

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

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

Claim Application No. OA(IIu)/KOL/32/2020
Date of filing of claim application : 31.12.2019
Date of Judgement : 03.11.2023

1. Prabha Bala Manna, wife of the deceased, Ratan Chandra Manna
2. Bhola nath Manna, son of the deceased, Ratan Chandra Manna

Residing at :

Village- Hari Charan, P.O. Balichak, P.S. Debra,
Dist. Paschim Midnapore, PIN 721124

..... Applicants

-VS-

Union of India represented through
The General Manager, South Eastern Railway, Kolkata
Claim for Rs.8,00,000/

... Respondent

Present : Shri A. K. Ganguly, Ld. Counsel for the Applicant.

Shri P. S. Ghosh, Ld. Counsel for the Respondent.

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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 and son of the deceased, Ratan Chandra Manna 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 31.05.2019 the deceased along with son was allegedly travelling from Balichak to Midnapore Railway station by a train with valid ticket bearing No.UWE 19387557 dtd.31.05.2019. During the course of his journey he fell down between Balichak and Shyamchak Railway stations. After falling down his body rolled down under the wheels of the train and he got grievous injuries. As a result, he 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 according to the final police report and rough sketch, the body was found inside the track. It is a clear

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case of run over. The duty train driver of train no.ME/NBOX/NMP stated that when his train was passing Balichak Railway station, he noticed a male person coming up on the main line and stood in front of the said train facing the engine. Despite the best effort given by the driver, the said person was run over by the said train. As per the Diary Entry No.876, Driver and Guard of Train No.ME/NBOX/NMP informed that one unknown male person was run over and dead. The dead body was lying inside the track. Respondent railway concluded that the entire facts in the claim application are concocted.

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/4. Apart from those documents, the other documents have been filed viz. Railway Memo (A/5), FIR (A/6), Letter of Kharagpur GRPS (A/7), Investigation Report (A/8), Seizure List (A/9), Railway Ticket (A/10), P.M.Report (A/11 & 12) and Final Police Report (A/13).

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

5. The applicant, Prabha Bala Manna, 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 - *".....My husband was doing an Accounting job in different shops located at Shyamchak, Medinipur. The distance from my residence to the nearest railway station Balichak. We come to the nearest Railway station by any available transport system like auto, toto etc. I have claimed compensation for the death of my husband in a railway accident. At the time of the incident I was not with my husband. GRP/Kharagpur informed me about the incident before post mortem examination. I got the news about the incident the next day. My*

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elder brother-in-law's son took possession of the dead body of my husband. GRP informed me that due to the rush of passengers, my husband fell down from a running train and died. He sustained a head injury. I found his dead body covered with clothes. I am aware of some parts of my affidavit. Not a fact that while crossing the railway track my husband was dashed by a train."

6. Counsel for the applicant pleaded that the on the date of incident the deceased was travelling from Balichak to Midnapore Railway station by a train with a valid ticket bearing No.UWE 19387557 dtd.31.05.2019. During the course of his journey he fell down between Balichak and Shyamchak Railway stations. As per investigation of Kharagpur GRPS, the death of the deceased was due to an untoward incident. The ticket was also seized.. All the statutory documents were on record which indicate that the claimants are entitled to get the compensation due to death of the deceased as per 124-A of Railways Act.

Counsel for the respondent has vehemently objected to the claim of the deceased. He pleaded that there was no eye-witness to the incident. As per the statement of Train Driver of Goods train no.ME/NBOX/NMP, after the train left Ballychak , the deceased suddenly came before his engine and he was knocked down by the said train. Hence, the instant case should be summarily dismissed.

After hearing the arguments of both sides and perusing the evidence available on file, we 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, the investigation report (A/8) divulges that UD case No.50/19 dtd.31.5.2019 was registered in Kharagpur GRPS. As per version of the witnesses, the cause of death of the deceased was a fall from a train. However, to ascertain the actual cause of death of the deceased, the dead body was sent for P.M. Examination, in the report of which (A/11), the Medical Officer opined that "Shock due to massive haemorrhage." The final police report (A/13) revealed that no foul play could be detected behind the death. As per seizure list one Railway ticket vide No.UWE 19387557 dtd.31.5.2019 Balichak to Midnapure was seized from the possession of the deceased.

7.1 The respondent has submitted the DRM's report which revealed that as per SM/Balichak's diary entry no.876 dtd.31.05.2019 driver and guard of train no.NBOX(E) NMP informed him over walkie talkie that one unknown male person aged about 50

years was run over on UP main line and lying inside the track between Balichak and Shyamchak Railway stations at 03.20 hrs. The guard had given a memo at SMCK.

The I.O. of RPF recorded the statement of the concerned train driver.

