

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

Coram : Mr. Sanjay Singh Gehlot, Hon'ble Vice-Chairman

Claim Application No. OA(IIu)/KOL/23/2021
Date of filing of claim application : 08.03.2021
Date of Judgement : 16.11.2023

1. Jyotsna Bibi, wife of the deceased, Rajesh Mondal @ Raju Sk.
2. Nasim Mondal, son of the deceased, Rajesh Mondal @ Raju Sk.
3. Sagar Mondal, son of the deceased, Rajesh Mondal @ Raju Sk.
4. Rahul Mondal, minor son of the deceased, Rajesh Mondal @ Raju Sk.
5. Moyna Bibi, mother of the deceased, Rajesh Mondal @ Raju Sk.

Residing at :
Vill. & P.O. Tentulia, P.S. Murshidabad,
Dist. Murshidabad
742302

..... Applicants

-VS-

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

..... Respondent

Claim for Rs.8,00,000/-

Present :

Shri Amir Safique Molla, Ld. Counsel for the Applicant.
Shri B. Adhikary, 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 and 124-A of Railways Act, 1989 by the applicants, wife, sons and mother of the deceased, Rajesh Mondal @ Raju Sk. 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 is that on 03.07.2015 the deceased was allegedly travelling from Sealdah to Murshidabad Railway station by Train No.53105 UP (Sealdah Lalgola Passenger) train with valid

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ticket bearing no.J20581154. During his journey when the train was about to enter Murshidabad Railway station, he fell down from the running train near Km. Post No.195/33-195/31 due to pressure of the passengers. He sustained grievous injury and died on the spot.

3. The respondent railway has filed a written statement denying the facts stated in the claim application. It was submitted by the respondent therein that as SM Memo of Murshidabad, on 03.07.2015 on-duty Loco Pilot of Train No.53175 UP informed him over walkie talkie that one male trespasser suddenly came in front of the engine of Train No.53175 UP and was knocked down at Km. No.195/33-31 between Murshidabad and Cossimbazar Railway stations. Moreover, as per the statement of the claimant in the DRM's report that the deceased met with a Railway accident while crossing the Railway track and died on the spot. The respondent had again pleaded that no other evidence in support of the victim fallen down from a running train was available.

The following issues have been recast :

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 have produced certain documents towards proof of relationship with the deceased which were exhibited A/1 to A/3 & A/8 to A/11. Apart from those documents, the other documents have been filed viz. P.M.Report (A/4), Railway Ticket No.20581154 (A/5), Surathal Report (A/6) and Certificate issued by OC/Berhampur GRPS (A/7).

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The respondent Railway has furnished an inquiry report duly accepted by DRM/SDAH marked as Exh.R/1.

5. The applicant, Jyotsna Bibi, wife of the deceased filed an affidavit affirming the facts put forth in the claim application. She was also examined and cross-examined as AW-1. She stated that - *".....The incident took place on 03.07.2015. Today I have filed an affidavit. I narrated the fact to my Lawyer, he drafted the affidavit and explained its contents to me in Bengali. I did not see the incident. It is true that I have no personal knowledge about the incident. Co-passengers of my husband informed me about the incident. I do not remember their names. After the incident Railway police called me and they obtained my signature.....This paper bears my signature. On the date of the incident, my husband was coming home from Sealdah and he informed this fact over phone. He used to stay at Sealdah in connection with his work. I saw my husband one month prior to the incident. I have filed one Railway journey ticket. GRP gave this ticket. The persons who lifted dead body from the spot collected that ticket. Original ticket has been kept with GRP. I did not put signature while receiving ticket from GRP. After getting information, I did not go to the spot. I went to GRPS/Berhampore. Place of the incident is 1 ½ Km away from my residence. Nobody else will give evidence....."*

6. Counsel for the applicant pleaded that on 03.07.2015 the deceased was allegedly travelling from Sealdah to Murshidabad Railway station by Train No.53105 UP (Sealdah Lalgola Passenger) train with valid ticket bearing no.J20581154. During his journey when the train was about to enter Murshidabad Railway station, he fell down from the running train near Km. Post No.195/33-195/31 due to pressure of the passengers. He sustained grievous injury and died on the spot. The statutory reports indicated that death of the deceased was due to an untoward incident as defined under Section 123(c)(2) and the claimants are entitled to get the compensation as per 124-A of Railways Act.

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6.1 Counsel for the respondent stated that the pleading had already been taken in the written statement that on 03.07.2015 on duty Loco Pilot of Train No.53175 UP informed to SM/MBB over walkie talkie that one male trespasser suddenly came in front of the engine of Train No.53175 UP and he was knocked down at Km. No.195/33-31 between Murshidabad and Cossimbazar Railway station. The memo along with the statement of the said Loco Pilot were annexed with the DRM's report. He also pleaded that the respondent had also adduced the evidence of that Loco Pilot in the court who categorically stated that he had seen the person coming in front of the Engine and got dashed by the Engine. It was a clear case of being knocked down by the Train which did not fall under the definition of untoward incident. Hence, the instant case should be summarily dismissed.

