

BEFORE RAILWAY CLAIMS TRIBUNAL, KOLKATA BENCH

Coram: Shri Sanjay Singh Gehlot, Hon'ble Vice-Chairman

Claim Application No. OA(IIU)/KOL/2019/0105

(Application filed on 24.05.2019 & decided on 17.12.2024)

Rabi Bauri, mother of the deceased Sebak Bauri

Residing at :

Bauri Para, Vill. Alipur,

P.O. Panuria,

P.S. Barabani,

Dist. Burdwan(West),

West Bengal,

Pin Code - 713 315

..... Applicants

-VS-

Union of India represented through

The General Manager, Eastern Railway

..... Respondent.

Application under Section 16 of Railway Claims Tribunal Act, 1987 read with Sections 123(c)(2) and 124-A of Railways Act, 1989.

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

Shri A. K. Ganguly, Ld. Counsel for the applicant.

Shri D. K. Chatterjee, Ld. Counsel for the respondent

JUDGEMENT:

1. This is an application under Section 16 of Railway Claims Tribunal Act, 1987 read with Sections 123(c)(2) and 124-A of the Railways Act, 1989 filed by the applicant as a sole dependent claiming compensation on account of the death of her unmarried son allegedly in an untoward train incident of accidental falling from a train. It is pleaded in the claim application that on 27.05.2018 the deceased Sebak Bauri along with his one friend was travelling with IInd class computerised railway ticket from Asansol to Howrah. Firstly, they boarded a local train from Asansol to Burdwan. From Burdwan they boarded another local train for Howrah. They were sitting in Burdwan-Howrah local. After the departure of the train from

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Liluah, the deceased told his friend that he may vomit and so he came near the door of the compartment. When the train was approaching Howrah railway station(near Chandmari Bridge), the deceased could not keep his balance due to jerking and jostling of the passengers, he fell down from the train between Liluah and Howrah. He sustained grievous injuries and died on the spot. The ticket of the deceased ex. Asansol to Howrah was lost after the incident.

2. The respondent railway has filed a Written Statement disputing and denying the averments made in the claim application. It was denied that the deceased was travelling by a train and fell down from it. It was also denied that the deceased was a bona fide passenger.

3. On the basis of the pleadings of the parties, the following issues were framed :-

- 1. Whether the incident on account of which the victim alleged to have sustained injuries and died is covered as an 'untoward incident' within the provision of Section 123(c)(2) of the Railways Act, 1989?**
- 2. Whether the victim was a bona fide railway passenger?**
- 3. Whether the applicant is the sole dependant of the deceased and is entitled to get compensation, as prayed for?**
- 4. To what other relief, if any, the applicant is entitled?**

4. The applicant filed her affidavit of evidence and she was cross-examined as AW/1. Documents filed on behalf of the applicant were marked as Exhibit.A/1 to A/7. On behalf of the applicant, Ranjit Bauri, son of the deceased filed his affidavit of evidence. He was cross-examined by Ld. Counsel for the respondent as AW/2 & discharged. Documents filed by him were marked as Exht.A/8 & A/9.

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The respondent railway filed a report of ADRM/Howrah and its annexures. All these documents were collectively marked as Exht.R/1.

The respondent railway affidavit of evidence of Shankar Prasad, ASI/RPF/Post/HGYD/HWH and Debraj Samui, Constable of RPF/Post/HGYD/HWH. They were examined by the Court and cross-examined by Ld. Counsel for the applicant as RW/1 & RW/2 respectively and discharged.

5. Ld. Counsels for the rival parties submitted their respective oral arguments. After appreciating the arguments and perusing the records, I determine the issues as under :-

Issue Nos. 1 & 2

6. For proper adjudication of this case, these issues are taken up together.

6.1 Ld. Counsel for the applicant argued that the inquest report and Final report of Howrah/GRPS mentioned that the deceased fell down from a running train. He also submitted that Ranjit Bauri, the son of the deceased was a co-passenger of the deceased and he adduced evidence before the Court.

6.2 On the other hand, Ld. Counsel for the respondent argued that as per the ADRM's report the deceased was run over by a train. He further argued that RW/1 & RW/2 who were the witnesses of the inquest report stated before the Court that they had no knowledge about the cause of the death of the victim.

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6.3 In her affidavit of evidence, the applicant reiterated the facts of the case. As per the pleading of the applicant, the deceased had a friend as his co-passenger. During her cross-examination(AW/1) the applicant deposed that “ **My son was with my husband and he informed me about the incident. I am not aware that in my claim application it was stated that my son was with my husband or not.**” This part of her deposition contradicts with her statement in the affidavit as regards the alleged co-passenger of her deceased husband. On the other hand, to Court’s question AW/1 stated that “ **One friend of my husband was with him. My son was with my husband. Then says, I am not aware whether my son was with my husband or not.**” From this part of the deposition it transpired that she was not at all sure who was the co-passenger of her deceased husband, her son or the friend of the deceased. Moreover, her knowledge about the alleged incident was based purely on hear-say.

