

**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)/56/2022

(Application with delay filed on 20.06.2022, delay condoned on 29.09.2022
registered on 30.09.2022, reserved on 03.11.2023 and decided on 16.11.2023)

1. Mrs. Lakshmi Ponvelu, w/o Ponvelu, aged 37 years (wife of deceased)
 2. Ms. P. Thenmozhi, d/o Ponvelu, aged 15 years (daughter of deceased)
 3. Ms. P. Deepika, d/o Ponvelu, aged 13 years (daughter of deceased)
 4. Mr. M. Venkatesan, s/o Manikkam, aged 72 years (father of deceased)
(applicant no.- 2 and 3 are minors rep. by their
mother & natural guardian Laxmi Ponvelu)
Residing at: 153, Mariyamman Kovil Street
Dharjipet, New Town, Vaniyambadi - 635 752
- ... Applicants

Versus

Union of India
Rep. by General Manager,
South Railway,
Chennai-600 003.

... Respondent

Mr. S. V. Karthikeyan, Ld. Counsel for the Applicant
Mr. K. Vijayaprasad, Presenting Officer for Respondent

Application under Section 16 of the Railway Claims Tribunal Act, 1987 r/w Section 123
(c)(2), 124-A & 125 of the Railways Act, 1989.

Claim for Rs.8,00,000/- with 12% interest from the date of accident till the disposal of
application.

Judgement

Sanjeev Aggarwal, Member (Judicial)

1. Applicants are wife, daughters and father of Ponvelu (hereinafter referred as
deceased) and they have filed this Claim Application to claim the compensation on
account of his death, allegedly in an untoward incident.

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2. As per the case of the Applicant, deceased was doing masonry work in Bangalore. On 14.05.2018 at 08.46 Hrs deceased purchased a ticket no.-UOA 88478940 Ex.-Whitefield to Jolarpettai Rly Station and boarded Train No.- 22617 Bangalore to Chennai Intercity Express at Whitefield Rly Station. When the train was reaching at Jolarpettai Rly Station, he accidentally fell down from running train near TXR office at road no.-7 platform no.-5 and died on the spot. It was submitted that the deceased, died due to an untoward incident, therefore Applicant being the dependent of the deceased, is entitled for compensation.
3. Respondent Railway filed written statement along with DRM report wherein it was submitted that though a journey ticket no.-UOA 88478940 Ex.-Whitefield to Jolarpettai Rly Station was recovered from the possession of deceased but it cannot be said that he was a bonafide passenger of Train No.- 22617. As per the letter of Station Master/ Whitefield and also statement of Sri P.J. Paramanandam, the Guard of Train No.- 22617 that the train had no scheduled stoppage at Whitefield Rly Station and passed through Whitefield Rly station at 9.10 Hrs, arrived at Jolarpettai Rly Station at 11.00 Hrs without any detention. As such it was not possible for the deceased to board Train No.- 22617 at Whitefield and he was not travelling by the train as claimed by applicants and the ticket recovered did not belong to the deceased. And as per the memo of SS/ Jolarpettai, one unknown passenger informed that deceased was run over by Train No.- 22617 SBC-TPTY Express and his body was found in the middle of the track. Therefore, in the circumstances of the case it is clear that deceased did not die due to fall from any train and he was not

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travelling in the train as alleged. As such the Respondent is not liable to pay any compensation to the Applicant.

4. On the basis of pleadings of both of the parties on 13.03.2023, following issues were framed.

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

5. The Applicant, father of the deceased, on 13.06.2023, appeared before the Tribunal and reiterated the facts pleaded in the original claim application and he was cross examined thereon. Applicant filed copies of SM's Message, FIR, Inquest report, Seizure Mahazar, Post Mortem Certificate, Final Report, Death certificate, Legal Heir Certificate and train ticket, copies of Aadhar Card of applicants and deceased, copies of Bank Pass Book of applicants which were marked as Ex.A-1 to A-11 respectively. Respondent has filed DRM Report (Ex. R-1) along with copies of documents cited in it. Later respondent filed a copy of the message given by Station Master/ Whitefield to Post Commander, RPF/ Jolarpettal.

6. With consent of parties, heard both sides and proceeded to decide the matter as under:

Issues No. 2&3:

Since these issues are interconnected, hence for the sake of convenience are being taken together for discussion.

