

**BEFORE THE RAILWAY CLAIMS TRIBUNAL
CHENNAI BENCH**

Present:

**Shri Sanjeev Aggarwal, Hon'ble Member (J)
Shri Prasanta Kumar Sahu, Hon'ble Member (T)**

OA (II-U)/MAS/47/2022

(Application filed with delay condonation petition on 03.01.2022,
OA Registered on 29.09.2022, heard on 21.09.2023 and decided on 12.10.2023)

1. A.Manju, (wife of the deceased)
 2. A.Sandhiya, (daughter of the deceased)
 3. A.Suniya, (son of the deceased)
 4. A.Akash, (minor son of the deceased)
 5. A.Sripriya, (minor daughter of the deceased)
- (Applicants 4 & 5 are represented by mother &
next friend, Applicant No. 1)

All are residing at:

No.3A, Thulasisingam II Street,
Perambur,
Chennai – 600 011.

...Applicants

Versus

1. Union of India
Through General Manager,
Southern Railway,
Chennai.
2. B.Saveriyammal, (mother of the deceased)
W/o. Late Babu @ Chinnaya Babu,
No.1/35, D.M.C.Nagar, Udumalai Road,
Mannthiripalayam,
Tiruppur

...Respondents

Shri A.Shanmugaraj, Counsel for Applicants

Shri S.Janarthanam, Counsel for Respondent No.1

JUDGMENT

Prasanta Kumar Sahu, Member (T)

Present Application was filed by wife, two daughters & two sons of B.Aruldas,
hereinafter referred to as deceased, claiming compensation for his death in an alleged

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untoward incident. According to the Applicants, on 27.07.2019 the deceased, while travelling in a crowded unreserved compartment by standing near the door in Colmbatore Express train to Chennai, fell down from the train, between Vijayamangalam and Ingur Railway stations, and died. Submitting that the ticket purchased by the deceased was lost in the incident, Applicants claimed compensation of Rs.8 lakhs with interest.

2. Respondent No.1 filed Reply statement along with statutory investigation report, known as DRM report. Submitting that no valid ticket was recovered from the deceased, Respondent contended that the deceased was not a bona fide passenger. Respondent No.1 submitted that the time of boarding of the train by the deceased, as stated by the Applicant No.1, is not correct as the train passed the section much earlier. Further, referring to the nature of injuries suffered by the deceased, it was submitted these types of injuries would occur only in trespassing cases due to the body getting trapped between the wheels of the train and the Respondent contended that it was not an untoward incident.

3. Based on the pleading raised and documents placed on record, the following issues were framed on 28.03.2023:

- 1) Whether the deceased was a bona fide passenger as alleged?
- 2) Whether the incident in which the deceased allegedly lost his life was an untoward incident as defined under Sec.123(c)(2) of the Railway Act, 1989?
- 3) Whether the applicants are the only dependants of the deceased?
- 4) Whether the Applicants are entitled for compensation as claimed and other relief if any?

4. Applicant No.1, wife of the deceased filed Proof Affidavit & deposed as AW-1 on 22.06.2023. Applicants filed copies of FIR, Inquest Report, Post-mortem certificate, Police clearance certificate, Death Certificate, RTI Application and Aadhar card, Legal Heir Certificate, and Final Report and Memo of evidence, which were marked as Ex.A-1 to A-8, respectively. Respondent No.1 has filed DRM report along with copies of

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documents cited in it, which was marked as Ex.R-1. Respondent No.2, mother of the deceased, filed Proof Affidavit & deposed as RW-1 on 11.07.2023.

5. Heard both sides, perused the entire material on record. The following are the findings on the issues:

Issue Nos.1 & 2

6. Both these issues are taken together for the sake of convenience.

7. According to the Applicants, the deceased was working as a Cook at Tiruppur. On 27.07.2019 early morning, the deceased went to Tiruppur Railway station, purchased a ticket to go to Chennai by Coimbatore Express. Applicants submitted that before boarding the train, the deceased spoke to his mother, Respondent No.2, over phone. After boarding the train, he called his wife, Applicant No.1, and informed her about his travel and that he would reach Chennai at about 02.00 pm. During the said travel in a crowded unreserved compartment, standing near the door, due to jerk, the deceased fell down from the train and died.

