

रेल दावा अधिकरण, कोलकाता न्यायपीठ
BEFORE RAILWAY CLAIMS TRIBUNAL,
KOLKATA BENCH

**Coram : Mr. Sanjay Singh Gehlot, Hon'ble Vice-Chairman
Mr. Rajeev Jain, Hon'ble Member (Judicial)**

Claim Application No. OA(IIu)/KOL/147/2019
Date of filing of claim application : 19.08.2019
Date of Judgement : 13.10.2023

1. Pinki Nayak, wife of the deceased, Buddu @ Guddu Nayak
2. Mushkan Nayak, minor daughter of the deceased, Buddu @ Guddu Nayak
3. Anju Nayak, minor daughter of the deceased, Buddu @ Guddu Nayak
4. Om Nayak, minor son of the deceased, Buddu @ Guddu Nayak
5. Subham Nayak, minor son of the deceased, Buddu @ Guddu Nayak

Residing at : Dr. Ambedkar Colony, P.O. Inda, P.S. Kharagpur Town,
Dist. Midnapur, PIN 721305

..... Applicants

-VS-

Union of India represented through
The General Manager, South Eastern Railway, Kolkata

..... Respondent

Claim for Rs.8,00,000/-

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Present : Shri D. Guhathakurta, Ld. Counsel for the Applicant.
Shri P.S. Ghosh, Ld. Counsel for the Respondent.

निर्णय

J U D G E M E N T

1. This application has been filed under Section 16 of Railway Claims Tribunal Act, 1987 read with 124-A of Railways Act, 1989 by the applicants i.e. wife and daughters and son of the deceased, Buddu @ Guddu Nayak for compensation on account of death of the victim, who allegedly died in an untoward incident. Further the claim application has been amended in respect of the date of incident i.e. 20.10.2018 instead of 21.10.2018 vide Order No.11 dtd.29.06.2022.

2. Brief history of the case of the applicant is that on 20.10.2018 the deceased was travelling from Tata to Kharagpur by local passenger train. At about 03.30 a.m. he boarded the said train from Tata Station and at about 5.00 a.m. while the said train was entering Kharagpur station, he fell down from running train. Immediately he was shifted to Kharagpur S.D. Hospital and thereafter she was transferred to Sadar Hospital,

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Midnapur and finally he was admitted to R.G.Kar Medical College and Hospital where he expired on 25.10.2018.

3. The respondent railway has filed a written statement denying the facts stated in the claim application. The applicants have been put to a strict proof thereof.

Upon pleadings of both sides and documents, the issues have been recast which are as follows :

Issues :

1. Whether the incident on account of which the victim is alleged to have died can be termed as an untoward incident as defined under Section 123(c)(2) of the Railways Act, 1989 ?
2. Whether the victim was a bona fide passenger of the train on the date of incident, as alleged ?
3. Whether the applicant is the sole dependant of the deceased in terms of Section – 123 (b) of Railways Act and are entitled to get compensation from the respondent ?
4. Relief, if any.

4. In support of the claim, the applicant filed certain documents to prove the relationship of the applicants with the deceased which were exhibited A/1 to A/8 & A/18. Apart from those documents, the applicants filed certified copies of documentary evidence viz. inquest report (A/9), P.M.Report (A/10), Medical Report of R.G.Kar Hospital (A/11), Copy of letter dtd.26.10.18 of GRPS/Kharagpur (A/12), Copy of letter dtd.22.11.18 of GRPS/Kharagpur (A/13), Copy of GDE No.1398 dtd.26.10.2018 (A/14), Copy of Death Certificate (A/15), Letter dtd.17.3.2019 of Tala P.S. (A/16), Death Certificate of Buddu Nayak (A/17).

The respondent Railway has furnished an inquiry report duly accepted by DRM/KGP(R/1).

5. The applicant, Pinki Nayak, wife of the deceased filed an affidavit affirming the facts contended in the claim application. She was examined and cross-examined as AW/1.

6. Counsel for the applicant pleaded that on the date of incident the victim was travelling from Tata Nagar to Kharagpur by a passenger train. While the train was entering Kharagpur Railway station, he suddenly fell down from the running train and he sustained grievous injury. He was shifted to Kharagpur S.D. Hospital and thereafter she was transferred to Sadar Hospital, Midnapur and finally he was admitted to R.G.Kar Medical College and Hospital where he expired on 25.10.2018. The statutory reports clearly corroborated that the victim died due to an untoward incident. After the incident

the ticket was lost. The victim had valid ticket. Hence, the applicants were entitled to get compensation under Section 123(c)(2) of Railways Act.

