

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

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

Claim Application No. OA(IIU)/KOL/2019/0223

(Application filed on 17.09.2019 & decided on 29.04.2024)

- 1) Tanuja Mondal, wife of the deceased Jiadul Haque Mondal
- 2) Jeet Mondal, son of the deceased Jiadul Haque Mondal

Both residing at :
12/14, R. B. C. Road, Dum Dum(M),
P.S. Dum Dum, North 24 Pgns.,
West Bengal – 700 028

..... 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

Mrs. S. Chatterjee, Ld. Counsel for the applicant.
Shri D. K. Chatterjee, Ld. Counsel for the respondent

निर्णय

J U D G E M E N T :

Dictated by Rajeev Jain, Member(Judicial)

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 for herself and also on behalf of her son claiming compensation as dependants on account of the death of her husband allegedly in an untoward train incident of accidental falling from a train. It is pleaded in the claim application that on 31.01.2019 at about 17.38 hrs. the victim Jiadul Haque Mondal and his friends Ganesh Saha and Sahadeb Dey were travelling from Barrackpore to Dum Dum Cantonment. At the time of boarding a local train, the victim fell down from the train. He sustained injuries all over his body and his right thumb was badly injured. He was sent to B.N. Bose Hospital with the help of his relative and friends. From there he was referred to R.G. Kar Medical College & Hospital for better treatment, where he expired on 07.02.2019.

2. The respondent railway has filed Written Statement disputing and denying the averments made in the claim application. In the written statement, it was stated that there was no such incident happened at Barrackpore station as the incident was not recorded in the station diary. It was further denied that the victim accidentally fell down from any running train and that the victim had any co-passengers. There was no whisper about the recovery of the railway ticket in the police report.

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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 died can be termed as an 'untoward incident' as defined under Section 123(c)(2) of the Railways Act?
2. Whether on the date of alleged incident the victim was a bona fide railway passenger?
3. Whether the applicants and other are the dependants of the deceased in terms of Section 123(b) of the Railways Act and are entitled to get compensation from the respondent?
4. Relief, if any?

4. The applicant filed her affidavit of evidence and she was cross-examined as AW/1. In support of the case, the applicant has furnished the following documents, which were marked Exhibits A/1 to A/14 (Aadhar card of Tanuja Mondal – A/1, Aadhar card of Jiadul Haque Mondal – A/2, Aadhar card of Jeet Mondal – A/3, Death certificate of Jiadul Haque Mondal – A/4, OPD ticket of R.G. Kar Hospital – A/5, Visiting card of R.G. Kar Hospital – A/6, Attendance/Admission record of R.G. Kar Hospital – A/7, Patient Registration Bill of Spandan Hospital – A/8, Case Summar of Spandan Hospital – A/9, Original ticket – A/10, Disposal order of R.G. Kar Hospital – A/11, letter of Barrackpore GRPP to Tala P.S. – A/12, inquest report – A/13 and P.M report – A/14.

On behalf of the applicant, one Ganesh Saha, the alleged co-passenger of the deceased filed affidavit of evidence and he was cross-examined as AW/2. His Aadhar card and Voter's card were marked as Exht. A/15 & A/16.

On the other hand, the respondent railway filed DRM/SDAH's report along with annexures which were marked Exht.R/1 collectively.

As per Court's summons, Dr. Bhudeb Mandal, Medical Officer of Dr. B.N. Bose S.D. Hospital, Barrackpore appeared before the Court and he was examined as Court witness(CW/1). He produced the Emergency Register of the Hospital, marked as Exht.C/1.

5. Ld. Counsels for the rival parties advanced their respective oral argument. After appreciating the arguments and perusing the record, we determine the issues as under :-

Issue No.s 1 & 2

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

6.1 In her affidavit, the applicant reiterated the facts of the case as narrated in the claim application. In her cross-examination, the applicant(AW/1) deposed that he did not see the incident and he got the information about the incident from Ganesh Saha.

