

रेल दावा अधिकरण, कोलकाता न्यायपीठ
BEFORE RAILWAY CLAIMS TRIBUNAL, KOLKATA.
Claim Application No. O.A.(IIu)/KOL/0004/2020

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

Mr. Sanjiv Dutt Sharma, 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 : 26.03.2025.

- 1) Razia Bibi, wife of the deceased, Md. Firoz @ Firoj Applicants.
- 2) Md. Faruk, son of the deceased, Md. Firoz @ Firoj
- 3) Md. Faijan, son of the deceased, Md. Firoz @ Firoj

All are residing at North Goala Para, P.O. : Angus,
P.S. : Bhadreswar, Dist. : Hooghly, W.B, PIN – 712 221

-VS-

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

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

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

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

निर्णय

J U D G E M E N T

The instant claim application 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 applicants for themselves for the death of the victim, Md. Firoz @ Firoj. It has been stated in the claim application that on 12.04.2019 at about 05.45 hrs. when Md. Firoz @ Firoj, since deceased, with a valid 2nd class Railway Monthly Ticket bearing No.89973656, UTS 42LCCDM102 was travelling Ex- Howrah R/S to Baidyabati R/S by a train, he fell down from the said running train between Bally R/S

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and Uttarpara R/S at KM Post No.8/33 – 8/35 due to overcrowding and sudden jerk and died on the spot. It is submitted that post mortem of the dead body was done by District Hospital, Howrah and Belur GRP seized the railway monthly ticket of the deceased.

2. The respondent, Eastern Railway, has contested the case by filing a written statement. In the 'WS' the respondent has denied and disputed almost all the averments of the applicants, made in the claim application. In the written statement the respondents have specifically denied that the deceased was a *bona fide* passenger. It was argued that no journey ticket was recovered from the deceased at the spot and the process of alleged seizure has also been highly disputed. It was also contended that the deceased did not die due to any 'untoward incident', as per the provision of Section –123(c) (2) of the Railways Act. Instead, a condition is put to the claimants to provide strict proof that the alleged victim did not die due to any reason enumerated under Sub-clauses (a) to (e) of Section – 124-A of Railways Act. The respondents have finally prayed for dismissal of the case with cost.

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3. For proper adjudication of the case, the following issues were framed on 24.03.2021:-

- 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 the alleged incident the victim was a *bona fide* railway passenger?**
- 3) **Whether the applicant and others are the dependents 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.**

4.1 To prove their case, the applicant No.1, Razia Bibi, wife of the deceased, has affirmed an affidavit and produced herself as only witness (AW/1). On behalf of the applicants the documents produced and marked as – (1) Affidavit of evidence of Razia Bibi (Exhibit – AW/01-A), (2) Death Certificate of Md. Firoz (Exhibit – A/2), (3) Aadhaar Card of Md. Firoz (Exhibit – A/3), (4) Election I/Card of Md. Firoz (Exhibit – A/4), (5) Aadhaar Card of Razia Bibi (Exhibit – A/5), (6) Election I/Card of Razia Bibi (Exhibit – A/6), (7) Aadhaar Card of Md. Faijan (Exhibit – A/7), (8) Birth Certificate of Md. Faijan (Exhibit – A/8), (9) Aadhaar Card of Md. Faruk (Exhibit – A/9), (10) Birth Certificate of Md. Faruk (Exhibit – A/10), (11) FIR

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(Exhibit – A/11), (12) Seizure List (Exhibit – A/12), (13) Dead Body Challan (Exhibit – A/13), (14) Rly. MST No.89973656 (Exhibit – A/14), (15) Railway Memo (Exhibit – A/15), (16) P. M. Report (Exhibit – A/16) & (17) Investigation Report (Exhibit – A/17).

4.2 The respondent railways have examined one, Sri Vijay Prakash, SI of RPF as witness **RW/1** and have filed DRM's Report with Annexures. These are marked as **Exhibit – R/1 (collectively)**.

