

रेल दावा अधिकरण, कोलकाता न्यायपीठ
BEFORE RAILWAY CLAIMS TRIBUNAL, KOLKATA.
Claim Application No. O.A.(Ilu)/KOL/0016/2020

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

Date of filing of the Case : 07.01.2020.

Date of Registration : 08.01.2020.

Date of the Decision : 05.01.2024.

Kalpana Ray @ Roy Applicant.
W/o Dilip Ray @ Roy,
residing at G.T. Road, Angus Post Office, Chapdani (M),
Hooghly Angus (West Bengal), PIN – 712 221.

-VS-

Union of India represented through Respondent.
General Manager, Eastern Railway, Kolkata.

Claim for Rs.8,00,000/-.

Presented : Shri N. Mittal, Ld. Counsel for the applicant.

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

निर्णय

JUDGEMENT

The instant claim petition has been filed under Section – 16 of the Railway Claims Tribunal Act, 1987 seeking compensation for an amount of Rs.8,00,000/- along with cost and interest by the applicant for herself, as well as on behalf of her husband, Dilip Ray @ Roy, her widowed daughter-in-law, Chumki Roy @ Ray and her minor granddaughter, Priyanka Roy @ Roy, as dependants for the death of her son, Samar Ray @ Roy. It has been stated in the claim application that on 27.08.2018 her son, since deceased, along with one, Asim Roy was travelling from Baidyabati to Liluah by a local train with valid 2nd class railway ticket bearing No.67554546 (ticket seized by Sheoraphully, GRPS) when her son accidentally fell down from the said running train between Rishra and Shreerampore due to over-crowding and sudden jerk and died on the spot. It is submitted that with regard to death of the deceased, one U.D. Case bearing No.66/17 dt. 27.08.2018 was registered at Sheoraphully, GRPS. Initially the claim application was filed with delay and Tribunal has condoned that delay vide Order No.03 dated 03.01.2020.

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2. The respondent, Eastern Railway in their written statement has denied all the material averments made in the claim application. The respondent in its 'WS' has denied that the deceased fell down at the alleged place of occurrence and it is contended that the deceased was run over by train, as stated in the DRM's Report. It is also averred that as per RPF record no journey ticket was recovered from the possession of the deceased. It has finally prayed for dismissal of the case.

3. For proper adjudication of the case, the following issues were framed on 06.10.2020:-

- 1) Whether the incident on account of which the victim is 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?
- 2) Whether the victim was a *bona fide* railway passenger?
- 3) Whether the applicant and others are the dependants of the deceased and are entitled to get any compensation from the respondent railway?
- 4) To what other relief, if any the applicant and others are entitled?

4.1 To prove her case, the applicant, Kalpana Ray @ Roy has affirmed an affidavit and produced her as only witness (AW/1). On behalf of the applicant the documents produced and marked as – (1) Aadhaar Card of Kalpana Ray (Exhibit – A/1), (2) Election I/Card of Kalpana Ray (Exhibit – A/2), (3) FIR (Exhibit – A/3), (4) Final Police Report (Exhibit – A/4), (5) Investigation Report (Exhibit – A/5), (6) Dead Body Challan (Exhibit – A/6), (7) Station Memo of Rishra R/S (Exhibit – A/7), (8) Seizure List (Exhibit – A/8), (9) Railway ticket bearing No.67554546 (Exhibit – A/9) & (10) P. M. Report (Exhibit – A/10).

4.2. The respondent railway has adduced two witnesses, namely, (1) Shri Mrigyuunjay Mandal, SI/RPF (RW/1) & (2) Ranjay Kumar Yadav, RPF Constable (RW/2) and has filed DRM's Report with Annexures which is marked as **Exhibit – R/1 (collectively)**.

5. Further in compliance with the Summons issued by the Tribunal, one Dipak Kumar Samanta, SI of Police was posted at Sheoraphuli GRPS examined before the Tribunal as witness (CW/1).

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DECISION WITH REASONS

Issue No. 1 :-

6.1 Considered the arguments advanced by Ld. Counsels of both sides and perused all the documents and evidence available on the record.

6.2 It appears that the averment of the applicant is based on her own evidence (AW/1) and the documents available on record. By her own admission during cross-examination the applicant (AW/1) does not have any knowledge about the alleged incident and she got the information after 03/04 days from the date of occurrence of the alleged incident. Thus, since there is no direct evidence available on the record, the Tribunal has no other option except to consider the circumstantial evidence for proper adjudication.

6.3 It is seen that the concerned Railway Memo which has been treated as FIR (Exhibit - A/3) mentions that “....An unknown male person aged about 30 years dashed & killed at KM 17/08 to 17/19 on reverse in between RIS – SRP Stn. Dead body outside track, Information received from on-duty staff of L/C gate 4B.....” It is seen that the Police Investigation Report (Exhibit – A/5) appears to have been based on assumption, presumption and mere conjecture because the Inquest witness No.2, Ranjay Kumar Yadav is a RPF Constable whose statement is available in the DRM’s Report and he has given evidence before the Tribunal as RW/2 when he stated that on 27.8.2018 at about 07.45 hrs. he got information about the alleged incident and within five minutes he reached the spot. Thus, it is crystal clear that the RW/2 is not an eye-witness of the alleged incident. That apart, the CD sent by the concerned GRPS does not contain the written statement of Inquest Witness No.2 (RW/2) which was required to be recorded by IO/GRP and most surprisingly IO of GRP did not interrogate concerned staff of nearby L/C Gate 4B (as per Sketch Map annexed with the CD of SHE/GRPS) who reportedly the *prima facie* informant of the alleged incident. Furthermore, the concerned IO of GRP, namely, Dipak Kumar Samanta (CW/1) during cross-examination stated before the Tribunal that RPF staff refused to put signature in the Inquest Report whereas as Witness No.2 of the Inquest Report name of Ranjay Kumar Yadav is mentioned.