M. S. Srinivasan



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7. As per the case of applicant on 14.05.2018 deceased with a ticket no.-UOA 88478940 Ex.-Whitefield to Jolarpettai Rly Station was travelling in Train No.- 22617 Bangalore to Chennai Intercity Express. When the train was arriving at Jolarpettai Rly Station, he accidentally fell down from running train near TXR office at road no.- 7 platform no.-5 and died on the spot.
8. Part III of the Indian Evidence Act, 1872 dealing with the "PRODUCTION AND EFFECT OF EVIDENCE" are relevant here. Following sections are quoted for better appreciation and arriving at the just conclusion by the Tribunal:
- "101. Burden of proof.- Whosoever desires any court to give judgment 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 bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*
- 102. On whom the burden of proof lies.- The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.*
- 103. Burden of proof as to particular fact.- The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."*
9. It is settled law that mere presence of the dead body on the Railway premises will not be conclusive to hold that the injured or deceased was a bona fide passenger and victim of untoward incident for which a claim for compensation could be maintained. The initial burden to establish the fact is on the Applicant.
10. In order to prove that deceased was travelling as a bonafide passenger by Train No.- 22617 Bangalore to Chennai Intercity Express from Whitefield Rly Station to

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Jolarpettai Rly Station, applicant has filed ticket no.-UOA 88478940 Ex.-Whitefield to Jolarpettai Rly Station (Ex. A-9). During the inquiry, respondent got the ticket verified and CBSR/Whitefield issued a certificate that the ticket no.-UOA 88478940 was issued from Whitefield Rly Station.

11. The in compliance with statutory provision of the Untoward Passengers (Manner of Investigation) Rules 2003 as amended in the year 2007 the matter was investigated by Post Commander, RPF/ Jolarpettai and in the report it was concluded that:

"Conclusion:

The deceased by name Ponvelu, aged 36 years S/o. Venkatesan, No.31/153, Mariyamman Koli Street, Dharjipet, Vaniyambadi Taluk, Tirupattur District, Tamil Nadu, was having a general UTS Ticket bearing No.UOA 88478940 ex: Whitefield - Jolarpettai which was issued at Booking Counter/Whitefield Station on 14.05.2018 at 08.46 hrs. During the inquest held by GRP/JTJ at JTJ station on 14.05.2018 between 14.00 hours and 16.00 hours, the subject journey ticket had been recovered from the body of the deceased and the same was also corroborated by the statement of Sri.R.Devaraj, SIPF/JTJ who had attended the spot on the fatal day. Though there was a recovery of an ordinary rail journey ticket ex: Whitefield - Jolarpettai from the possession of the body of the deceased, it casts doubt on the bonafides of the deceased as a passenger on the following grounds. 1) As per the letter issued by SS/Whitefield station and also statement of Sri.P.J.Paramanandem who had worked as Guard in Tr.No.22617 (SBC-TPTY) Interdy Exp, the train had no scheduled stoppage at Whitefield

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station but had passed through Whitefield station at 09.10 hrs. and arrived at Platform No.5/Jolarpettai at 11.00 hrs and departed at 11.02 hrs without any detention. As such, it was not possible for the deceased to entrain in the said train at Whitefield station on 14.05.2018 and in other words, it can be stated that the deceased did not travel in the subject train on the day.

2) According to the GRP records, the deceased while trying to get down from the running Tr.No.22617, had accidentally fallen down at JTJ station and dragged 500 meters and was then run over by the said train. But there was no direct evidence/ eye witness for the alleged incident to corroborate the mere conclusion of GRP/JTJ even though the incident had happened in broad daylight and as per the statements of Panchayatadars also (mentioned in the Inquest Report), they did not know as to how the incident had occurred.

3) At the time of the inquest, GRP/JTJ recovered the UTS ticket without any damage or any blood stains on the ticket which also raises doubts whether the ticket actually pertains to the deceased or not.