5. In compliance with the summons issued by the Tribunal, Belur GRPS sent Case Diary along with some other documents through the Bearer namely, Sri Sandip Goswami, Constable No.938 (**CW/1**) and one, Shri Tarun Kr. Ghosh, Ex- SI of Belur GRPS has also been examined by the Court as witness (**CW/2**) before the Tribunal.

कारणों सहित निर्णय

DECISION WITH REASONS

Issue Nos. 1 & 2 :-

6.1 In order to avoid repetition of appreciation of evidence and for the purpose of brevity, Issue Nos. 1 & 2 are taken up together for the purpose of discussions and orders.

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6.2 It is pertinent to mention here that after filing of the Claim Application, respondent railways have filed the written statements and Report of DRM. The copy of DRM's Report and copies of the entire record on which the railways have relied upon, were supplied to the applicants/claimants through their Advocate.

6.3 After getting the versions of the railways along with DRM's Report, the applicants were given the opportunity to file proof of evidence and entire documentary evidence which they had intended to file. In the 'WS' the veracity of the claim application has been challenged on the grounds of maintainability, cause of action and falsehood etc. On merits, the respondent railways have denied the averments made in the claim application. It is alleged that no eye-witness was found, who could prove that the deceased had fallen down from a train and no journey ticket was recovered from the victim at the spot.

6.4 It appears that according to the pleadings, the victim was allegedly travelling from Howrah to Baidyabati R/S. He allegedly fell down between Bally and Uttarpara R/S. **For this journey no eye-witness's version was available on record who had seen the deceased either boarding any train or falling from any train.**

Initially from the evidence of AW/1, we find that the applicant No.1 (AW/1) was neither a co-traveller of the deceased, nor did she go to the spot and naturally she did not have any personal knowledge about the alleged incident. It appears that in the Railway Memo which was subsequently treated as FIR (Exhibit – A/11) it is mentioned that –
“As reported by Guard of 37361 Local that one unknown male dead body aged about 45 years lying outside the track between KM No.08/33 to 08/35 Up main line between Bally & Uttarpara....”
Therefore, we find that from the FIR (Railway Memo) nothing can be concluded. First of all it is evident that the Final Police Report is based on the Police Investigation Report (Exhibit – A/17) and has been submitted by the same SI of Police of Belur GRPS. Since in the Investigation Report it has been opined that the deceased may have fallen down from any unknown running train, we called for the IO of GRP, namely, Shri Tarun Kumar Ghosh (CW/2) and accordingly his statement given before this Tribunal is reproduced below :

CA No. O. A. (IIU)/KOL/04/2020
Dated 03.01.2025
CW/2

Statement of Shri Tarun Kr. Ghosh, Vivekananda Pally, Bolpur, Dist. Birbhum - 731 204, ex. SI of Belur GRPS on oath :

Court's questions

I was the IO of Belur GRPS, U/D case no.28/19 dated 12.04.2019. I retired from the service in the year 2020. In this case Belur GRPS got

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a memo from SM/Bally on 12.04.19 at about 06.05 am. Then I went to the spot at about 7 am. I saw the body of the deceased lying beside the railway track. A monthly ticket and a railway's identity card were found from him and from this identity card, the deceased was identified. The witnesses of the inquest report and the seizure list were the local people. As stated by them. I mentioned their respective addresses in the seizure list. The post mortem of the dead body was done at Howrah General Hospital. The signature of Razia Bibi, the wife of the deceased, was taken on the Seizure list in the office of Belur GRP the next day. I prepared the seizure list in the office of GRP, not at the spot. I was the IO of this case. I prepared this inquest report at the spot. **The witnesses of the inquest report were not the eye-witnesses to the incident. It was their assumption that the deceased may have fallen down from a train. It was also my assumption that the deceased may have fallen down from a train.** Only a monthly ticket and an identity card were found from him. No mobile phone was found from him. The deceased was a resident of Bhadreswar, Hooghly. The body of the deceased was lying between Bally and Uttarpara railway stations. The distance between the place of occurrence and the place of the residence of the deceased is about 18/20 km. This Case Diary was written by an author of Belur GRPS in my presence. This Case Diary was written after the Final Police Report was submitted by me. I did not record the statement of the SM/Bally from whom I got a memo regarding a male dead body lying outside the track between Bally and Uttarpara.