8. Respondent No.1 submitted that body of the deceased lying by the side of the Railway tracks at KM 417/400-500, was noticed by the Keyman of the Respondent Railway at 08.00 hrs on 27.07.2019. Quoting statement of Applicant No.1 to the Government Railway Police on 28.07.2019 that the deceased contacted her through mobile phone at about 8:00 A.M. and informed about his plan to come to Chennai and that he would reach Perambur Railway station at 13.30 hrs, Respondent No.1 submitted that said claim of the Applicants indicated that the deceased travelled by train No.12680 Intercity Express. However, Train Signal Register of Vijayamangalam Railway station indicated that the said train passed the place of Incident at about 07.21 hrs on 27.07.2019 and hence the statement of Applicant No.1 is contradictory to the facts of the case. Referring to the nature of injuries suffered by the deceased, it was submitted these types of injuries would occur only in trespassing cases due to the body getting trapped between the wheels of the train. the Respondent No.1 submitted that it was not an

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untoward incident. Submitting that no ticket was recovered from the deceased, Respondent No.1 further contended that the deceased was not a bona fide passenger.

9. It is seen from the records that the body of the deceased lying by the side of the Railway tracks at KM 417/400-500, between Vijayamangalam and Ingur Railway stations, was noticed by a Keyman of the Respondent Railway at 08.00 hrs on 27.07.2019. He informed the same to Station Master of Vijayamangalam Railway station at 11.30 hrs. Based on the information passed on through Station Master of Tiruppur by way of Report of Untoward Incident, in Form-1, Government Railway Police registered FIR at 11.40 hrs on 27.07.2019 (Ex.A-1). Inquest was conducted from 14.10 hrs to 17.10 hrs on the same day (Ex.A-2). Against column 7 of the Inquest report as well as in the Observation Mahazar, it was recorded that due to severe head injury, brain came out and right and left shoulders were separated from the body, right and left leg knees were broken and crushed and that both the feet were crushed and separated. It was specifically mentioned in the Inquest Report that no ticket was found. Post-mortem was conducted on 28.07.2019 at Government Headquarters Hospital Tiruppur (Ex.A-3). Apart from the injuries noted during the Inquest, extensive injuries to the internal parts of the body were also recorded in the Post-mortem certificate. Final Report of the Police was prepared on 10.03.2020 (Ex.A-8). In the Final Report it was recorded that the deceased was identified based on recovery of a copy of Aadhar card with phone number of the wife of the deceased written over it, from the pant pocket of the deceased. It was recorded that on 27.07.2019 at about 05.45 hrs, the deceased informed his mother, Respondent No.2, over phone that he is at Tiruppur Railway station to go to Chennai and at about 08.00 hrs the deceased informed his wife over phone that he was coming to Chennai by train. Concluding the Report, the Police submitted that the deceased was not having ticket and that there is no direct witness who saw the deceased travelled in a train and that the incident might have happened either due to the deceased crossing the Railway line negligently or fall from a running train.

10. According to the Applicants, as mentioned in the Original Application, the deceased boarded Coimbatore Chennai train at about 07.00 hrs on 27.07.2019 at