4) As per the memo of SS/JTJ and statement of Sri.K.Balasundaram, SS/Jolarpettai, on 14.05.2018, the deceased was run over by Tr.No.22617 ex.SBC-TPTY Express on Road No.7 (Platform No.5) at Jolarpettai station as informed by one unknown passenger. The availability of the body on the track (road No.7/JTJ) had also been confirmed in the statement of Sri.R.Devaraj, SIPP/JTJ who had attended the spot and the position of the body was obviously marked in the Rough Sketch prepared by RPF in this regard. Hence, it is abundantly clear that the body was lying on the middle of the

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track (Up line) and it is to be stated that if a person falls from running train, the body would not be on the middle of the track. 5) As per the PMC of GH/Tirupattur, "the cause of the death is "Death due to multiple crush injury of whole body". In the Inquest report, it had also been recorded as "body in fully damaged, left hand cut, right leg cut and intestine came out" and the same were also substantiated in the statement of SIPP/JTJ. From the above, it could be seen that the body was in a crushed condition and left hand/right leg cut but generally, the body would not be in a state of crushing and hand/leg cut, if the person falls from a running train. From the nature of the injuries sustained by the deceased, it is evident that the death of the deceased may not be due to a fall from running train. All the aforesaid facts and circumstances establish that the deceased had not travelled in the subject train which had no scheduled halt at Whitefield station and the death of the deceased seems to be suspicious in nature and can be on the account of reason other than accidental fall from train. Hence, Railway is not liable for any type of compensation to the claimant."

12. Ld. counsel for respondent vehemently argued that as there was no scheduled stoppage of Train No.- 22617 Bangalore to Chennai Intercity Express at Whitefield Rly Station, It is not possible that deceased had boarded the train Ex. Whitefield Rly Station for going to Jolarpettai Rly Station. The entire story of the applicant is cooked up and untenable. Further it was argued that as per the memo of SS/JTJ and statement of Sri.K.Balasundaram, SS/Jolarpettai, the deceased was run over by

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Tr.No.22617 Ex. SBC-TPTY Express, there was no mention of falling down of deceased from the train. In the Rough Sketch prepared by RPF dead body of the deceased was shown lying in the middle of the track (Up line) and if a person falls from running train, the body would not be on the middle of the track. The deceased was not a passenger of Tr.No.22617 Ex. SBC-TPTY Express and in all probability the ticket produced by applicant was planted at the behest of the family of deceased.

13. 5. 191 of Railways Act, 1989. Section 191 of Railways Act, 1989 is as under:

191. Proof of entries in records and documents.—Entries made in the records or other documents of a railway administration shall be admitted in evidence in all proceedings by or against the railway administration, and all such entries may be proved either by the production of the records or other documents of the railway administration containing such entries or by the production of a copy of the entries certified by the officer having custody of the records or other documents under his signature and stating that it is a true copy of the original entries and that such original entries are contained in the records or other documents of the railway administration in his possession."

14. In the message given by Station Master/ Whitefield to Post Commander, RPF/ Jolarpettal (R-41) It is mentioned that the Trains No.- 22617 and 22618 Exp are run through trains at Whitefield Rly Station (WFD) and do not have a any stoppage at Whitefield. This document is uncontroverted and is admissible u/s 191 of the Act.

15. To the specific query by the court that how could the deceased have boarded at Whitefield Rly Station if Tr.No.22617 Ex. SBC-TPTY Express did not have stoppage at the station applicant failed to furnish any satisfactory and convincing explanation. From the rough sketch (R-22) it is also seen that dead body of the deceased was in

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the middle of railway track which is not possible in case of falling down from running train.

16. Considering the material available on record and preponderance of probabilities deceased was not travelling in a train and he did not die due to accidental fall from any train.

17. Thus on holistic evaluation of evidences on record and attendant circumstances, we have come to conclusion that the deceased was not a passenger of the train in question and his death was not caused by an 'untoward incident' as defined u/s 123 (c)(2) of the Act. Accordingly, Issues No.1 and 2 are decided against the Applicant and in favour of respondent.

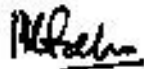
Issues No.-1

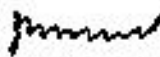
18. In view of the findings on issues no 2&3, discussion on this issue would be redundant exercise.

Issue No. 4:

19. In view of the above findings, Applicant is not entitled for compensation as claimed or any other relief. The present original claim, being devoid of merits, is dismissed with no order as to cost.

20. Pronounced in the open court today on 16.11.2023.


(Prasanta Kumar Sahu)
Member (Technical)


(Sanjeev Aggarwal)
Member (Judicial)

