

रेल दावा अधिकरण, कोलकाता न्यायपीठ
BEFORE RAILWAY CLAIMS TRIBUNAL, KOLKATA.
Claim Application No. O.A.(Ilu)/KOL/0003/2020

Coram :- Mr. Sanjay Singh Gehlot, Hon'ble Vice-Chairman, RCT/Kolkata
&
Mr. Rajeev Jain, Hon'ble Member(Judicial)/RCT/Kolkata

Date of filing of the Case : 19.12.2019.

Date of Registration : 01.01.2020.

Date of the Decision : 12.02.2024.

Mst Munafa Bibi @ Mosammat Monofa Bibi
W/o Md. Jamanulla as well as mother of the deceased.

..... Applicant.

residing at Vill. : Shrikrishnapur Pakhuria,
P.O. & P.S. : Rampurhat, Dist. ; Birbhum,
West Bengal, PIN – 731 224.

-VS-

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

..... Respondent.

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

Presented : Shri R. N. Basu, Ld. Counsel for the applicant.

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

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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 herself, as well as on behalf of her husband, Md. Jamanulla, as dependants, for the death of her son, Azizmotulla @ Ajeymotulla. It has been stated in the claim application that on 06.09.2019 her son, since deceased, was travelling from Sainthia R/S to Rampurhat R/S by a local train when her son accidentally fell down from the said running train between Tarapith Rd. and Rampurhat at KM Post No.96/06 – 96/07 near LC Gate No.22C due to over-crowding and sudden jerk and died on the spot. It is submitted that the deceased had valid 2nd class railway ticket bearing No.UTI36879098 dt. 06.9.2019 and Sainthia GRPS seized that ticket and handed it over to father of the deceased obtaining a Zimmanama.

2. The respondent, Eastern Railway in their written statement has denied all the material averments made in the claim application. The respondent in its 'WS' has denied that the deceased fell down at the alleged place of occurrence and it is contended that the deceased was run over by train, as stated in the DRM's Report. It is also averred that as per RPF record no journey ticket was recovered from the possession of the deceased. It has finally prayed for dismissal of the case.

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3. For proper adjudication of the case, the following issues were framed on 06.10.2020:-

- 1) Whether the incident on account of which the victim is alleged to have sustained injuries and died and the said incident is covered as an 'untoward incident', within the provision of Section-123 (c) (2) of the Railways Act, 1989?
- 2) Whether the victim was a *bona fide* railway passenger?
- 3) Whether the applicant and her husband are dependants of the deceased and are entitled to get compensation, as prayed for?
- 4) To what other relief, if any the applicant and her husband are entitled?

4.1 To prove her case, the applicant, Mst Munafa Bibi @ Mosammat Monofa Bibi has affirmed an affidavit and produced her as only witness (AW/1). On behalf of the applicant the documents produced and marked as – (1) Voter I/Card of Mosammat Munafa Bibi (Exhibit – A/1), (2) Aadhaar Card of Mst. Munafa Bibi (Exhibit – A/2), (3) Aadhaar Card of Md. Jamanulla (Exhibit – A/3), (4) Voter I/Card of Md. Jamanulla (Exhibit – A/4), (5) Death Certificate of Md. Azizmotulla (Exhibit – A/5), (6) Original Rly. Journey Ticket No.36879098 dt. 06.9.2019 (Exhibit – A/6), (7) FIR (Exhibit – A/7), (8) Final Police Report (Exhibit – A/8), (9) Police Investigation Report (Exhibit – A/9), (10) Dead Body Challan (Exhibit – A/10), (11) P. M. Report (Exhibit – A/11), (12) Railway Memo issued by Dy. SM/Sainthia (Exhibit – A/12), (13) Railway Memo issued by Dy.SM/Rampurhat (Exhibit – A/13) & (14) Aadhaar Card of Azizmotulla (Exhibit – A/14).

4.2. 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)**.