6.1 Counsel for the respondent filed written argument. He objected to the claim of the applicant. As per report of SM/KGP and SM/NTY there was no information about the alleged incident. So, there was no entry in the concerned register by the railway authority. It was also pleaded that there was no entry in the Daily Diary of RPF and GRP/Kharagpur regarding the alleged incident on the alleged date of incident. The victim did not travel in any train at all on the alleged date of incident. Hence counsel for the respondent pleaded that the case may be dismissed.

7. Issue-wise discussion is as follows :

Issue No. 1 & 2 :

7.1 Both the issues are taken up for discussion as they are interrelated. The applicant had filed the documents as evidence as mentioned in Para-4. Among those documents filed by the applicant, letter of OC/Tala PS dtd.17.03.2019 as a reply under RTI Act 2005 (Exh.A/16) revealed that as per inquiry report of ASI, Biswanath Ghosh, Kharagpur GRPS that on 21.10.2018 the deceased Guddu Nayak fell down from running train before reaching Kharagpur Railway station and sustained bleeding severe injury. He was immediately shifted to Kharagpur S.D. Hospital by his family members and relatives and thereafter he was transferred to Sadar Hospital, Medinipur and finally he was referred to R.G.Kar Medical College and Hospital. He expired in the hospital on 25.10.2018. On the basis of inquiry report by SI/ASI Biswanath Ghosh of Kharagpur GRPS vide GDE No.1398 dtd.26.10.2018, PM examination over the dead body was held in R.G.Kar Medical College and Hospital. the GDE No.1398 dtd.26.10.2018 (Exh.A/14) is reproduced – *"By this time received a E-mail message from Tala police station, Kolkata that enquiry report of Buddu Nayek S/O Lt. Bijoy Natek, vide Tala P.S. GDE No.1880 dt.25.10.18, who (was) expired on 25.10.18 at 12.15 hrs. at R.G.Kar medical college & hospital due to (fell) fall down from running train on 21.10.18. After received E-mail message as per order I/C Kharagpur GRPS I enquired the matter and send a report to O/C, Tala P.S., Kolkata and I also pray the dead body handed over to his wife Pinki Nayek. Sd/- ASI, Biswanath Ghosh."* In the letter of ASI/GRPS/KGP, Biswanath Ghosh addressed to OC/Tala P.S. (Exh.A/12) information were provided after preliminary inquiry – viz.

1) No foul play found behind the death of the deceased.

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2) Post Mortem Examination of deceased Guddu Nayak is required to ascertain actual cause of death.

3) As per Kharagpur GRPS GDE No.1398 dtd.26.10.18, no specific complaint was received by the GRPS.

4) On 21.10.18 at about 05.00 hrs Guddu Nayak fell down from running train before reaching Kharagpur Railway station at Tata end side and sustained bleeding injury. He was immediately shifted to Kharagpur S.D.Hospital by his family members and relatives and thereafter he was transferred to Sadar Hospital, Medinipur and finally he was referred to R.G.Kar Medical College and Hospital. He expired in the hospital on 25.10.2018.

7.2 Pinki Nayak (AW/1) deposed before the court that -

"..... My husband was returning home from Tatanagar. My husband fell down from the train at Kharagpur railway station. I do not know the exact time of incident. I was travelling with my husband on the fateful date of incident. After the incident I heard a hue and cry and then I came to know that my husband fell down from the train. I did not preserve our railway journey tickets. I did not see my husband falling down from the train. None will depose in this case....."

7.3 The respondent has filed the DRM report (R/1). It stated that on the alleged date of incident no any information was received at either Kharagpur or Nimpura Railway station about the incident. Hence, SM/KGP and SM/NTY did not make any diary entry about such incident. No information was also received at RPF Post/KGP and GRPS/KGP from any corner about the alleged incident. As per report of Tala PS no Railway journey ticket was found from the deceased.

After inquiry it was concluded in the DRM report that the incident might have happened outside the Railway area by any other means as the place of residence of the deceased was nearby Kharagpur Railway station. Railway was not responsible for death of the deceased.

