Issue No.1 -

9. Applicant No.1 Smt. Hura has deposed by way of her affidavit that on 20.10.2019, she, her husband Shri Ralu alias Ralu Damor and her minor grandson (aged 03 years) were to travel from Ajmer to Ratlam by a passenger train. Shri Puran Singh, Contractor came to see them off at Ajmer railway station and ticket was also purchased by him for them. She has further deposed vide Para-5 of her affidavit that the said ticket was lost during the course of incident and that her husband Shri Ralu alias Ralu Damor was a bonafide passenger at the time of occurrence of the incident. During cross-examination, she has maintained the same averments and nothing contradictory has come out.
10. *Per contra*, learned counsel for the respondent has vehemently 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 no ticket was recovered from his possession during search made by the Police. He has further argued that this fact stands corroborated with the testimonies of both the witnesses of the respondent and the original DRM's Report. Hence, the claim application of the applicants is liable to be dismissed on this ground alone.
11. I have given my 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 Shri Amar Singh Meena, Investigation Officer has deposed by way of his affidavit that on 20.10.2019 deceased Shri Ralu alias Ralu Damor accidentally fell down between the train and face of the platform in the process of getting down from the moving train bearing No.19408. The said fact was also stated by Smt. Hura before the Police. He has further deposed that no ticket was



found with the deceased by the Police. Hence, the deceased was not a bonafide passenger at the material time. During cross-examination, he has stated that he did not go to the site of incident. The search was not made by him on the person of the injured now deceased. He did not record the statements of any person who made a search on the person of the injured now deceased.

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13. Second witness of the respondent Shri Shailendra Mahavar, Station Master, Ajmer has not deposed anything regarding ticket.
 14. From the statement made by the witness of the respondent Shri Amar Singh Meena during his cross-examination, it is amply clear that he was not present at the site of incident at the time of occurrence of the incident. Besides, neither was the search made by him on the person of the injured now deceased nor he recorded the statements of the any person who made a search on the person of the injured now deceased. Hence, his testimony, in my considered view, cannot be relied upon to draw an adverse inference particularly when falling down of Shri Ralu alias Ralu Damor from the train in question, has been admitted by him.
 15. Mere absence of ticket does not tantamount to say that the deceased at the material time, was an unauthorized passenger. It is an admitted position in this case that subsequent to occurrence of incident, the Shri Ralu alias Ralu Damor was shifted to the JLN Hospital, Ajmer by an Ambulance. Meaning thereby he was handled at various stages by different agencies and under such circumstances, possibility of losing a ticket which is a small piece of paper, in my considered view, cannot be ruled out. Besides, Shri Puran Singh, Contractor has stated before the Police that he came to see off Shri Ralu alias Ralu Damor, his wife and his minor grandson at Ajmer railway station and a ticket from Ajmer to Ratlam was also purchased by him for them. On the contrary, the respondent Railway Administration has not adduced any

evidence to show that an extensive search was made on the person of the injured now deceased and at the site of incident to locate the ticket and his personal belongings.



The Hon'ble Rajasthan High court while passing judgment in the case of *Union of India v. Hari Narayan Gupta and Anr.* dated 15/11/2006, under Para-7 & 11, has observed as under :-

"7. The legal issue, which has arisen before this Court is on whom does the burden of proof lie to prove that the deceased was or was not a bonafide passenger-does not lie on the claimants, or on the Railway Administration? In order to answer these issues, it is imperative that a holistic reading of the Act is undertaking. Section 2 (29) of the Act defines the word "passenger" as meaning "a person travelling with a valid pass or ticket". Section 54 of the imposes a duty on a passenger to present his pass or ticket to such railway servant for examination during the journey or at the end of the journey or surrender such ticket at the end of the journey, or if such ticket is issued for a specific period, on the expiry of such period. Furthermore, Section 55 of the Act prohibits every person from entering or remaining in any carriage on a Railway for the purpose of travelling therein as a passenger unless he has with him a proper pass or ticket. In case a person is found to be ticketless, Section 137 of the Act empowers the Courts to imprison such person for a term which may be extended to six months, or with fine which may extend to one thousand rupees, or with both. The proviso thereto restricts the power of the Court in imposing the fine. The fine cannot be less than Rs.500/-. Thus, a minimum punishment has been prescribed by the said provision. Section 138 of the Act permits the Railway to levy excess charge and fare on those passengers, who travel without ticket. Section 139 of the Act empowers the Railways to remove the person in case, the person is found to be travelling ticketless. A bare perusal of all these provisions

clearly reveals that a criminal liability is created against a ticketless passenger.