5. Further in compliance with the Summons issued by the Tribunal, GRPS/Sainthia has sent original Case Diary and one, Mithilesh Kr. Singh, Constable/RPF Post/Rampurhat has been examined before the Tribunal as witness (CW/1) and his Office I/Card is marked as **Exhibit – C/1**.

कारणों सहित निर्णय

DECISION WITH REASONS

Issue No. 1 :-

6.1 Considered the arguments advanced by Ld. Counsels of both sides and perused all the documents and evidence available on the record.

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6.2 It appears that the averment of the applicant is based on her own evidence (AW/1) and the documents available on record. By her own admission during cross-examination the applicant (AW/1) did not see the alleged incident and she got the information about the alleged incident from Police. Thus, since there is no direct evidence available on the record, the Tribunal has no other option except to consider the circumstantial evidence for proper adjudication.

6.3 It is seen that the concerned Railway Memo which has been treated as FIR (Exhibit - A/3) mentions that “....*This is to inform you that as per reported by on-duty Gateman, N. Ballav 01 dead body of male of age approx. 25 yrs. is lying inside the track of Up & Dn reversible line between RPH – TRF near LC gate No,22/C.....*” It is seen that the Police Investigation Report (Exhibit – A/5) appears to have been based on assumption, presumption and mere conjecture because the Inquest witness No.2, Mithilesh Kumar Singh is a RPF Constable whose statement is available in the DRM’s Report and he has given evidence before the Tribunal as CW/1 when he stated that on 06.09.2019 he was on-duty RPF/Constable and during his duty hour after noticing a gathering near KM Post No.96/6 between Tarapith and Rampurhat he (CW/1) went to the spot and saw dead body of a male person and nearby people told him (CW/1) that the victim was run over by a train. The witness CW/1 also stated that 30/40 persons were at the spot and those persons told CW/1 that at the time of occurrence of the alleged incident three persons were crossing railway track, out of them two persons managed to cross the railway track but the third one was run over. The witness (CW/1) further stated that he did not narrate anything about the fact of the incident to the IO of GRP and he did not know the contents of the Inquest Report, even though his (CW/1) signature does appear in the Inquest Report as witness. The witness (CW/1) also stated that the Gateman, who is the *prima facie* informant of the incident, told the CW/1 that the victim was run over by a train. It is seen that the statement of the on-duty Gateman of L/C gate No.22/C, Neeraj Ballav is annexed with the DRM’s Report wherein the Gateman concerned stated that at about 18.45 hrs. on 06.9.2019 he was informed by local public that one male person was run over by a running train. Thus, it is crystal clear that the either the Gateman, Neeraj Ballav or the witness CW/1 may not be the eye-witness of the

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alleged incident, but they are the most clinching circumstantial evidence available in the record. That apart, most surprisingly the written statements of the Inquest Witnesses Nos.1 & 2, as annexed with the CD filed by the GRPS/Sainthia, are exactly reverse of their statements given to the IO of the RPF and given to the Court while examination/cross-examination. Thus, we are not in a position to place any reliance on the alleged statements of the Inquest Witnesses, as annexed with the CD sent by GRP. Therefore, it is very much clear that the statement of IO/GRP given in the Investigation Report is not beyond reasonable doubt for which the Tribunal is helpless to place any evidentiary value upon such a Police Investigation Report (Exhibit – A/9). It is also seen that the Final Police Report (Exhibit–A/8) is based on the Investigation Report submitted by the same SI of GRP/Sainthia for which we cannot place any evidentiary value upon the Final Police Report (Exhibit – A/8) also. Admittedly the body of the victim was found in scattered and mutilated condition between two reversible lines and in the P.M. Report (Exhibit – A/11) the injuries over the dead body have been described as (1) lacerated wound mid frontal scalp, head & face crushed laceration with brain matter missing. All skull bones fractured, Fracture of mandible and maxilla bones, (2) abrasion left arm lateral aspect, (3) abrasion right lateral abdomen & back, (4) fracture right clavicle medial end, (5) crushed laceration of right arm at level of elbow, (6) crushed laceration of right foot with missing bones & tissues and skin attached, (7) fracture dislocation of left leg mid shaft, (8) fracture dislocation of left hip and fracture shaft femur, (9) fracture of all ribs right side with rupture of corresponding lung tissue, (10) capsular bruise of both kidneys (11) left lung bruise on posterior aspect & (12) Spleen ruptured.