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

On the basis of the assumption of the inquest witnesses I wrote in the Final Report that the deceased fell down from a train. I am not aware whether the railway filed any *Na-raji* petition against my Final Police Report before any Magistrate's Court or not.

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

I did not mention in the inquest report about the recovery of the monthly ticket as mentioned in the seizure list.

R.O.A.C.

Sd/- of Tarun Kumar Ghosh

Dt:03.01.2025.

Sd/-
(S.D. Sharma)
Member(Judicial)

Sd/-
(Sanjay Singh Gehlot)
Vice-Chairman

6.5 On close scrutiny of the evidence of CW/2, namely, IO of GRP it is crystal clear that the statement that the deceased fell down from a train was purely an assumption of some persons. That apart, the IO of GRP during investigation did not take any statements from the railway staff who lodged the FIR, viz. issued the Railway Memo. That apart, IO did not prepare the Seizure List at the spot, nor did he record the allegedly seized articles in the Investigation Report. It is quite obvious that the seizure list was not prepared by the IO at the spot because Razia Bibi who is a claimant-cum-AW/1 clearly stated before the court that she signed the seizure list in the next morning at the Hospital. Since there is a contrary statement appearing on the face of the 'written statement' submitted by the respondent railway, we would go through the evidence of witness RW/1. Accordingly his (RW/1) statement given before this Tribunal is reproduced below :

C.A. No. O.A.(IIu)/0004/2020
Dated : 26.02.2025

RW/1

Statement of Sri Vijay Prakash, S/o Sitaram Rout, aged about 48 yrs, residing at Liluah, Howrah presently posted as SI/RPF/OP/Khaltipur under RPF/Post/NFK before the Court on S.A.

Stated on Oath that -

I have tendered my affidavit as Exhibit – RW/1-A. Today I filed my office I/Card which may be marked as Exhibit - RW/1-B.

Cross- Examination by Shri R. N. Basu, Ld. Counsel for the applicant.

I did not see the incident. The concerned RPF Diary bears my signature and I wrote its contents in my own handwriting. The original

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RPF Daily Diary is kept at RPF/Post/Bally. It is incorrect that the deceased fell down from a train. It is correct that none of the local public disclosed his name or identity to me. Self-stated that accordingly I could not record the statement of any of them. The body was lying outside the Up railway line. I do not remember the clothing of the victim. It is correct that I did not conduct any physical search of the body. But Doms undertook a physical search of the body in my presence when nothing was found from the body. Doms came along with GRP staff. It is incorrect that the deceased fell down from a train. It is also incorrect that a monthly ticket was found from the body at the spot. It is incorrect that I am deposing falsely.

To Court :

On 12.04.2019, I was the on-duty ASI of RPF at RPF/Post/Bally. On that day, during my duty hours I received written information from SM/Bally regarding the lying of a body near the railway track. After getting information, I went to the spot and saw that one male body was lying beside the railway track. The spot was between Bally and Uttarpara near Bally. It was about 05/07 minutes walking distance from Bally Station. I reached the spot first and thereafter GRP came to the spot. At the spot, I asked the local public regarding the incident and they told me that they saw the victim crossing the railway track & he was knocked down in the process. I asked them their names. But nobody disclosed his name or identity to me. The deceased was not identified at the spot. I do not know whether the victim was a local resident or not. Physical search of the body was done in my presence when nothing was recovered from the body. SI, RPF, Shri Sanjay Kumar is the Inquiry Officer of RPF. He recorded my statement. After returning to RPF/Post/Bally, I recorded the fact of the incident in the RPF Daily Diary in my own handwriting. *(The witness is shown the RPF Diary, copy annexed with the DRM's Report)*. This paper bears my signature. In this Diary I had mentioned that no journey ticket was found from the possession of the body. *(The witness is shown the Rough Sketch Map, annexed with the DRM's Report)*. I have prepared this Sketch Map and the positing of the body has been rightly shown in this sketch Map. I do not know any person named Umesh Yadav or Sidhartha Kumar. At the spot, GRP staff wrote something on a piece of paper. I do not know what they wrote. I did not put my signature on any GRP paper. I was present at the spot till clearance of the body from the spot.

