

रेल दावा अधिकरण, कोलकाता न्यायपीठ
BEFORE RAILWAY CLAIMS TRIBUNAL, KOLKATA.
Claim Application No. O.A.(IIu)/KOL/0232/2022

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

Date of the incident : 13.06.2022.
Date of filing of the Case : 10.11.2022.
Date of Registration : 10.11.2022.
Date of the Decision : 05.07.2024.

1) Satendra Malakar, father of the deceased Applicant.

Permanently residing at Vill. : Bich Balihari, P.O. : Kasunda,
P.S. : Putki, Dist. : Dhanbad, Jharkhand, PIN – 828 116.

Presently residing at 152 Bagan Area, Stag Road, Agrico,
P.S. : Sitaram Dera, Dist. ; East Singhbhum, Jharkhand,
PIN – 831 009.

-VS-

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

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

Presented : Shri R. K. Mishra, Ld. Counsel for the applicant.

Shri A. Prasad, Ld. Counsel for the respondent.

निर्णय

J U D G E M E N T

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 himself, as sole dependent for the death of his unmarried son, Vikash Malakar. It has been stated in the amended claim application that on 13.06.2022 Vikash Malakar, since deceased, after purchasing a valid Railway ticket boarded the train from Bandel R/S to go to Dhanbad R/S and during the said journey the victim suddenly fell down from the running train near Panagarh R/S at KM Post No.153/21 – 153/23 and as a result died on the spot. It was submitted that with regard to the death of the victim one U.D. Case bearing No.28/2022 dt. 14.6.2022 was registered at Andal GRPS and the journey ticket of the deceased could not be recovered after the accident.

Contd...../2.

2. The respondent, Eastern Railway in their written statement has denied all the material averments made in the claim application. In the 'WS', the respondent has averred that neither the victim was a *bona fide* railway passenger nor the incident, as alleged, was an 'untoward incident' as per Section – 1213 (c) (2) of the Railways Act. It further contended that the applicant has made a false and a fabricated story, as there is no eye-witness or cogent proof in support of the pleadings of the applicant. It has finally prayed for dismissal of the case.

3. Upon pleadings of the parties the following issues were framed on 09.06.2023 for proper adjudication of the case :-

- 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, 1989 or not?
- 2) Whether the victim was a *bona fide* railway passenger?
- 3) Whether the applicant is the sole dependent of the deceased and is entitled to get compensation, as prayed for?
- 4) To what other relief, if any, the applicant is entitled?

4. To prove the case, the applicant, Shri Satyendra Malakar, father of the deceased affirmed an affidavit and produced himself as the only witness (AW/1). On behalf of the applicant the documents produced and marked as – (1) Railway Memo (Exhibit – A/1), (2) Dead Body Challan (Exhibit – A/2), (3) Investigation Report (Exhibit – A/3), (4) P. M. Report (Exhibit – A/4), (5) Final Report (Exhibit – A/5), (6) Aadhaar Card of Vikash Malakar (Exhibit – A/6) & (7) Aadhaar Card of Satyendra Malakar (Exhibit – A/7).

Contd...../3.

5. The respondent railway has filed DRM's Report with Annexures which is marked as ***Exhibit– R/1 (collectively)*** and being directed by the Tribunal, the respondent railway has filed one Ticket Verification Report and a corroborating affidavit sworn by Sri Pawan Kumar, Dy. CCM/Court & Claims/E.Rly.

कारणों सहित निर्णय
DECISION WITH REASONS

Issue No. 1 :-

6.1 Considered the written arguments filed by Ld. Counsel for the applicant and submissions made by the respondent's side and perused all the documents and evidence available in the record.

6.2 It appears that the averment of the applicant is based on the evidence of AW/1 and the documents available in the record. By his own admission during cross-examination of the witness (AW/1) it transpired that at the time of occurrence of the alleged incident he (AW/1) was at his residence and as such, he (AW/1) was not an eye-witness of the alleged incident. The Railway Memo issued by Stn. Manager/Panagarh/E.Rly. dt. 14.6.22 at 05.50 hrs. (Exhibit – A/1), which has been treated as FIR, stated that – “.....As per reported by Trackman – III, Sri Pradeep Karmakar an unknown male person aged about 35 yrs. found dead in Up-1 (M/L) inside the track at KM 153/21 – 153/23 at PAN Stn. limit.....” That apart, from the pragmatic point of view it is seen that as per the record, the victim's body was lying unnoticed and was first noticed by a railway staff who did not see the alleged incident .So, there was definitely no eye-witness of the alleged incident, even any private witness,

Contd...../4.

unless he or she must have reported the incident to the concerned Railway Station, Panagarh which is located in the close vicinity of the alleged place of occurrence. Therefore, at this stage, there is no constraint to hold that in the instant case there was no eye-witness of the alleged incident. Thus, it is observed that the opinion of the IO of GRP made in the Police Investigation (Exhibit – A/3) is purely based on assumption, presumption and conjecture. Further, the IO/RPF in the DRM's Report stated that no eye-witness of the alleged incident was available. It appears that the Final Police Report (Exhibit – A/5) is based on the Police Investigation Report submitted by the same SI of GRP.

6.3 In the DRM's Report it has been contended that there was no eye-witness of the alleged incident and there is no cogent evidence in support of the fact, as pleaded by the applicant.

6.4 Conclusively it is considered that due to lack of cogent and reliable evidence in support of the alleged incident this Tribunal has no other option except to hold that the applicant has miserably failed to establish the fact of this issue that the deceased had fallen down from a train carrying passengers. Accordingly, the Tribunal is absolutely helpless to adjudicate this issue in favour of the applicant.

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

Contd...../5.

Issue No. 2 :-

7.1 In the instant case it was averred on behalf of the applicant that the deceased had a valid journey ticket which was lost. On the other hand, it has been contended by the respondent in the 'WS' as well as in the DRM's Report that no journey authority was recovered from the possession of the deceased. However the applicant (AW/1) during cross-examination stated that the victim had a confirmed ticket in a reserved compartment .Since the applicant (AW/1) on oath stated before the Tribunal that the victim was travelling by Dehra Doon Express dt. 13.06.2022 with a confirmed ticket in a reserved compartment, taking the said statement as his conclusive evidence, the Tribunal directed the respondent to affirm on affidavit whether any PNR ticket was issued in the name of the said deceased, Vikash Malakar by Dehra Doon Express or not. In compliance with that direction, Dy. CCM(Court & Claims), Sri Pawan Kumar has sworn an affidavit wherein it was affirmed that no PNR ticket was issued in the name of the deceased, Vikash Malakar on 13.06.2022 by Train No.13009 (Dehra Doon Express). Hence it is quite clear that the deceased was not a bona fide passenger on the train mentioned by AW1 & the father of the deceased.

7.2 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 on the date of the alleged incident. Hence, this issue is also decided against the applicant.

Contd...../6.

Issue No. 3 :-

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

Hence,

आदेश
ORDERED

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

(Sanjay Singh Gehlot)
Vice-Chairman

रेल दावा अधिकरण,
कोलकाता न्यायपीठ
RAILWAY CLAIMS TRIBUNAL
Kolkata Bench

ORDER SHEET

Nature of application _____ Number OA(IIu)/0232 Year 2022

Satendra Malakar -Vs- GM/E. Railway

Date	Proceeding of the Bench	Notes of the Registrar
15 ----- 05.07.2024	Record is put up for delivering judgment attaching the written arguments filed by the Ld. Counsel for the applicant. 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. (Sanjay Singh Gehlot) <u>Vice-Chairman</u>	