6.4 On the other hand, in the column ‘Conclusion’ of DRM’s Report (Exhibit – R/1) it is specifically mentioned that the victim, since deceased, was crossing railway track violating general notification of Railways and at that time he was run over by unknown running train at KM No.96/06/07 near LC gate No.22/C in between Rampurhat & Tarapith Rd. R/S and consequently got injured and died on the spot. That apart, the deceased was a local inhabitant. Accordingly, on the basis of the above findings and in the absence of any cogent evidence we are absolutely helpless to consider that the alleged cause of action may be covered as an ‘untoward incident’ in its statutory definition.

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

Issue No. 2 :-

7.1 It is pleaded on behalf of the applicant that one Journey ticket bearing No. No.36879098 dt. 06.9.2019 Ex- Sainthia to Rampurhat was recovered and seized by GRP from the possession of the deceased and original of that ticket has been filed by the applicant and Zimmanama have been produced along with the CD by GRPS/Sainthia. That apart, in the Investigation Report and Final Police Report the same thing is mentioned.

7.2 On the other hand, it is contended in the DRM’s Report that as per Daily Diary of RPF Post/Rampurhat no journey authority was recovered from the possession of the deceased while searching dead body at the spot. In support of this contention the respondent railway has produced certified copy of extract of Daily Diary of RPF Post/Rampurhat. In adjudicating the conflicting two points, we observe that the fashion of mentioning the alleged recovery of journey ticket allegedly from the possession of the dead body in Column No.4(b) of the Investigation Report unable to attract any credence for which we are absolutely helpless to place any evidentiary value on such a purported statement. That apart, in deciding the Issue No.1 above, it is already held that the Police Reports submitted by OC/Sainthia GRPS are devoid of merit in attracting any evidentiary value. In addition, since in deciding the Issue No.1 the applicant has failed to prove that the deceased fell down from a train carrying passenger, we are also helpless to relate the ticket filed in this case with the alleged journey of the deceased.

7.3 Further in support of his plea, Ld. Counsel for the applicant cited and relied upon one Judgement of **Hon’ble High Court of Bombay in the Case of Smt. Jayashree Suresh Gharak and Others –vs- Union of India reported in 2022 (1) T.A.C 215 (Bom.)**. On bare reading of the Judgement it is found that the facts, circumstances and adjudicating points of

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that Judgement entirely differs from the fact and circumstances of the instant case and accordingly, we are unable to consider the verdict of Hon'ble High Court made in that case in deciding the Issue Nos.1 & 2 of the instant case.

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

Issue No. 3 :-

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

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ORDERED

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

(Rajeev Jain)
Member(Judicial)

(Sanjay Singh Gehlot)
Vice-Chairman

रेल दावा अधिकरण,
कोलकाता न्यायपीठ
RAILWAY CLAIMS TRIBUNAL
Kolkata Bench

ORDER SHEET

Nature of application _____ Number OA(IIu)/0003 Year 2020

Mst Munafa Bibi @ Mosammat Monofa Bibi -Versus- GM/E. Railway

Date	Proceeding of the Bench	Notes of the Registrar
10 ----- 08.02.2024	<i>Present : Shri R. N. Basu, Ld. Counsel for the applicant.</i> <i>Shri P. Prasad, Ld. Counsel for the respondent.</i> As fixed, the case is taken up for arguments. Heard both the sides. Judgement be kept reserved. <i>(Rajeev Jain)</i> <u>Member(Judicial)</u> <i>(Sanjay Singh Gehlot)</i> <u>Vice-Chairman</u>	
11 ----- 12.02.2024	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>(Rajeev Jain)</i> <u>Member(Judicial)</u> <i>(Sanjay Singh Gehlot)</i> <u>Vice-Chairman</u>	