The DRM's report concluded that as per GRPS/SHM report that no foul play could be found behind the death. As per RPF report and statement of on duty driver of train No.ME/NBOX/NMP UP, after the train passed Balichak Railway station, at about 03.00 hrs early in the morning, he noticed that a male person suddenly came onto the UP main line and stood in front of the said train facing towards the engine. He tried to control the said train by applying emergency brakes. But the said person did not leave the Railway track and was run over by the said train. It was ,therefore , not a case of falling down from a train.

7.2 Counsel for the respondent produced Mr. Cromton Ghosh, Loco Pilot of train no.ME/NBOX/NMP (UP). He filed an affidavit in evidence and was examined and cross-examined as RW/1.

He solemnly affirmed in the affidavit that On 30.05.2019 he was booked as loco pilot of train no.ME/NBOX/NMP (UP) Loco No.2825828450 ex Andul to Kharagpur. On 31.05.2019 after the train left Balichak station, at about 03.00 hrs, he noticed that a male person came on UP main line and stood in front of the said train facing loco. He tried to control the train by applying emergency brakes while blowing the whistle continuously. But, he did not leave the track. He was run over at 03.02 hrs. Then, the driver and the guard, S.K.Maity rushed to the spot and found a male person aged about 50 years lying dead inside UP line.

During cross-examination by the counsel for the applicant in the court, that Cromton Ghosh deposed that - ***"On the date of incident I was working as a Goods Train driver and I was assisted by one Assistant Loco Pilot. On 30.05.2019 the train No.ME/NBOX/MNP UP loco No.2825828450 was booked in my name from Andul to KGP. The train left Andul at 00.55 hrs as per my personal diary. I recorded the incident in my personal diary also. (Certified true copy of his personal diary is marked as Exht.R/3. The names of my Assistant Loco Pilot and the guard have not been mentioned in my affidavit. The train consisted of 59+1 wagons including the guard bogie. After the train left Ballychak and was passing on through signal the incident happened at about 3.02 hrs. One person suddenly came before my engine, 50/60 metres distance is visible from the pilot's cabin. After the incident I applied the emergency brakes and the train stopped after passing about 400/500 metres***

from the place of occurrence. I informed the guard over the walkie talkie. 5/7 minutes later the guard came to me and we went to the spot. When the incident happened the train was running at a speed of 50/60 kmph. Then I informed Ballychak SM over walkie talkie. I gave a memo to Section Controller, Kharagpur through SM/Shyamchak at 3.40 a.m. The deceased was knocked down inside the track and his body was intact. RPF recorded my statement on 11.07.2020 and I signed it. I did not identify the deceased. I gave my memo on the basis of the incident which I had witnessed. Not a fact that the memo is not related to the incident in this case. Not a fact that my evidence is false."

7.3 After going through the documents filed by both sides, pleadings of both sides and the oral evidence of the witnesses, we observed that -

- i) The inquest report indicated that the cause of death of the deceased was a fall from a running train based on the version of the inquest witnesses. In the final report it was also mentioned that as per statement of available witnesses it could be learnt that the deceased fell down from the running train. But neither the statement of the inquest witnesses is available on record nor they have been produced before the court to adduce their oral evidence. Hence, the statutory reports are based on hearsay evidence. No conclusive evidence could be adduced by the applicant.
- ii) As per DRM's report on duty train driver of train no.ME/NBOX/NMP (UP) Loco No.2825828450 stated before the I.O. of RPF that a male person was knocked down by his train between Balichak and Shyamchak Railway stations. During investigation, the said person was identified as the deceased here. The said train driver, Cromton Ghosh was present before the court (RW/1) and on cross-examination he stated that on 31.05.2019 after the train left Balichak station, at about 03.00 hrs, he noticed that a male person came on UP main line and stood in front of the said train facing the loco. He was knocked down by his train. Then he informed Ballychak SM over walkie talkie. He gave a memo to Section Controller, KGP through SM/Shyamchak at 3.40 a.m. The deceased was knocked down inside the track.

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.

The train driver could emerge as the best evidence in case of a person being knocked down by that particular train. Here, it is evident from the statement of the train driver of Train No.ME/NBOX/NMP (UP) Loco No.2825828450 (RW/1) 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 could not challenge the oral evidence adduced by RW/1 by filing or adducing any contra evidence. In the circumstances, it is held that the deceased was run over by train No. ME/NBOX/NMP (UP) Loco No.2825828450 and as such, the case of the applicant does not come under the purview of Section 123(c)(2) of the Railways Act, 1989.

7.5 In support of bona fide of the deceased, the applicant filed a seizure list(Exht.A/9) and certified copy of a ticket(Exht.A/10). The ticket was stated to have been recovered from the possession of the deceased. Section 123(c)(2) of the Railways Act states that "untoward incident" means " the accidental falling of any passenger from a train carrying passengers". In the case in hand, it has already been established that the deceased was run over by train No. ME/NBOX/NMP (UP). Hence, the seizure of ticket cannot be given cognizance to.

7.6 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.

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.

(Rajeev Jain)
Member (Judicial)

(Sanjay Singh Gehlot)
Vice-Chairman