

रेल दावा अधिकरण, कोलकाता न्यायपीठ
BEFORE RAILWAY CLAIMS TRIBUNAL, KOLKATA.
Claim Application No. O.A.(Ilu)/KOL/0026/2021

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

Date of filing of the Case : 09.03.2021.

Date of Registration : 10.03.2021.

Date of the Decision : 26.12.2023.

Swapan Dom & Ors.

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Applicant.

W/o Late Sanat Dom,

residing at Vill. : Kharikatikari, P.O. : Ikra,

P.S. : Suri, Dist. : Buirbhum, W.B., PIN – 731 129.

-VS-

Union of India represented through

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Respondent.

General Manager, Eastern Railway, Kolkata.

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

Presented : Shri R. N. Basu, Ld. Counsel for the applicant absent in the final arguments.

Smt. S. Mukherjee, 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 well as on behalf of his wife, Sabitri Dom, as dependants for the death of his unmarried son, Anup Dome @ Anup Dom. It has been stated in the claim application that on 27.05.2017 his son, since deceased, was travelling from Burdwan R/S to Durgapur R/S by a train with a valid 2nd class railway journey ticket when his son fell down from the said running train at Platform No.2 of Panagarh Railway Station due to over-crowding and sudden jerk and died on the spot. It is submitted that after the incident the journey ticket of the victim was lost. Initially the claim application was filed with delay and the Tribunal has condoned that delay vide Order No.07 dated 25.02.2021.

2. The respondent, Eastern Railway has contested the case filing a written statement denying all the material averments made in the claim application. The respondent in its 'WS' has contended that neither the deceased was a *bona fide* passenger nor the alleged incident comes under the definition 'untoward incident'. It

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is specifically contended that as per reporting of Driver of Train No.12496 Up the deceased was unauthorizedly crossing the railway track when he was run over and died and no journey authority was recovered from the possession of the deceased. It has finally prayed for dismissal of the case.

3. For proper adjudication of the case the following issues were framed on 19.07.2021 :-

- 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 the Railways Act?
- 2) Whether on the date of alleged incident the victim was a *bona fide* railway passenger?
- 3) Whether the applicant and other are the dependants of the deceased in terms of Section – 123 (b) of Railways Act and are entitled to get compensation from the respondent?
- 4) Relief, if any?

4. To prove his case, the applicant, Swapan Dom has affirmed an affidavit and produced him as only witness (AW/1). On behalf of the applicant the documents produced and marked as – (1) Death Certificate of Anup Dom (Exhibit – A/1), (2) Voter I/Card of Anup Dom (Exhibit – A/2), (3) Aadhaar Card of Swapan Dom (Exhibit – A/3), (4) Voter I/Card of Swapan Dom (Exhibit – A/4), (5) Aadhaar Card of Sabitri Dom (Exhibit – A/5), (6) Voter I/Card of Sabitri Dom (Exhibit – A/6), (7) Police Investigation Report (Exhibit – A/7), (8) Final Police Report (Exhibit – A/8), (9) FIR (Exhibit – A/9), (10) P. M. Report (Exhibit – A/10), (11) Dead Body Challan (Exhibit – A/11) & (12) Railway Memo (Exhibit – A/12),

5.1 The respondent railway has not adduced any oral evidence and has filed DRM's Report with Annexures which is marked as **Exhibit – R/1 (collectively)**.

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5.2 Further in compliance with the Summons issued by the Tribunal, one, Shri Sakti Kumar Das, Train Driver working in Sealdah Division of Eastern Railway appeared as witness and he was examined and cross-examined as **CW/1** and the Driver's Note Books produced by CW/1 is marked as C/2 & C/2-C.

कारणों सहित निर्णय

DECISION WITH REASONS

Issue Nos. 1 & 2:-

6.1 Both the issues are taken up together for analysis being interrelated. Considered the arguments advanced by Ld. Counsel for the respondent and Ld. Counsel for the applicant did not participate in the final arguments.

6.2 It appears that the case was fixed for arguments in three consecutive occasions and 14.12.2023 was fixed for arguments as last chance and in every occasion Ld. Counsel for the applicant was absent. Even though the Ld. Counsel for the applicant did not take part in the hearing, within the provision of **Rule – 18 of RCT (Procedure) Rules, 1989** the case is taken up for arguments for its disposal. Rule 18(3) is reproduced as follows :

“18. Action on application for applicant's default. - (1) Where on the date fixed for hearing of the application or on any other date to which such hearing may be adjourned, the applicant does not appear when the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.”