R. O. A. C

Sd/- Vijay Prakash

26.02.2025

Sd/-

(S. D. Sharma)
Member(Judl.)

Sd/-

(Sanjay Singh Gehlot)
Vice-Chairman

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6.6 In Appreciation of Evidence in Civil Cases it has been introduced that - “Evidence is the currency by which one fulfills the burden of proof. In order to arrive at a decision in civil, criminal or administrative cases to establish and prove the matters of defense or mitigation or to overcome a *prima facie* case or presumption the essential question which one needs to answer is whether the evidence placed before them meets the required parameters or adequate enough to give such evidence.” Section – 101 of Indian Evidence Act 1872 bears the heading “Burden of Proof”. It reads as follows: “Whoever desires any Court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is about to prove the existence of any fact, it is said that the burden of proof lies on that person.” The Court always will give due cognizance to the best available evidence. Hon’ble High Court of Andhra Pradesh has held in case No.CMA 947 of 2008 (**Jetty Naga Lakshmi Parvathi & Others –Vs- The Union of India**) that “.....from Section – 101 of the Indian Evidence Act, 1872, it is clear that the applicants, having come to the court asserting some facts, must prove that the death of the deceased had taken place in an untoward incident and that the death occurred while the deceased was travelling in a train carrying passengers as a

passenger with a valid ticket. Therefore having asserted that the deceased died in an untoward incident and he was having a valid ticket at the time of his death, the initial burden lies on the applicants to establish the same. The initial burden of the applicants never shifts unless the respondent admits the assertions made by the applicants. Such evidence is lacking in this case.”

6.7 In this case the applicants have not been able to marshal sufficient reliable evidence to prove the contention that the victim had fallen down from a train carrying passengers & discharge the burden of proof on them as the applicants and as such, we are absolutely helpless to consider that the victim died due to an ‘untoward incident’.

6.8 It is evident that to corroborate their pleadings that the deceased had a valid monthly ticket, one original railway monthly ticket and a Seizure List have been annexed with the Case Diary, sent by Belur GRPS. But from the evidence of CW/2 it is crystal clear that the alleged seizure was not done properly in accordance with Law and from the evidence of RW/1 it is very much clear that nothing was recovered from the dead body at the spot. That apart, it is also seen that the applicant (AW/1) is one of the witnesses in the Seizure List

and she admittedly put her signature on the next date at the hospital and to that effect the arguments advanced by the respondent that everything around the Seizure List was manipulated by GRPS/Belur afterwards, cannot be ruled out particularly when circumstantial evidence is corroborating the same. That apart, if the statement of the AW/1 is authentic, then the GRP has committed an unlawful act by obtaining the signature of a witness on their Seizure List (which was a part of preparing their Seizure List) at the hospital whereas the Seizure List should be prepared at the spot. Therefore, we are absolutely helpless to relate the monthly season ticket, so available on the record, with the alleged journey of the deceased.

6.9 Therefore it is quite obvious that applicants have failed to prove by marshalling sufficient cogent evidence that the deceased fell down from a train & that he was a bona fide passenger at the time of the incident.

6.10 Hence, both these issues are decided against the applicants.

Issue No. 3 :-

7. Since as per the findings in Issue Nos.1 & 2 above, the applicants have failed to establish their case, this issue does not require any adjudication.

Issue No. 4 :-

8. Since as per the findings in Issue Nos.1 & 2 above, the applicants have failed to establish their case, they are not entitled to get any compensation or any relief, as prayed for. This issue is, thus, also answered against the applicants. Hence,

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

(S. D. Sharma)
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)/0004 Year 2020

1) Razia Bibi -Vs- GM/E. Rly.

2) Md. Faruk

3) Md. Faijan

Date	Proceeding of the Bench	Notes of the Registrar
23 ----- 26.03.25	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. (S. D. Sharma) <u>Member(Judicial)</u> (Sanjay Singh Gehlot) <u>Vice-Chairman</u>	