6.2 Ganesh Saha in his affidavit of evidence stated that on 31.01.2019 in the evening he alongwith Sahadeb Dey and the deceased Jiadul Haque Mondal boarded Dn. Krishnanagar

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local after purchasing a railway ticket from Barrackpore for going to Dum Dum Cantonment. When the train just left the platform area of Barrackpore, he fell down on the platform and got minor injury. He then noticed that Jiadul Haque Mondal also fell down from the train and slipped between the gap of the platform and the train due to rush of passengers. Immediately the train stopped. Then he along with the other passengers pulled Jiadul Haque Mondal on the platform from the railway track. After informing to Jeet Mondal, the son of Jiadul Haque Mondal, they took the victim to B.N. Bose Hospital with the help of GRP. After giving him first aid by B.N. Bose Hospital, the victim was referred to R.G. Kar Hospital. Jeet Mondal came at R.G. Kar Hospital and took his father to Spondon Hospital, where he got treatment from 01.02.2019 to 05.02.2019. He was again shifted to R.G. Kar Hospital on 06.02.2019, where he died on 07.02.2019.

As per claim application, the ticket of the deceased was in the custody of his friend. The applicant filed the original ticket, marked Exht.A/10. The ticket was issued at 17.38 hrs. on 31.01.2019. According to deposition of AW/2, the alleged incident happened before 05.00 p.m. AW/2 deposed that after the incident they carried the victim to B.N. Bose Hospital and on the same day they carried him to R.G. Kar Medical College & Hospital. They stayed at B.N. Bose Hospital upto one hour. In his affidavit, AW/2 stated that after providing first aid at B.N. Bose Hospital, the victim was referred to R.G. Kar Hospital. As per summons issued, Dr. Bhudeb Mandal, the Medical Officer of B.N. Bose Hospital turned up before the Court and he was examined by the Court as CW/1. CW/1 deposed that on 31.01.2019 he was on duty Medical Officer of Emergency Room of B.N. Bose Hospital. On 31.01.2019 no patient in the name of Jiadul Haque Mondal was treated at B.N. Bose Hospital. In view of such contradictions in the evidence of Ganesh Saha(AW/2), the alleged co-passenger of the deceased, his evidence cannot be given cognizance to.

6.3 As per claim application, after the alleged incident, the victim was taken to B.N. Bose Hospital. There is no documentary evidence on record which substantiates that the deceased was taken to B.N. Bose Hospital and he was rendered primary treatment there. After getting the death information from R.G. Kar Hospital, Tala P.S. held inquest over the dead body at the hospital morgue. There was no whisper in the Inquest report that the deceased died due to fall from a train, as claimed. The incident allegedly happened at Barrackpore railway station. But the letter of Barrackpore GRPP under GDE No.216 & 220 dt.07.02.2019 to the OC/Tala P.S. (Exht.A/12) did not reveal that the deceased sustained injury due to fall from a train at Brrackpore station.

6.4 DRM's report(Exht.R/1) mentioned that no such incident took place in the jurisdiction of RPF/ Post/Barrackpore. Ld. Counsel for the respondent argued that the alleged incident was not recorded by the station authority of Barrackpore as no such incident happened.

6.5 **The applicant has not been able to adduce sufficient cogent evidence which could corroborate her claim of accidental falling of her husband from a train.** When a person is bound to prove the existence of any fact, the burden of proof lies on that person. It is the duty of the applicant to lead and marshal sufficient convincing evidence. In this case, the applicant miserably failed to establish her contention. In the absence of any cogent and convincing documentary evidence, the incident as alleged could not be proved. Even no such incident was recorded by the concerned station master of Barrackpore, when the allegedly incident happened at Barrackpore station.

6.6 In the light of the above discussion, it is held that the applicant has failed to prove that the deceased accidentally fell down from a train carrying passengers and as such, the incident did not come under the purview of Section 123(c)(2) of the Railways Act, 1989. This issue is, therefore, decided against the applicant.

7.0 As per claim application, the victim purchased a second class journey ticket bearing no.40741859 which was in the custody of his friend, but the name of his such friend has not been disclosed in the claim application. Ganesh Saha deposed that they were having one ticket for three persona and the ticket was with him. He further deposed that the incident happened before 05.00 p.m. However, the ticket filed(Exht.A/10) showed that it was issued at 17.38 hrs. Therefore, it is crystal clear that the ticket filed is a ticket subsequently procured to prove the bona fide of the deceased. Section 123(c)(2) of Railways Act states that 'untoward incident' means "**the accidental falling of any passenger from a train carrying passengers.**" **In this case, there is no corroborative evidence that the deceased was a passenger undertaking any train journey at the time of his death.** As such, the deceased cannot be termed as a bona fide passenger. This issue is accordingly decided against the applicant.

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,

आदेश
ORDERED

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

(Rajeev Jain)
Member(Judicial)

(Sanjay Singh Gehlot)
Vice-Chairman