6.3 It appears that the averment of the applicant is based on his own evidence (AW/1) and the documents available on record. **It appears that during cross-examination the applicant (AW/1) has stated that at the time of occurrence of the alleged incident he was at home and did not see the incident and accordingly there**

is no direct evidence produced on behalf of the applicant. Further it is clear from the evidence of CW/1 that the Driver of 12496 Up Bikaner Express Shri Sakti Kumar Das (CW/1) is the primary witness.

6.4 It is seen that the concerned Railway Memo which has been treated as FIR (Exhibit – A/12) stated that “....Apropos Ref. No. of SM/PAN one dead body unknown male person aged approx. 45 years is lying in UPL-1 (Main Line) at KM 154/47 at Panagarh Platform area.....” Secondly it appears that whatever was stated in the Police Reports was merely a conjecture based on assumption and presumption for which the IO of GRP sent the dead body for post mortem examination for ascertaining the actual cause of death.

6.5 In the Railway Memo, copy annexed with the DRM’s Report states that as reported by the Driver of 12497 Up an unknown person aged about 45 years run over on Up line 2(one) at KM 154/47 at Panagarh platform which has been confirmed by on-duty Driver of the said train, Shri Sakti Kumar Das during his examination and cross-examination before the Tribunal as CW/1.

6.6 It is seen that in support of the plea taken in the DRM’s Report that the victim was knocked down by train No. 12497 Up, the concerned Train Driver was examined before the Tribunal as CW/1 and during evidence CW/1 specifically stated that the victim was dashed and knocked down by his train. Further, the Ld. Counsel for the applicant availed the opportunity of cross-examining the witness (CW/1) and during cross-examination CW/1, Ld. Counsel for the applicant could not demolish the statement of the witness (CW/1). That apart, the incident had been noted by CW/1 in his personal Note Book which has been produced before the Tribunal and the same is

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marked as Exhibit – C/2-C. It is also considered that since the on-duty Driver of the concerned train is the best witness and his evidence is the most *prima facie* evidence, the Tribunal cannot draw any inference setting aside the evidence of the Train Driver concerned.

6.7 In the instant case it is averred on behalf of the applicant that the alleged journey ticket of the deceased was lost due to the alleged incident. On the other hand, it is contended by the respondent in the DRM's Report that no journey authority was recovered from the possession of the deceased. In this connection, considering the facts and circumstances of the case, it is observed that in such cases the main corollary of the Judgements of various Hon'ble High Courts and Hon'ble Supreme Court is that when it is proved beyond reasonable doubt within the adjudication of the Hon'ble Court that the victim/the deceased fell down from a train carrying passenger while performing journey and consequently the said incident can be termed as an 'untoward incident' over railway, a convincing view can be taken that mere filing of an Affidavit by the victim himself/herself or by the claimants/dependants of the deceased in support of the pleading is sufficient to hold that the victim was a *bona fide* passenger of railway on the date of his/her accident particularly in the absence of any cogent contrary evidence produced by the rival side. In this context, the Judgement passed by Hon'ble Supreme Court in the case of **Union of India –vs- Rina Devi reported in 2018 ACJ 1441** is the ready reckoner. Since in this case the Tribunal finds that the applicant has failed to prove that the victim sustained fatal injuries due to an 'untoward incident' over railway, I am unable to apply the perspective settled in the above Judgement and accordingly, the Tribunal is absolutely helpless to consider the victim as a *bona fide* passenger of railway on the date of the alleged incident.

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6.8 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 and also failed to prove that the victim was a *bona fide* railway passenger. Hence, both the issues are decided against the applicant.

Issue No. 3 :-

7. 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 :-

8. 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

9. 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)/0026 Year 2021

Swapan Dom & Ors. -Versus- GM/Eastern Railway

Date	Proceeding of the Bench	Notes of the Registrar
19 ----- 12.12.2023	<i>Present : Mr. A. S. Molla, Ld. Counsel for the applicant.</i> <i>Shri B. P. Singh, Ld. Counsel for the respondent.</i> As fixed, the case is taken up for arguments. Heard both the sides. <i>Judgement be kept reserved.</i> <i>(Sanjay Singh Gehlot)</i> <u>Vice-Chairman</u>	
20 ----- 26.12.2023	Record is put up for delivering judgment. 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. <i>(Sanjay Singh Gehlot)</i> <u>Vice-Chairman</u>	