7.4 After going through the documents on record and considering the pleadings of both sides, we observe that -

i) The applicant in the claim application as well as in the affidavit in evidence affirmed that the alleged incident occurred on 20.10.2018. Whereas the GDE of Tala P.S. & the same of Kharagpur GRPS and the letter of ASI, Biswanath Ghosh, GRPS/Kharagpur as well as the reply letter of Tala PS under RTI Act, 2005 all in one

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voice stated that the incident occurred on 21.10.2018. It was also noticed that the applicant had filed the claim application earlier stated that the incident occurred on 21.10.2018 whereas all the medical documents of Medinipur Medical College and Hospital and R.G.Kar Medical College and Hospital, the date of admission of the deceased on 20.10.2018. Though, the claim application was amended and the date of incident was modified as 20.10.2018, there is still a serious discrepancy with the statutory reports of KGP GRPS and Tala PS which showed the date of incident as 21.10.2018.

ii) As per GDE No.1398 dtd.26.10.2018 of Kharagpur GRPS (A/14) email message from Tala PS was received by Kharagpur GRPS about inquiry pertaining to the death of Buddu Nayek on 25.10.2018 in R.G.Kar Medical College and Hospital. As per Order of IC/Kharagpur GRPS, ASI Biswanath Ghosh inquired the matter and sent the report to OC/Tala PS. But, from the letter of ASI Biswanath Ghosh. Kharagpur GRPS (A/12) it cannot be ascertained that there was any inquiry conducted by the GRPS under whose jurisdiction the incident is alleged to have occurred. No separate inquiry report is available on record.

iii) As per DRM Report, there was no information either with SM/Kharagpur & SM/Nimpura or with RPF/Kharagpur regarding the alleged incident. Kharagpur Railway station is a junction station which is enriched with good amenities. 24X7 the station is full of crowd. Hence, it has a remote chance that if an incident occurred near the station area, no railway authority shall be aware of the same.

iv) Though AW/1, wife of the deceased stated that she was travelling with the deceased on the date of incident, but she miserably failed to prove the fact that she was present at the time of alleged incident occurred. She never pleaded in the claim application that she was with the deceased at the material time.

v) In the claim application the it was mentioned that the deceased boarded a local passenger train at 03.30 a.m. from Tata and at about 05.00 a.m. the incident of fall of the deceased from the train occurred when the train was entering Kharagpur Railway station. On the other side, the DRM report said that first Kharagpur bound local train arrived Kharagpur Railway station at 06.40 hrs. on 20/21/10.2018.

vi) As per findings of the DRM's report, there are no railway documents viz. Railway memo, Form - 1, Station Diary, RPF Diary to corroborate the fact that any such incident occurred at the alleged place of occurrence on the alleged date. So, no such incident took place in the Railway premises on the date in question. The respondent filed the DRM's report with a copy to the applicant. There is neither any rebuttal on the part of

the applicant found on record nor did the counsel for the applicant challenge the DRM's report by adducing any contrary evidence.

After the above discussion it is crystal clear that the claim application and the evidence produced by the applicants are riddled with discrepancies, inconsistencies and are contradictory.

vii) Finally, no ticket was found from the possession of the deceased. Hon'ble Apex Court in a case ***Union of India v. Rina Devi***, Civil Appeal No.4945/2018 held that *"mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances."* In the subject case, the applicant could not substantiate that the deceased was travelling in a train. Unless the deceased is proved to have been travelling in train at the time of alleged incident, the hands of this Tribunal get tied in this regard in obedience of the ruling of the Apex Court.

7.5 Hon'ble High Court of Andhra Pradesh has held in case No.CMA 947 of 2008 (Jetty Naga Lakshmi Parvathi & Others v/s The Union of India) that ".....from Section 101 of the Indian Evidence Act, 1872, it is clear that the applicants, having come to the court asserting some facts, must prove that the death of the deceased had taken place in an untoward incident and that the death occurred while the deceased was travelling in a train carrying passengers as a passenger with valid ticket. Therefore having asserted that the deceased died in an untoward incident and he was having a valid ticket at the time of his death, the initial burden lies on the applicants to establish the same. The initial burden of the applicants never shifts unless the respondent admits the assertions made by the applicants. Such evidence is lacking in this case."

7.6 The applicant could not succeed to prove by adducing cogent evidence that the deceased was travelling in train on the date of incident and his death was caused by injury due to a fall from a running train.

7.7 Hence, we hold that the applicant has failed to prove that the victim died as a result of fall from the train and that the victim was a bona fide passenger.

7.8 Considering the factual elements coming out from the discussion, these issues are held against the applicant by holding that there was no untoward incident as defined

under Section 123(c)(2) of the Railways Act, 1989 involving the victim and the victim was not a bona fide passenger.

Issue No. 3 :

8. In view of the foregoing, this issue does not require further consideration.

Issue No. 4 :

9. The applicants have failed to prove Issue Nos. 1 & 2. Hence, they are not entitled to any relief as prayed for.

O R D E R

The case is dismissed with no order as to costs.

(Rajeev Jain)
Member (Judicial)

(Sanjay Singh Gehlot)
Vice-Chairman