After hearing 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. Among the documents relied upon by the applicant, Surathal Report (A/6) revealed that on 03.07.2015 when the train no.53105 was entering Murshidabad Railway station, the deceased Rajesh Mondal fell down from the train and he died. This was the version of the eye-witnesses. However, to ascertain the actual cause of death of the deceased, the dead body was sent for P.M. examination. As per P.M. Report, Death was due to the effects of ante mortem injuries. The final police report reiterated the outcome of the investigation as stated in the surathal report.

7.1 The respondent has submitted the DRM's report which revealed that SM/Murshidabad issued a memo to the effect that on 03.07.2015 on duty Loco Pilot of T/No.53175 UP informed to SM/Murshidabad over walkie talkie that one male trespasser aged about 35 years came in front of the

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engine of the said train and was knocked down at KM NO.195/33-31 between Murshidabad and Cossimbazar Railway station. Dead body was lying inside the Railway track. The RPF diary had also corroborated the fact as mentioned in the SM/Murshidabad's memo. As per the statement of the Loco Pilot in question, on 03.07.2015 he was booked as Loco Pilot in the passenger Train No.53175 UP (Sealdah-Lalgola Passenger). When the said train was running between Cossimbazar and Murshidabad Railway stations, one male person aged about 35 years came on UP Railway track in front of his engine of T/No.53175 UP and he was knocked down.

The DRM's report concluded that it has been well proved that it is a case of trespassing the Railway track due to which he was knocked down by the Train. The Railway Authority was ,therefore,not liable to pay the compensation for the incident mentioned above.

7.2 The respondent had also adduced evidence of the Loco Pilot in question wherein he stated that -

"My name is Satya Prasad Mazumder. I have received summons from this Court to appear today to give evidence. The incident took place on 03.7.2015. On that date I was on-duty Loco Pilot of 53175 UP ex Sealdah to Lalgola. On that date the train left Sealdah at 12.32 hrs. The train left Cossimbazar at 17.53 hrs and reached Murshidabad at 18.00 hrs. The incident took place between this period of time. At the time of occurrence of the incident, the speed of the train was about 50/60 KM per hour. Suddenly I saw a person come in front of my Engine. I blew a whistle. But that person did not pay any heed and got dashed by the Engine. Most probably that person came from the left side. At that time it was a single line track. When the person got dashed by the Engine I heard a sound. After the incident, I conveyed it

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to the on-duty Guard of the train and also to SM/Murshidabad. Subsequently, reaching Sealdah I noted down the incident in 'Untoward Incident' register kept at Sealdah. I have not filed that register, since the same is not kept with me. I do not know what has been written in the GRP Report, since GRP did not ask me anything about the incident. No a fact that I have given false evidence.

To Court :

" Today I have filed my Note Book containing the entries dated 03.7.2015 and in the back side of that Note Book I have recorded the incident."

7.3 Upon the above discussion, I observe that -

- i) **The on-duty Loco Pilot of 53175 UP ex Sealdah to Lalgola passenger (RW/1) unequivocally stated before the court that the deceased was dashed by his train while he came in front of the Engine. Counsel for the applicant had also cross-examined the RW/1 where the counsel could not dislodge the evidence adduced by RW/1.** He had also submitted a certified copy of the Loco Pilot's Notebook which revealed that at KM No.195/33 there was a knock down of a male person.
- ii) Whereas, the statutory report of GRPS revealed that the deceased fell down from train no.53105 when the train was arriving at Murshidabad Railway station as per the version of the inquest witnesses. Neither the statements of the inquest witnesses were produced nor were they produced before the court. Hence, the statutory reports are based purely on inquest witnesses whose testimonies were not substantiated.
- iii) **Ld. counsel for the applicant could also not repudiate the deposition of the said Loco Pilot of 53175 UP ex Sealdah to**

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Lalgola passenger.

Section 59 of Indian Evidence Act deals with the proof of facts by oral evidence. It envisages that - *"All facts, except the contents of documents or electronic records, may be proved by oral evidence."*

Section 60 of Indian Evidence Act deals with oral evidence which must always be direct which means ocular evidence. If evidence is led to prove a fact of an event which one sees such an event, the witness who saw the event must be produced to state the facts of the particular event.

Since, a train driver could emerge as the best evidence in case of a person being knocked down by that particular train, the Ld. Bench took the burden on its shoulder to have summoned the train driver of the concerned train to explore the truth. Here, it is evident from the statement of the train driver in question that he had seen the person being knocked down by his train. The Court always will give due cognizance to the best available evidence. Counsel for the applicant had also cross-examined the said train driver in the court, but no exceptional information could be gathered.

iv) Counsel for the applicant did not challenge the oral evidence adduced by CW/1 by filing or adducing any contra evidence. Besides, Counsel for the applicant had also cross-examined the said train driver in the court, but no exceptional information could be gathered. It has become obvious that the police report of GRPS filed by the applicants have been prepared based on hearsay. Counsel for the applicant, therefore, did not file any cogent evidence to prove the case.

7.4 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."

7.5 Considering the factual elements coming out from the 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.

7.6 **Rather, as per the statement of the Loco Pilot of train no.53175 the deceased was run over by his train.** Taking cognizance of the statement of the said Loco Pilot as well as the documentary evidence adduced by both the parties and the circumstantial evidence, I hold that the deceased was run over by train.

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.

(Sanjay Singh Gehlot)
Vice-Chairman