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Tiruppur and called his wife, Applicant No.1, at about 08.00 hrs and informed about his travel and that he would reach Chennai at about 14.00 hrs. Applicant No.1, wife of the deceased, in her Proof Affidavit submitted before this Tribunal on 22.08.2023 stated that "I humbly submit that on 27.07.2019, my deceased husband Arudoss travelled in Coimbatore Express (Train No.12680) from Tiruppur to Chennai. On that day before 8.30 a.m., while the above said train was running in between Vijayamangalam - Ingur (Non-stop) Railway Station, my husband who traveled in unreserved (crowded) compartment by standing near the door side was fall from the train by jerking and sustained grievous injuries which lead to death near the Railway line". Applicant No.1 also submitted that on the date of the incident, the deceased called his mother, Respondent No.2, at 05.45 hrs on 27.07.2019 and informed that he was going to Chennai. It was also stated "I further submit that on that day (27.07.2019) before 8.00 A.M. my husband Arudoss also contacted me over phone to my Cell No.8428394027 and informed that he is coming by Coimbatore Express Train and he will arrive Chennai at about 2 p.m. and pay the money". In her deposition before this Tribunal on the same day, Applicant No.1 submitted that the deceased called her before 08.00 hrs and informed her that he was travelling from Tiruppur to Chennai and that he had purchased ticket for his travel. Applicant No.1, in her statement to Sub Inspector of Railway Protection Force on 20.02.2022, stated that "On 25.07.2019 I called to my husband and asked for money to pay the children's school fee and house rent, then he said that he would come to home within two days and took money. After that on 27.07.2019 at about 06.00 AM he called me and informed that his colleague by name Kumar also came to Tiruppur Railway station for send off him. On the same day at about 07.20 hrs again he called me and informed that train came nearer to Tiruppur and after some time I would call you. Thereafter at about 01.30 PM one Railway police Constable by name Gunasekaran was called me and informed that my husband was died on the railway tracks near Vijayamangalam Railway station". Respondent No.2, in her statement to Sub Inspector of Railway Protection Force on 20.02.2022, stated that "On 27.07.2019 at about 05.30 AM he came to Palladam bus stand near Tiruppur and met with me and informed that he was going to his home to pay

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his children's school fee and his house rent and returned back to Tiruppur within two days and then he went to Tiruppur Railway station". Respondent No.2 in her Proof Affidavit submitted before this Tribunal on 11.07.2023 stated that "on 27.07.2019 at about 5.45 a.m., my deceased son Aruldoss informed me over phone that he took ticket at Tiruppur Railway station to go to Chennai by paying money to his wife for school fees of the children and house rent and he was awaiting for arrival of Coimbatore Express". In her deposition before the Tribunal on the same day, she stated that she did not know personally whether the deceased purchased ticket for his travel.

11. Respondent has submitted copy of Train Signal Register of 27.07.2019 of Vijayamangalam Railway station. As per said Register, train No.12680, Coimbatore – Chennai Intercity Express, passed Vijayamangalam Railway station at 07.21 hrs. Considering that Vijayamangalam is approximately 25 kms away from Tiruppur train No.12680 would have departed Tiruppur Railway station at its scheduled departure time of 06.55 hrs as per the Time Table pertaining to the relevant date.

12. As per Final Report, as noted supra, the deceased would have died either due to trespass on to the Railway tracks or falling down from the train. According to the Applicants, the deceased travelled in train No.12680 Coimbatore – Chennai Express and at about 08.00 hrs contacted Applicant No.1 over phone. Respondent No.2 also made statements to that effect and in her statement to the Railway Protection Force official, even claimed that on the date of the incident at about 05.30 AM the deceased came to Palladam bus stand near Tiruppur and met her. In her statement to the Railway Protection Force official Applicant No.1 claimed that the deceased called her at 07.20 hrs and informed that train came nearer to Tiruppur and after some time he would call her. The efforts of the Applicants and Respondent No.2 were to establish that the deceased boarded train No.12680 Coimbatore Express at Tiruppur and travelled in the train. However, the timing of boarding the train and travel are not at all in consonance with the actual passage of train No.12680 Coimbatore Express from Tiruppur through the section, which was at about 07.21 hrs on 27.07.2019, where body of the deceased was found lying by the side of the Railway tracks. Further, had the deceased travelled in

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the train, he would have fallen down from the train at the place where his body was found at about 07.25 hrs. However, according to the Applicants, at that time the deceased was waiting at Tiruppur to board the train and later had conversation with Applicant No.1.