11. The first and foremost cardinal principle of Common Law is that "every man is innocent, till proven guilty". The burden of proving a person guilty lies on the State or on instrumentality of the State. Since the Railway Administration is an instrumentality of the State, obviously the burden of proving that the passenger was travelling ticketless and, hence, was not a bonafide passenger lies on the Railway Administration."

17. Hence, 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 which was cast upon them to prove the deceased a ticketless traveller at the material time.
18. In view of the judgments quoted above, my discussions in foregoing paras and looking at the peculiar facts and circumstances of this particular case, it is held that deceased Shri Ralu alias Ralu Damor was a bonafide passenger at the relevant time 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 -

19. Applicant No.1 Smt. Hura has deposed by way of her affidavit that on 20.10.2019 she, her husband Shri Ralu alias Ralu Damor and her minor grandson (aged 03 years) were to travel from Ajmer to Ratlam by a passenger train on a valid second class railway journey ticket, valid for two adults. The said ticket was purchased by the Contractor Shri Puran Singh who came to see them off at Ajmer railway station. When a passenger train named Varanasi - Ahmedabad arrived at





Ajmer railway station, her husband Shri Ralu alias Ralu Damor inadvertently boarded an overcrowded general coach of the said train. After coming to know the fact that the said train does not go to Ratlam railway station when he was getting down from the train, the train suddenly started moving as a result thereof he lost his balance and accidentally fell down from the moving train. Due to fall from the moving train, he entangled between the train and face of the platform and suffered grave injuries. Further, he was shifted to JLN Hospital, Ajmer by 108 Ambulance Service where he died during treatment on 21.10.2019 as a result of injuries sustained by him in the said untoward incident. Further, the Police on receipt of the information about death of Shri Ralu alias Ralu Damor, registered a Marg Report under Section 174 Cr.P.C. and also completed other requisite formalities including postmortem on the dead body and handed it over to the family members for final rituals. During cross-examination nothing contradictory has come out.

20. *Per Contra*, learned counsel for the respondent has argued that death of the deceased happened in the process of getting down from the moving train which is a punishable offence under Section 156 of the Railways Act, 1989 and, therefore, the present case is covered under clause (b) and (c) to the proviso to Section 124A of the Railways Act, 1989 for which no compensation is admissible to the applicants. He has further argued that this fact stands corroborated with the testimonies of both the witnesses of the respondent and the original DRM's Report. Hence, the claim application of the applicants deserves to be dismissed with costs.
21. Although first witness of the respondent Shri Amar Singh Meena has deposed by way of his affidavit that the deceased met with this incident in the process of deboarding the moving train, during cross-examination, he has stated that he did not go to the site of incident and he is not a witness to the incident.

22. Second witness of the respondent Shri Shailendra Mahavar, Station Master, Ajmer has deposed by way of his affidavit that no incident took place on that day at Ajmer railway station and, therefore, no remarks were made by him in the Station Diary & Charge Book to this effect.

Since Shri Amar Singh Meena has admitted during his cross-examination that he is not a witness to the incident, relying upon his testimony, in my considered view, will not be justifiable to draw an adverse inference particularly when death of Shri Ralu alias Ralu Damor as a result of a fall from the train in question, has not been disputed by the respondent.

24. For the sake of argument, I feel it pertinent to mention that 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 getting down from the train which he boarded inadvertently.
25. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of *Union of India vs. Rina Devi* (supra).
26. Hence, in view of the judgment (supra) and under the facts and circumstances of the instant case, it is held that deceased Shri Ralu alias Ralu Damor became a victim of an untoward incident as a result of an accidental fall from the passenger carrying train and the instant case is well within the definition of Section 123 (c) (2) 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.3 & 4 -

27. Both these issues are being dealt with and decided together.
28. Case in hand has been filed before this Tribunal on behalf of the wife, children and widow mother of the deceased being the only dependants. Applicant No.1 Smt. Hura vide Para-6 of her affidavit, has deposed that present applicants and proforma respondent No.2 are the only dependants of the deceased. To prove their sole dependence, true copies of the Aadhaar Cards and Family Ration Card have been filed on behalf of applicants as Ex.A/13 to A/19 respectively. On the contrary, no evidence whatsoever has been adduced on behalf of respondent to rebut the case of the applicants and proforma respondent No.2 on the point of their dependence. 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.
29. Applying the principles laid down in *Rina Devi (supra)* in the present case, it is held that present applicants and proforma respondent No.2 being the only dependants of the deceased within the meaning of Section 123 (b) (i) & (ii) 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. 20.10.2019 till the date of award. Both these issues are decided accordingly.