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Therefore, it is very much clear that IO/GRP did not follow the statutory norms while preparing the purported Investigation Report. Accordingly, the Tribunal is unable to place any evidentiary value upon the Police Investigation Report. It is also seen that the Final Police Report (Exhibit–A/4) is based on the Investigation Report submitted by the same ASI of GRP Sheoraphuli for which we cannot place any evidentiary value upon the Final Police Report.

6.4 On the other hand, in the column ‘Conclusion’ of DRM’s Report (Exhibit – R/1) it is specially mentioned that the victim, since deceased, was dashed with an unknown train while crossing the Railway Track and consequently he got injured and died on the spot which seems to be the outcome of RPF Inquiry Report. The most *prima facie* document, Railway Memo (FIR) has also corroborated the same and RPF Daily Diary also stated that it is a case of dash by an unknown train. Accordingly, on the basis of the above adjudication we are absolutely helpless to consider that the alleged cause of action may be covered as an ‘untoward incident’ in its statutory definition.

6.5 In the light of the above discussion, it is concluded that the applicant has failed to prove her case that the victim died due to an ‘untoward incident’ as defined in Section – 123 (c)(2) of Railways Act. Hence, this issue is decided against the applicant.

Issue No. 2 :-

7.1 It is pleaded on behalf of the applicant that one Journey ticket bearing No.67554546 Ex- Baidyabati to Rishra dt. 27.08.2018 was recovered and seized by GRP from the possession of the deceased and copy of that ticket has been filed by the applicant as well as copy of that ticket and Seizure List have been produced along with the CD by SHE/GRPS. That apart, in the Final Police Report the same thing is mentioned.

7.2 On the other hand, it is contended in the DRM’s Report that no journey authority was recovered from the possession of the deceased while searching dead body at the spot. In support of this contention the respondent railway has produced one on-duty RPF Constable,

namely, Ranjay Kumar Yadav (RW/2) who during cross-examination has stated that he (RW/2) reached the spot before GRP, GRP personnel reached afterwards and searched dead body when nothing was recovered from the possession of the deceased. During cross-examination RW/2 stated a serious point that GRP did not take his signature and when his signature appearing in the Seizure List was shown to him, RW/2 stated that is not his signature whereas both in the Investigation Report and Seizure List his name does appear as a witness. It is also admitted by the IO of GRP (CW/1) during cross-examination that RPF personnel reached the spot before GRP. It is evident that alleged recovery of ticket from the possession of the dead body has not been mentioned in the Police Investigation Report.

7.3 Further in support of his plea, Ld. Counsel for the applicant cited and relied upon one Judgement of **Hon'ble High Court of Guwahati in Case No.MFA/197/2021 in the case of Madhumita Phukan –vs- Union of India**. On bare reading of the Judgement it is found that the facts, circumstances and adjudicating points of that Judgement entirely differs from the fact and circumstances of the instant case and accordingly, we are unable to consider the verdict of Hon'ble High Court made in that case in deciding this issue. It is also construed that during cross-examination despite availing opportunity the evidence of RW/1 on the point that nothing was recovered from the dead body could not be demolished on behalf of the applicant. That apart, in mentioning the name of a person in the Seizure List without his signature and consent as revealed during cross-examination of RW/2, IO of GRP, in our opinion, has definitely made an illegal act for which Seizure List (Exhibit – A/8) has lost its evidentiary value. Accordingly, we are helpless to consider that the journey ticket filed in this case was actually recovered from the possession of the deceased.

7.4 In the light of the above discussion, it is concluded that the applicant has failed to prove that the victim was a *bona fide* passenger of on the date of the alleged incident. Hence, this issue is also decided against the applicant.

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Issue No. 3 :-

8. Since as per the findings in Issue Nos.1 & 2 above, the applicant has failed to establish her case, this issue does not require any adjudication.

Issue No. 4 :-

9. Since as per the findings in Issue Nos.1 & 2 above, the applicant has failed to establish her case, she is not entitled to get any compensation or any relief, as prayed for. Thus, this issue is also answered against the applicant. Hence,

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ORDERED

10. That the instant claim application is dismissed on contest on its merit. No costs.

(Rajeev Jain)
Member(Judicial)

(Sanjay Singh Gehlot)
Vice-Chairman

रेल दावा अधिकरण,
कोलकाता न्यायपीठ
RAILWAY CLAIMS TRIBUNAL
Kolkata Bench

ORDER SHEET

Nature of application _____ Number OA(IIu)/0016 Year 2020

Kalpana Ray @ Roy Versus- GM/Eastern Railway

Date	Proceeding of the Bench	Notes of the Registrar
05 ----- 03.01.2024	<i>Present : Shri N. Mittal, Ld. Counsel for the applicant.</i> <i>Shri D. K. Chatterjee, Ld. Counsel for the respondent.</i> As fixed, the case is taken up for arguments. Heard both the sides. Judgement be kept reserved. <i>(Rajeev Jain)</i> <u>Member(Judicial)</u> <i>(Sanjay Singh Gehlot)</i> <u>Vice-Chairman</u>	
08 ----- 05.01.2024	Record is put up for delivering judgment. Vide the Judgment delivered in separate sheets the O.A. is dismissed on contest on its merit. No costs. Let the case file be consigned to the record room. <i>(Rajeev Jain)</i> <u>Member(Judicial)</u> <i>(Sanjay Singh Gehlot)</i> <u>Vice-Chairman</u>	