13. Further, the nature of injuries, as recorded in the Observation Mahazar, Inquest report and Post-mortem certificate, i.e. the body had suffered severe injuries like head being severely crushed, right and left shoulders being separated from the body, right and left leg knees being broken and crushed and both the feet being crushed and separated. Fracture of body parts and injuries to internal organs were also recorded in the Post-mortem certificate. Such kind of mutilation to the body would have been occurred only when the person was hit by a speeding train, either in standing condition or in lying down condition, and the body getting caught underneath the train. The place of incident is an open plain area between two stations and if a person falls down from a running train in such an area, he would have been thrown to the side of the Railway tracks and the person would have suffered injuries like abrasions, contusions and fractures and sometimes crush injuries to some parts if it hits any hard substance but would not have got caught under the train

14. Though Applicants and Respondent No.2 claimed that the deceased was a bona fide passenger, in her deposition before this Tribunal, Respondent No.2 admitted that she was not aware personally whether the deceased purchased ticket for his travel. It is pertinent to note here that even though copy of Aadhar card was recovered from the deceased, no ticket was recovered. Though Applicant No.1 in her statement to the Railway Protection Force official claimed that the deceased informed her that his colleague by name Kumar also came to Tiruppur Railway station for send off him and the Applicants are aware of the place of work of the deceased, no effort was made by them to produce the evidence of the said colleague of the deceased.

15. It is also noted that as per the Applicants the deceased was travelling in a crowded unreserved compartment standing near the door side and the alleged fall from the train occurred at about 8:15 and 8:30 in the morning. It is very unlikely that this was

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not noticed by any other passenger of the same or adjacent coach; there was no alarm chain pulling to stop the train or alert the train staff, nor was it reported to any nearby station by any passenger until the Keyman on duty saw and reported to Station Master, Vijayamangalam Railway station at 11:00 Hrs. Even in the Final Report by the Police it was concluded that the deceased was not having ticket and that there is no direct witness who saw the deceased travelled in a train and there was possibility of occurrence of incidence due to the deceased crossing the Railway line.

16. As per section 101 of Evidence Act, "whoever desires any Court to give judgment as to any legal right or liability dependent on existence of facts which he asserts, must prove that those facts exist". This was also laid down in the Judgment of the Hon'ble Supreme Court in UOI v. Rina Devi in Civil Appeal No.4945 of 2018 on 09.05.2018, while specifically considering the issue of burden of proof held as under:

"Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly".

(emphasis supplied)

Thus, now there is no ambiguity regarding *onus probandi*. It is on the claimants and only after they discharge it satisfactorily, burden will then shift to the Respondent. The burden of proving the alleged travel and accidental fall of the deceased lay on the Applicants, which has not been discharged by them to our satisfaction. It is clearly revealed from the facts and circumstances in the discussion above that the Applicants have utterly failed to prove that the death was due to falling down of a passenger from a train carrying passengers as stated in Section 123 (c)(2) of the Railways Act, 1969.

17. Thus, glaring contradictions in the claims made by the Applicants with the material available on record do not inspire even an iota of confidence in us and we find no legal impediment to hold that the deceased was not a bona fide passenger and that the incident in which he lost his life, was not an untoward incident. The whole narration

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was a cooked-up story to establish that the death was due to falling down from a train. Hence, the issues are answered in negative.

Issue No.3

18. In view of the findings on Issue no.1 & 2 supra, it is felt that there is no necessity to go into the issue of dependants of the deceased.

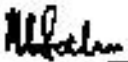
Issue No.4

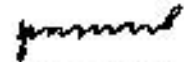
19. Thus, in view of the findings above, the present original claim application deserves to be dismissed with no order as to cost.

ORDER

20. The claim application is dismissed. In the facts and circumstances of this case, there is no order as to costs.

21. Pronounced in the open court today on 12.10.2023.


(Prasanta Kumar Sahu)
Member (Technical)


(Sanjeev Aggarwal)
Member (Judicial)