6.2 Ranjit Bauri in his affidavit mentioned that “ **On 26.05.2018 I along with my father Sevak Bauri including his one friend and two other members of my family boarded a local train in the evening time. Then we picked up Burdwan-Howrah EMU train via the main line whose departure time from Burdwan was 21.58 hrs. and arrival time at Howrah was 12.20/12.30 hrs. For the treatment of my father in Hyderabad we had a reservation ticket in sleeper class coach S-11 of train no.12703 Up Falaknuma Express on 27.05.2018 at 7.25 hrs. After getting down at Howrah railway station, I did not see my father. Then I informed the railway authority and GRPS/Howrah. On 27.05.2018 GRPS called me on mobile phone intimating that a dead body was lying near Chandmari Bridge. Then all of us went to the spot and identified my father. GRPS/Howrah investigated the case. I put my signature on the investigation report.** ” During the course of his deposition, Ranjit Bauri(AW/2) stated that “ **Myself and my three relatives were travelling with my father on the fateful date of the**

incident. I was all along travelling with my father on the fateful date of the incident. My father went to the gate of the compartment and after that I could not find my father in the train and searched for my father exhaustively in the train. Finding no other alternative I informed the matter to GRPS/Howrah. GRPS informed us regarding the incident.” The affidavit in chief of Ranjit Bauri and his deposition before the Court clearly revealed that he was not an eye-witness to the alleged incident. On the next date of the alleged incident, he was informed by the GRPS/Howrah about the alleged incident. His knowledge about the incident was purely based on the information of GRPS/Howrah.

6.3 The memo of Dy. Station Manager(Comml.), Eastern Railway, Howrah(Exht.A/2) on 27.5.18 at 01.35 hrs. gave a memo to the ACMS/Howrah Orthopaedic Hospital informing that a male person aged about 50 years was lying inside the track in front of SE/EMU local 38830 between KM post 57 & 64 signal near goods yard cabin. Copy of this memo was given to IC/GRPS/HWH. The Investigation report of Howrah GRPS dt.27.05.18(Exht.A/3) mentioned that as per the statements of Shankar Prasad, ASI/RPF/Post/HGYD/HWH, Debraj Samui, Constable/RPF/Post/HGYD/HWH and Ranjit Bauri, the deceased fell down from an unknown train and was run over.

As per evidence of Ranjit Bauri, he along with his father availed a Burdwan-Howrah main line EMU local from Burdwan for Howrah. When Ranjit Bauri signed the inquest report as one of the witnesses, he could have told the GRP person that he was travelling with his deceased father by Burdwan-Howrah local. But there was no mention in the Investigation report that Ranjit was a co-passenger of the deceased by Burdwan-Howrah local train. On the other hand, the Investigation report mentioned **“an unknown train”**. Moreover, from the evidence of Ranjit Bauri it transpired

that he was not an eye-witness to the alleged incident. Rather he was informed by the GRPS/Howrah about the incident.

Shankar Prasad, ASI/RPF/Post/HGYD/Howrah filed his affidavit of evidence on behalf of the respondent, wherein he mentioned that on 26.05.2018 from 22.00 hrs. to 06.00 hrs. he was on duty at RPF/Post/HGYD/Howrah. After getting information from RPF constable Debraj Samui at 00.15 hrs on 27.05.18 he went to the spot and found the deceased lying inside the track. He was at the spot till the removal of the dead body by the deceased when the deceased was unidentified. Shankar Prasaad was examined by the respondent as RW/1. To Court's question, RW/1 stated that **" I did not see how the person died. I signed the inquest report. I did not give my opinion as to how the person died. The inquest report was prepared in Bengali. The GRP asked me to sign the inquest report for clearing the dead body for safe passage of the train... I did not state to the I.O. of the GRP that the deceased had fallen down from a train."** During his cross-examination by Ld. Counsel for the applicant, the RW/1 specifically stated that **" I have no personal knowledge as to how the deceased in this case had died."** Therefore, the evidence of Shankar Prasad revealed that he had no personal knowledge about the alleged incident and so he did not give any opinion to the I.O. of the GRP at the spot about the cause of the death of the victim.

Debraj Samui of RPF/Post/HGYD/HWH mentioned in his affidavit that **" on 26.05.2018 I was on duty from 22.00 hrs. to 06.00 hrs. at RPF/Post/HGYD/Howrah. At about 00.01 hrs. Of 27.05.2018 I noticed that a local train no.DN-38830 Midnapur local suddenly stopped at KM Post [No.SE/182A](#) without red signal. Then I immediately attended the spot and found one person lying inside the track near signal no.S/57 and his one leg was cut. Then I along with ASI Shankar Prasad**

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attended the place of occurrence. At about 01.40 hrs. the dead body was removed by the GRP and at that time the body was not identified. I was present there till the removal of the dead body from the yard by GRPS/Howrah.” Debraj Samui was examined by the respondent as RW/2. To the Court's question, RW/2 stated that “ I signed the inquest report. When I signed the inquest report, its last page was not filled in. I did not state to the GRP that the person had fallen down from a train. The dead body was not identified then. His name was also not mentioned in the inquest report when I signed the inquest report. ” During his cross-examination, RW/2 specifically stated that **“I have no personal knowledge as to how the deceased in this case had died.”** Therefore, the evidence of Debraj Samui(RW/2) revealed that he had no personal knowledge about the alleged incident and so he did not give any opinion to the I.O. of the GRP at the spot about the cause of the death of the victim.