ORDER

30. The claim application is allowed in favour of the applicants and proforma respondent No.2. The respondent railway administration is directed to pay Rs.8,00,000/- to the applicants and proforma



respondent No.2 as compensation along with interest @ 9% per annum from the date of incident i.e.20.10.2019 till the date of award.

31. The payment shall be made to the applicants and proforma respondent No.2 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
Smt. Hura (wife of the deceased)	Rs.55,000/- (Rs. fifty five thousand only) along with proportionate interest.	Rs.4,95,000/- (Rupees four lakh ninety five 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.
Matiyas Damor (son of the deceased)	Rs.5,000/- (Rs. five thousand only) along with proportionate interest.	Rs.45,000/- (Rupees forty five thousand only). This amount will be kept in the form of fixed deposit for a period of one year. However, the monthly interest accrued on this amount, shall be credited to his SB Account.
Manji Damor (son of the deceased)	Rs.5,000/- (Rs. five thousand only) along with proportionate interest.	Rs.45,000/- (Rupees forty five thousand only). This amount will be kept in the form of fixed deposit for a period of one year. However, the



		<i>monthly interest accrued on this amount, shall be credited to his SB Account.</i>
<i>Meera Damor (daughter of the deceased)</i>	<i>Rs.5,000/- (Rs. five thousand only) along with proportionate interest.</i>	<i>Rs.45,000/- (Rupees forty five thousand only). This amount will be kept in the form of fixed deposit for a period of one year. However, the monthly interest accrued on this amount, shall be credited to her SB Account.</i>
<i>Smt. Huma alias Huma Damor (widow mother of the deceased)</i>	<i>Rs.10,000/- (Rs. ten thousand only) along with proportionate interest.</i>	<i>Rs.90,000/- (Rupees ninety 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.</i>

32. 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 and proforma respondent No.2 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.
33. The applicants and proforma respondent No.2 are hereby directed to submit the details of their Aadhaar linked Bank account of a Nationalized Bank situated nearest to their place of residence to the Additional Registrar of this Tribunal.

34. The Bank shall not permit any joint name(s) to be added in the saving Bank accounts or fixed deposit account of the applicants and proforma respondent No.2 i.e. the Saving Bank Accounts of the applicants and proforma respondent No.2 shall be an individual Saving Bank Account and not a Joint Account.

The monthly interest be credited by Electronic Clearing System (ECS) in the Saving Bank Accounts of the applicants and proforma respondent No.2 near the place of their residence.

36. The maturity amount of the FDRs be credited by Electronic Clearing System (ECS) in the Saving Bank Accounts of the applicants and proforma respondent No.2.
37. No loan, advance, withdrawal, or pre-mature discharge be allowed on the fixed deposit without permission of the Tribunal.
38. The concerned Bank shall not issue any cheque book and/or debit card to the applicants and proforma respondent No.2. However, in case the debit card and/or cheque book have already been issued, Bank shall cancel the same before the disbursement of award amount. The Bank shall freeze the accounts of the applicants and proforma respondent No.2 so that no debit card be issued in respect of the account of the applicants and proforma respondent No.2 from any other Branch of the Bank.
39. The Bank shall make an endorsement on the passbooks of the applicants and proforma respondent No.2 to the effect that no cheque book and/or debit card have been issued or will be issued without the permission of the Tribunal and the applicants and proforma respondent No.2 shall produce the passbooks with the necessary endorsement duly signed and stamped by the Bank before the Additional Registrar of this Tribunal. The Bank is further directed to



permit the applicants and proforma respondent No.2 to withdraw money from their Saving Bank Accounts by means of a withdrawal form only.



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 alongwith a calculation sheet and the same shall be filed with the Additional Registrar.

41. In the facts and circumstances of the case, there is, however, no order as to costs.
42. 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.
43. Judgment pronounced, signed and sealed in open Court today i.e. 10.10.2023.

(Jhanja Tripathy)
Member (Technical)
RCT/Jaipur