

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

Coram : Mr. Sanjay Singh Gehlot, Hon'ble Vice-Chairman
Mr. S. D. Sharma, Hon'ble Member (Judicial)

Claim Application No. OA(IIu)/KOL/185/2019
Date of filing of claim application : 11.09.2019
Date of Judgement : 13.09.2024

1. Manijal Sekh,

Residing at :

Vill. Mushlimpara, Mauja : Rampurhat, Birbhum 731224 Applicants

-VS-

Union of India represented through

The General Manager, Eastern Railway, Kolkata Respondent

Claim for Rs.8,00,000/-

Present : Mr. Navin Mittal, Ld. Counsel for the Applicant.

Mr. D. K. Chatterjee, Ld. Counsel for the Respondent.

निर्णय

JUDGEMENT

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 applicant for compensation on account of injury of the victim, who allegedly injured in an untoward incident.

2. Brief history of the case of the applicant was that on 24.02.2018 Manijal Sekh was travelling from Bolpur to Rampurhat by 63581 local train with valid 2nd class railway ticket. He was travelling with his wife, daughter, his grandfather and grandmother. They all boarded the train when it was stationary. As soon as the train started, he accidentally fell from the train due to overcrowding pressure and sudden jerk at Bolpur station and was grievously injured. The relatives and police got him shifted

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to Bolpur Hospital and thereafter he was transferred to Gouri Devi Hospital and Research Institute, then to Niramaya Nursing Home. Finally he was discharged on 16.03.2018.

3. The respondent railway filed a written statement denying the facts stated in the claim application. It was averred that the victim was not a bona fide passenger, rather he was a trespasser. The victim got injured due to his own negligence.

Vide Order No.9 dtd.26.02.2021, the following issues were framed for determination and adjudication in this case :

1. Whether the incident on account of which the victim is alleged to have sustained injury 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 entitled to get compensation from the respondent railway and if entitled, what would be the quantum ?

4. Relief, if any.

4. During proceedings of the subject case, the applicant filed a substitution petition on 28.04.2023 stating that the claimant, Manijal Sekh died on 25.04.2021. It was prayed by the counsel for the applicant that Sohagi Bibi, wife of the deceased being a dependant of the victim may be substituted.

5. Vide 22.02.2024 the substitution petition was allowed on prima facie assumption that the victim died due to injury as stated above.

6. *The Railway had submitted the DRM report and has marked the same as Ex.R-1.*

7. Before going to the merit of the case, we deemed it necessary to determine the other two issues :

1. Whether the victim/injured died due to the injury that occurred in the alleged incident ?

2. whether Sohagi Bibi, wife of the victim could emerge as a valid claimant for the compensation due to the injury sustained by the victim, Manijal Sk. ?

8. Whether the victim/injured died due to the injury occurred in the alleged incident ?

The victim filed this claim application on 11.09.2019 for compensation on account of his injury. He was allegedly injured in an untoward incident on 24.02.2018. During proceedings he died on 25.04.2021. There is neither any whisper in the Substitution Petition & the affidavit in chief of Sohagi Bibi as to the cause of the death of the victim nor did the wife of the deceased file any medical document to prove the same. Besides, the evidence of Sohagi Bibi was adduced as AW/1, but she could never say as to what was the cause of death of the victim. Hence, it is held that the death of the victim was not due to the injury sustained in the alleged incident.

9. whether the applicant, Sohagi Bibi, wife of the victim could emerge as a valid claimant for the compensation due to injury sustained by the victim, Manijal Sk. ?

Section 124A of the Railways Act, 1989 is reproduced below :-

"Compensation on account of untoward incidents - When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain

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an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident."

Section 125 of the Railways Act, 1989 enshrines that -

"Application for compensation

1. An application for compensation under Section 124 or Section 124A may be made to the Claims Tribunal -
 - a. by the person who has sustained the injury or suffered any loss, or
 - b. by any agent duly authorised by such person in this behalf, or
 - c. where such person is a minor, by his guardian, or
 - d. where death has resulted from the accident, or the untoward incident by any dependant of the deceased or where such a dependant is a minor, by his guardian.

A plain reading of the statute reveals that dependents of the victim must establish that the victim's death resulted from injuries sustained in an untoward incident to be entitled to file the claim for compensation for the death of the victim to the extent of Rs.8,00,000/-. There is no provision for the dependents of any victim to claim compensation for the extent of injury (scheduled or non-scheduled) only.

Issue Nos. 1, 2, 3 & 4 :

8. In view of the foregoing, these issues do not require further consideration.

O R D E R

The case is dismissed with no order as to costs.

(S.D.Sharma)
Member (Judicial)

(Sanjay Singh Gehlot)
Vice-Chairman

