

BEFORE RAILWAY CLAIMS TRIBUNAL, KOLKATA BENCH

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

Claim Application No. OA(IIU)/KOL/2020/0034

(Application filed on 20.01.2020 & decided on 17.12.2024)

1) Ranjit Kumar Mondal @ Ranjit Mondal, father of the deceased Late Sagar Modal

2) Asimarani Mondal, mother of the deceased Late Sagar Modal

Both residing at :

Vill. Nabagram(Dharani),

P.O. Mahurapur,

P.S. Mayureswar,

Dist. Birbhum,

Pin Code 731 213

West Bengal,

..... Applicants

-VS-

Union of India represented through

The General Manager, Eastern Railway Respondent.

Application under Section 16 of Railway Claims Tribunal Act, 1987 read with Sections 123(c)(2) and 124-A of Railways Act, 1989.

Claim for Rs.8,00,000/- with interest and costs

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

Shri D. K. Chatterjee, Ld. Counsel for the respondent

JUDGEMENT:

1. This is an application under Section 16 of Railway Claims Tribunal Act, 1987 read with Sections 123(c)(2) and 124-A of the Railways Act, 1989 filed by the applicant for himself and also on behalf of his wife as dependants claiming compensation on account of the death of their unmarried son Sagar Mondal, allegedly in an untoward train incident of accidental falling from a train. It is pleaded in the claim application that on 22.01.2019 the deceased along with his maternal uncle Ashoke Kumar Pal boarded 12348 Dn. Rampurhat Express(Shahid Express) from Sainthia to

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Howrah in a general compartment. During the course of his journey, he allegedly fell down from the running train at about 8.30 p.m. due to overcrowding and sudden jerk on platform no.3 of Dankuni station. He died on the spot.

2. The respondent railway has filed a Written Statement disputing and denying the averments made in the claim application. It was denied that the deceased was a bona fide passenger, & that he boarded a general compartment of train no.12348 from Sainthia for going to Howrah with his maternal uncle and that he fell down from the train.

3. On the basis of the pleadings of the parties, the following issues were framed :-

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 applicants are the dependents of the deceased and are entitled to get any compensation from the respondent?

4. Relief, if any.

4. The applicant No.1 filed his affidavit of evidence and he was cross-examined as AW/1. Documents filed on behalf of the applicant were marked as Exht.A/1 to A/11(FIR- A/1, Investigation report- A/2, Railway ticket - A/3, Seizure list- A/4, Dead body challan - A/5, P.M. report - A/6, Final Report- A/7, Aadhar card of Sagar Mondal- A/8, Aadhar card of Asimarani Mondal - A/9, Election I/card of Asimarani Mondal - A/10, Aadhar card of Ranjit Kumar Mondal - A/11).

On behalf of the applicant, one Ashok Kumar Pal filed his affidavit of evidence as an alleged co-passenger cum eye-witness to the incident. He was examined in chief and cross-examined by Ld. Counsel for the respondent as AW/2 & discharged.

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The respondent railway filed a report of ADRM/Howrah and its annexures. All these documents were collectively marked as Exht.R/1.

The respondent filed an affidavit of evidence of Shivaji Verma, Constable/ Howrah, who was examined as RW/1. The respondent railway also filed an affidavit of evidence of Kanhaya Choudhary, SI of RPF/Post/Bandel. He was examined twice as RW/2 & RW/2/1. As per Court's summons, Sri Dev Shankar Mahato, Sr. Passenger Train Manager appeared before the Court as a Court witness. He was examined as CW/1.

5. Ld. Counsels for the rival parties submitted their respective oral arguments. After appreciating the arguments and perusing the record, I determine the issues as under :-

Issue Nos. 1 & 2

6. For proper adjudication of this case, this issue is taken up first.

6.1 As per the pleading of the applicant, the deceased Sagar Mondal had his maternal uncle Ashoke Kumar Pal as his co-passenger. It has been pleaded that the victim had a ticket no.UTI62215467 dated 22.01.2019 ex. Sainthia to Howrah. The applicant filed a certified copy of the ticket, marked as Exht.A/3. The ADRM's report however clearly mentioned that no ticket was found from the possession of the deceased.

6.2 In his affidavit of evidence, the applicant mentioned that the original ticket was kept under the custody of Belur GRPS. In his deposition, the applicant stated that "Ashoke Kr. Pal, my son's maternal uncle, was travelling with him. My son's ticket has been submitted before the Court. I do not know about the ticket for Ashoke Kr. Pal". Ashoke Kr. Pal during his cross-examination(AW/2) deposed that he saw the deceased standing at the ticket counter for purchasing the tickets. But Ashoke Kumar Pal could

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not show his ticket of that day by which he performed the journey. **According to AW/2, he was present at the spot where GRP came, but during cross examination in the court ,he clearly stated that he did not know whether anything was found from the deceased's possession by the police or not. But on the other hand he has signed on the Seizure List regarding recovery of a ticket.This is highly contradictory.**

AW2 said that he pulled the alarm chain of the train after he allegedly saw the incident while the train was running through Dankuni station.But the Train Manager (Guard) of the concerned train (12348 Shahid Express)Shri Dev Shankar Mahto clearly stated before the court that **Chain pulling system was functioning properly on that day & that during the journey that day no chain pulling occurred at all in the course of the entire journey from Sainthia to Howrah.To prove that there was no chain pulling as claimed by the alleged co passenger,Shri Dev Shankar Mahto has produced the entire record of the train movement from Rampurhat to Howrah.It is,therefore, crystal clear from this record submitted by Shri Dev Shankar Mahto of the journey on 22/01/2019 of Shahid Express that there was absolutely no Chain Pulling from Rampurhat to Howrah. This clearly dislodged the claim of AW2 that he pulled the alarm chain after allegedly witnessing the incident.** This also puts in absolute doubt about the claim of AW/2 that he was a co-passenger of the deceased on the day of the incident.

