

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

Coram : Mr. Rajeev Jain, Hon'ble Member (Judicial)

Claim Application No. OA(IIu)/KOL/164/2022
Date of filing of claim application : 26.07.2022
Date of Judgement : .03.2024

- 1. Lalita Mridha @ Bhagat, wife of the deceased, Shiu Kumar Bhagat @ Sukumar Mridha**
- 2. Sanjaya Kumar Mridha @ Bhagat, son of the deceased, Shiu Kumar Bhagat @ Sukumar Mridha**

Residing at :

MV 11, Panchabati, Malkangiri, Odissa, PIN 764046

..... Applicants

-VS-

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

..... Respondent

Claim for Rs.8,00,000/-

Present : Shri Navin Mittal, Ld. Counsel for the Applicant.
Smt. S. Mukherjee, Ld. Counsel for the respondent.

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JUDGEMENT

1. This application has been filed under Section 16 of Railway Claims Tribunal Act, 1987 and 124-A of Railways Act, 1989 by the applicants i.e. wife and son of the deceased, Shiu Kumar Bhagat @ Sukumar Mridha for compensation on account of death of the victim, who allegedly died in an untoward incident.

2. Brief history of the case of the applicant as amended is that on 21.01.2022 the deceased was allegedly travelling from Jagaddal to Sealdah Railway station by Train with a valid journey ticket no.10424768. During the course of working of the railway he accidentally fell down from the said train near Shyamnagar Railway station and sustained injuries. He was admitted to Bhatpara State General Hospital and then he was shifted to Kalyani JNM Hospital on 22.01.2022 at 12.23 a.m. where he expired on the same day at 1.12 a.m.

3. The respondent railway has filed written statement followed by additional written statement denying the facts stated in the claim application. It was averred therein that as per inquest report conducted by the local police station i.e. Kalyani P.S.

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at the hospital morgue, the victim fell down from a running train based on the version of the relatives of the victim who were neither the co-passenger of the deceased nor the eye-witness of the alleged incident. With regard to the inquiry report of Naihati GRPS dtd.23.01.2022 the victim was injured due to train accident by an unknown train near 24 No. Railway gate at Shyamnagar station. That report never stated about the cause of incident as to fall from running train. It was further contended that the residential address of the victim was at Kankinara, Bhatpara, Jagaddal which was nearby the place of occurrence. So, trespassing on the Railway gate and being knocked down or run over by any train is clearly proved. It was also pleaded that the final police report of the P.S. does not reveal the alleged incident as falling down from train. So, the fact as mentioned by the applicant in the claim application is totally false and fabricated. The respondent had also disputed the bona fide of the deceased. It was contended that the time of purchase of the ticket was at 13.14 hrs. and it was written therein that the journey should commence within one hour. Whereas the alleged incident occurred at about 21.40 hrs. after about seven hrs. Hence, the ticket was not valid journey ticket at the time of happening of the alleged incident.

Upon pleadings of both sides and documents, the issues are 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 Railways Act, 1989 ?
 2. Whether on the date of alleged incident the victim was a bona fide railway passenger ?
 3. Whether the applicants are the dependents of the deceased in terms of Section 123(b) of Railways Act and are entitled to get compensation, as prayed for ?
 4. To what other relief, if any, the applicants are entitled to ?
4. The applicants filed copy of their Aadhaar Cards which were exhibited A/1 & A/2. Besides, the applicants produced the documents which were exhibited viz. Cremation certificate (A/3), FIR (A/4) Final Police Report (A/5) and Surathal Report (A/6).

The respondent Railway has furnished DRM's report along with the annexures.

5. Counsel for the applicant pleaded that on 21.01.2022 the deceased was allegedly travelling from Jagaddal to Sealdah Railway station by Train with a valid journey ticket no.10424768. During the course of working of the railway he accidentally fell down

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from the said train near Shyamnagar Railway station and sustained injuries. He was admitted to Bhatpara State General Hospital and then he was shifted to Kalyani JNM Hospital on 22.01.2022 at 12.23 a.m. where he expired on the same day at 1.12 a.m. The documents filed by the applicants proved that the death of the deceased was due to an untoward incident as defined under Section 123(c)(2) and the claimant was entitled to get the compensation as per 124-A of Railways Act.

5.1 Counsel for the respondent vehemently objected to the claim of the deceased. She pointed out that the inquest report of Kalyani P.S. mentioned fall of the victim which was based on the version of the relatives of the deceased who were not supposed to be eye-witness. The final report did not state anything as to the cause of incident as falling from train. The letter of Naihati GRPS addressed to OC/Kalyani PS did not mention anything about the cause of incident as fall from train except train accident. There was no co-passenger or eye-witness and the statutory report is not conclusive in support of the claim application. With regard to the bona fide of the deceased, the time of the ticket, which was referred to, was purchased much before the alleged incident. Since, the ticket is valid for the journey within one hour from the time of purchase of the ticket i.e. 13.14 hrs. and the incident was reported at 21.40 hrs. and there are so many trains in regular interval, the ticket cannot be held valid. The incident, therefore, did not fall under the purview of the definition of untoward incident as per Section 123(c)(2) of Railways Act. Besides, the ticket which was referred to was not valid at the time of alleged occurrence.