In the light of the above discussion, it is held that the witnesses of the investigation report were not the eye-witnesses to the alleged incident. The opinion of the I.O. of the GRPS/Howrah as to the cause of the death of the victim was entirely based on his own assumptions as two of the inquest witnesses namely Shankar Prasad ASI RPF ,& Debraj Samui never opined that he had fallen down from a train. The third inquest witness was his own son Ranjit Bauri ,who was not present at the place of occurrence as both Shankar Prasad & Debraj Samui clearly stated that the body remained unidentified at the place of occurrence & that no known person of the deceased was at the spot. Therefore conclusion of the inquest report is not verified by the two witnesses & the third witness was not at the spot at all & has signed on the inquest later on.

On the other hand, the Final Police Report(Exht.A/5) mentioned that the deceased **probably fell down**. Therefore, there was no specific conclusion in the Final Police Report as to the exact cause of the death of the victim.

Ranjit Bauri in his affidavit stated that on 26.05.2018 his father and the deceased boarded Burdwan-Howrah main line local train from Burdwan for coming to Howrah and the alleged incident happened from this train. As per the RPF Daily Diary written by RW/1 and the site plan, both annexed with the DRM's report, the body of the deceased was lying inside the track for movement of South Eastern Railway trains between KM post [no.SE/182](#) & SE/182A. The RPF diary and the rough sketch regarding the place where the body of the victim was lying are corroborated with the deposition of RW/2 where he stated that “ **During my duty hours at about 12.01 a.m. I saw that train no.DN 38830 Midnapore local was standing at KM pole [no.SE/182A](#).** When I asked the driver of the train about the reason, he replied that a person was run over by a train and the body was lying inside the track and as such, he could not pass his train though the signal was given.”

If a person travels by a main line Burdwan-Howrah EMU train under Eastern Railway and falls down near Howrah Goods Yard cabin from that train, his body cannot be found on the railway track which is exclusively meant for the movement of trains on South Eastern Railway. In the case in hand, the deceased was allegedly travelling by a main line Burdwan-Howrah EMU local. If he had fallen down from this train, his body could not have been on the railway track which is meant for movement of South Eastern Railway trains. This fact has been verified by the fact that the body was observed inside the track by the loco pilot of Dn38830 Midnapore local which had come from Kharagpur side & not from Eastern Railway side i e from Bardhaman.

This fact clearly goes to prove that the contention of the applicant that he was travelling by a mainline Bardhaman is not borne out by facts from the spot where the body was found. Hence the travel of the deceased is not getting proved at all.

Moreover the position of the body totally inside the track circumstantially points in the direction of being knocked down rather than a fall.

Hence, it is held that the applicant failed to prove that the victim died in an untoward incident of accidental falling from a train. As such, this case does not come under the purview of Section 123(c)(2) of the Railways Act, 1989.

7.0 According to the pleading of the applicant, the railway journey ticket of the deceased was lost after the alleged incident. The affidavit of the applicant Rebi Bauri mentioned that on 27.05.2018 her deceased husband along with his friend was travelling as bona fide passengers after purchasing IInd class computerised ticket for Asansol to Howrah. In her deposition, the applicant stated that the police did not recover the journey ticket of her husband. Ranjit Bauri(AW/2) deposed that he had a railway journey ticket and that ticket was kept with his father and after the incident, the ticket was lost. On the other hand, RW/1 & RW/2 both stated **before the Court that searching of the dead body was done by doms of GRP in their presence, but nothing like a money purse, money bag, mobile phone, ticket were found.** Section 123(c)(2) of Railways Act states that 'untoward incident' means "***the accidental falling of any passenger from a train carrying passengers.***" Section 2(29) of the Railways Act, the "passenger" means 'a person travelling with a valid pass or ticket'. In the foregoing paras, it has also been conclusively proved that the applicant failed to prove that the victim was travelling on the train at all. This combined with the fact that no ticket or anything else was found during body search goes to prove that, the deceased cannot be held to be a bona fide passenger.

These issues are, therefore, decided against the applicants.

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Issue No.3

8.0 In view of decision on issue nos.1 and 2, this issue is not required to be adjudicated.

Issue No.4

9.0 In the light of the decision on the foregoing issues, the applicants are not entitled to get any relief. Hence,

ORDERED

That the claim application being devoid of merit is hereby dismissed on contest & disposed of accordingly without costs.

(Sanjay Singh Gehlot)
Vice-Chairman