In view of the discrepancies & contradictions of statements of the alleged co-passenger AW2, his presence along with the deceased is not established at all.In addition to this he also could not prove by way of a ticket ,or through mobile tower location or any other electronic means that he travelled along with the deceased on the day of the incident.

6.3 The Investigation report of Belur GRPS under U/D case no.06/2019 dated 22.01.2019 was signed by (1) Md. Raj Qurashi, (2) S. Verma and (3) Ashoke Kumar Pal. The applicant failed to produce Md. Raj Qurashi and get him examined before the Court. Shivaji Verma(RW/1) deposed before the Court that the inquest was done on 22.01.19, but he signed on the inquest report on the next day ,that is, 23.01.19. He, however, specifically stated before the Court that he **did not see as to how he died**.

The Daily Diary of RPF/Post/Dankuni written by ASI Kanhaiya Choudhury, which is a part of ADRM's report mentioned that **no journey ticket was found in the possession of the deceased**. The respondent filed an affidavit of evidence of the said Kanhaiya Choudhury, wherein it was affirmed that no journey ticket was found from the possession of the deceased. During his cross-examination(RW/2) by Ld. Counsel for the applicant, Kanhaiya Choudhury deposed that "**The entire search of the dead body was made by GRP in his presence and no journey ticket was recovered from the possession of the dead body**". To Court's question, Kanhaiya Choudhury as RW/2/1 further deposed that "**No journey ticket has been found**" has been written in his own handwriting in the RPF Roznamcha. The Evidence of Kanhaiya Choudhury could not be dislodged by Ld. Counsel for the applicant regarding non-recovery of a ticket from the possession of the deceased. The evidence of Kanhaiya Chowdhury regarding non-recovery of any ticket is corroborated with the daily diary of RPF/Post/Dankuni written by him immediately after the incident.

6.4 The applicant filed a certified copy of the seizure list, marked as Exht.A/4 which mentioned recovery of a railway ticket no.62215467 ex. Sainthia to Howrah from the possession of the deceased Sagar Mondal at KM post on 22.01.19 between 21.05 hrs. and 21.15 hrs. The Surathal over

the dead body was done by Belur GRPS on 22.01.19 between 20.50 to 22.15. Therefore, it appears that the seizure list was prepared by Belur GRPS at the spot during the investigation. But the Investigation report is totally silent about recovery of any articles including the ticket from the possession of the deceased. The seizure list was purportedly signed by one Md. Raj Qurashi, one S. Verma and one Ashok Kumar Pal. The applicant failed to adduce evidence of Md. Raj Qurashi . **S Verma ,constable of RPF clearly stated in cross examination that no ticket was found during body search (Jama Talashi) of the deceased. Though his name has been mentioned in the seizure list, but he totally denied that he had signed on the seizure list. He stated that somebody had fabricated his signature on the seizure list. It was not his signature at all.** This is totally unauthorized & illegal & it is quite obvious that GRP IO has tried to establish the presence of a ticket by **concocting a signature of S Verma,constable of RPF .**

On the other hand, Ashoke Kumar Pal who was one of the witnesses of the seizure list also deposed during cross examination that “ **I do not know whether anything was found from the deceased’s possession by the Police**”. From the evidence of AW/2 it transpired that he had no knowledge about recovery of any ticket, though he put his signature thereon. In such circumstances, the veracity of the seizure list has become totally doubtful.

6.5 In the light of the above discussion & discrepancies noted above & efforts to fabricate S Verma, Constable RPF ‘s signature on the seizure list, it is crystal clear that the applicant has filed a planted ticket with the help of IO GRP in order to establish that the deceased was a bona fide passenger. This mischievous effort to mislead the court will be brought to the notice of DGP (Rail). The applicant has ,therefore,not come with clean hands & has tried to mislead the Tribunal. Hence, it is held that the applicant was not a bona fide passenger.

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In the light of the above discussion, it is held that the deceased was not a bona fide passenger and the incident which caused his death does not come under the purview of Section 123(c)(2) of the Railways Act, 1989.

These issues are, therefore, decided against the applicant.

Issue No.3

7.0 In view of decision on issue nos.1 and 2, this issue is not required to be adjudicated.

Issue No.4

8.0 In the light of the decision on the foregoing issues, the applicants are not entitled to get any relief. Hence,

ORDERED

That the claim application being devoid of merit is hereby dismissed on contest & disposed of accordingly without costs.

Registry is directed to send a copy of this judgement to the DGP(Rail), West Bengal for taking action against Shri Brajen Kr. Saha, the I.O. of Belur GRPS U/D case no.06/19 dated 22.01.2019.

(Sanjay Singh Gehlot)
Vice-Chairman