6. After the arguments of both sides and perusing the evidence available on file, I proceed to decide the issues as under :

Issue Nos. 1 & 2 :

7. These issues are taken up together for discussion as they are interrelated. The applicant, Sanjaya Kumar Mridha @ Bhagat, son of the deceased filed an affidavit affirming the facts contended in the claim application. He was examined and cross-examined as AW/1. The statement of AW/1 as recorded during deposition reveals that on the date of incident he was not present at the time of incident. He was informed about the incident by GRP after my father was taken to the hospital. Hence, the statement of AW/1 interalia suggests that his evidence is hearsay.

7.1 Among the documents filed by the applicants and duly exhibited, the inquest report revealed that during primary inquiry based on the statement of the present witness the I.O. came to know that the deceased was going from Jagaddal to Sealdah

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by train at about 1.00 p.m. and he fell down from the train between Jagaddal and Shyamnagar Railway stations. In the final police report, the cause of incident was reiterated as stated in the P.M. report that death was due to the effect of the injuries ante mortem in nature.

7.2 The respondent railway produced the DRM report accompanied with enquiry report. It came to the conclusion that as per surathal witnesses, they were not present at the place of occurrence when the incident took place. Apart from this, CBC/Shyamnagar stated that he had received information from local public that one unknown male trespasser aged about 45 years received injury by an unknown train.

7.3 On comprehensive scrutiny it is found in the inquest report that it was prepared in Kalyani Hospital by Kalyani P.S. where the I.O. reported that as per endorsed witnesses the victim sustained injury by falling down from train between Jagaddal and Shyamnagar. Hence, it is evident that the inquiry conducted by the I.O. of P.S. in the subject UD case is totally based on the inquest witnesses who were proved not to be the eye-witnesses. A letter addressed to IC/Kalyani PS issued by SI of Police, Naihati GRPS under reference of Kalyani PS UD case no.36/22 dtd.22.01.2022 and Naihati GRPS GDE No.426 dtd.21.01.2022 & 474 dtd.23.01.2022 revealed that upon inquiry on 23.01.2022 at about 07.15 hrs. to 07.45 hrs. a reported train accident occurred to the deceased between Km. Post No.30/18 and 30/20 by an unknown train near 24 No. Railway Gate at Shyamnagar Station. The said letter of Naihati GRPS threw light upon the fact that the local inquiry was conducted by them which envisaged that the victim sustained injury due to train accident by unknown train. From the letter of Naihati GRPS it cannot be held that the deceased sustained injury due to falling from train specifically. As far as the final police report is concerned, there is nothing as to the final outcome of the investigation under the subject UD case except the reiteration of the remarks of Medical Officer in P.M. Report – Death was due to the effect of the injuries, ante mortem in nature. The primary report i.e. inquest report of P.S. is evidently based on presumption which cannot be held conclusive. The final police report is silent as to the cause of incident and it never manifested that the deceased sustained injury due to fall down from train as alleged by the applicant. Besides, the local inquiry by Naihati GRPS at the place of occurrence only mentioned that the deceased was reportedly injured due to train accident. 'Train accident' enumerates a wide range of occurrence related to the train viz. knocked down, run over etc. There is no evidence on record to support the pleading of the applicant that the victim fell from running train. Applicant could not lead any cogent evidence that the victim died due to an untoward incident as defined under Section 123(c)(2) of Railways Act, 1989.

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7.4 As far as the bona fide of the deceased is concerned, the applicant has mentioned in the claim application that the deceased was having valid journey ticket no.10424768 dtd.21.1.2022 time of issue 13.14 hrs. The copy of the ticket is on record. The counsel for the respondent had vehemently disputed the validity of the ticket at the time of reported incident. It is carefully seen that the ticket was issued at 13.14 hrs. and the incident was reported at 21.40 hrs. It was clearly written in the ticket that the journey should commence journey within 1 hour from the time of issuance of ticket which means the deceased should have commenced journey within 14.14 hrs. whereas the incident was reported at 21.40 hrs. near Railway Gate at Shyamnagar Railway station which was after about seven hours from the expiry of the validity of the ticket from Jagaddal Railway station. It is also noted that Shyamnagar Railway station is the very next station of Jagaddal Railway station. Hence, the ticket appears to be invalid at the time of incident reported. Besides, the counsel for the respondent stated that there are trains of regular intervals towards Sealdah. The counsel for the applicant could not challenge the contention of the respondent by adducing any evidence. Considering the argument made by the respondent which was not challenged by the applicant and having scrutinized the ticket, the deceased cannot be held a bona fide passenger of the train.

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 In the case on hand, the applicant has miserably failed to prove the case that the deceased sustained death due to a fall from a train and he was a bona fide passenger on fateful date of incident either by marshalling conclusive documentary evidence or any eye-witness evidence before the Court. On the other hand, the respondent vehemently denied and disputed the claim of the applicant.

7.7 Considering the factual elements coming out from the above discussion, these issues are answered in favour of the respondent by holding that there was no untoward

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

Issue No. 3 :

8. In view of the foregoing, this issue is not required for 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)