

रेल दावा अधिकरण, नागपुर पीठ, नागपुर
BEFORE THE RAILWAY CLAIMS TRIBUNAL: NAGPUR BENCH, NAGPUR

QUORAM : HON'BLE SHRI SYED NISHAT ALI, MEMBER (TECHNICAL)/RCT/NGP

Case No.: OA (Ilu)/NGP/176/2019

Date of filing - 09.08.2019

Date of Judgement - 01.01.2024

APPLICANT's : 1. Vandana wd/o Sukhdeo Avvalwar
Aged about 45 years, Occu. – Household
2. Akash s/o Sukhdeo Avalwar
Aged about 25 years, Occu. – Labour
3. Chetan s/o Sukhdeo Awalwar
Aged about 20 years, Occu. – Labour
All R/o : Wadarpura, Station Road,
Murtizapur, Tq. Murtizapur, Dist.- Akola,
PIN - 444107

V/s.

RESPONDENT : Union of India
Through General Manager
Central Railway, C.S.M.T. Mumbai

VALUE OF CLAIM: Rs. 8,00,000/-

Applicant by Advocate C.N. Wankhade (absent on the day of final hearing)

Respondent by Advocate P. Opai

JUDGEMENT

1. The applicant counsel was absent on 28.09.2023, 02.11.2023, 28.11.2023, 12.12.2023. On 12.12.2023 final chance was given to appear on 28.12.2023. Applicant counsel remain absent on this date to. Hence, the case is taken up under Rule 18 (1) of the Railway Claims Tribunal (Procedure) Rules, 1989 which reads as under:

18(1) Action on application for applicant's default – (1) Where on the date fixed for hearing of the application or on any other date to which such hearing may be adjourned, the applicant does not appear [when the application is called] for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.

Accordingly the case has been taken on final orders duly considering the materials available on records, and facts of the case coming out from it. Heard the respondent counsel.

2. The applicants have filed this claim application under Sec.16 of the Railway Claims Tribunal Act, 1987 seeking compensation for an amount of Rs.8,00,000/- along with interest for the unfortunate death of Sukhdeo s/o Ramkrishna Awalwar, aged 50 years which occurred allegedly in an untoward incident on 24.10.2018. The applicants have contended in their claim application that on 24.10.2018, the deceased reached railway station Murtizapur along with his son namely Akash s/o Sukhdeo Awalwar and purchased the ticket by paying the fare charges of Rs.60/- from Murtizapur to Shegaon and boarded in the train. Due to heavy rush, the deceased was standing near the door of the compartment. Due to sudden jerk of the train, deceased fell down from running train near KM No.620/13-15. He was referred to Civil Hospital, Murtizapur and thereafter referred him to Akola from Murtizapur. During the treatment the deceased died on 25.10.2018. The journey ticket of the deceased was stated to be lost in the incident. It is contended by the applicants that the deceased was a bona fide passenger and died in an untoward incident, hence the applicants are entitled for claim compensation.

3. The respondent Railway had contested the claim application by filing the written statement along with DRM Report, wherein by way of preliminary objections, it is averred that no such incident causing death of the deceased within the meaning of the provision of Section 123 (c) read with Section 124-A of

the Railways Act had taken place and as such, the claim application is not maintainable and further that the deceased was not a bona fide passenger of any train. The alleged incident of accident is not due to fall from the train. The respondents also filed Statutory Report of DRM and stated that no valid journey ticket was recovered from the deceased at the time of inquest proceedings and he was not a bona fide passenger of train. There is no eye-witness to the incident. There is no evidence to say that the deceased had fallen down from the train and died. On merits, while denying all the averments of the applicants as made in the claim application either being wrong or for want of knowledge, it is averred that the applicants are not entitled to any compensation. With these averments, a prayer is made to dismiss the claim application with costs.

4. Based on the pleadings of the parties following issues were framed-

1. Whether the Applicants are the dependents of the deceased within the meaning of Section 123 (b) of the Railways Act?
 2. Whether deceased was a bona fide passenger of the train on the relevant day, with valid journey ticket?
 3. Whether the death of the deceased had occurred as a result of an untoward incident as alleged in the claim application within the meaning of Section 124-A r/w 123 (c) (2) of Railways Act?
 4. To what order/relief?
5. To prove their case, the applicant No.2 Akash Sukhdeo Awalwar has affirmed an affidavit and produced himself as witness AW-1. No other witness has been examined by the applicants. On behalf of applicants, certain documents are furnished which are marked as Exh. A-1 to A-13.
6. Shri Vaibhav Ashok Jamnik, Trackman was examined as RW-1 and Shri Vijay Narayanrao Gawali, Dy.S.S. Murtizapur railway station was examined as RW-2 who filed the SM Diary and TSR marked as R-1 and R-2 respectively. The respondent railway also filed DRM Report along with Annexures.

Discussion on the issues with reasoning:

ISSUE No. 2 & 3:

7.1 Both these issues being inter-connected are being taken up together for discussion and decision.

7.2 The case of the applicants is that on 24.10.2018, the deceased reached railway station Murtizapur along with his son namely Akash s/o Sukhdeo Awalwar and purchased the ticket by paying the fare charges of Rs.60/- from Murtizapur to Shegaon and boarded in the train. Due to heavy rush, the deceased was standing near the door of the compartment. Due to sudden jerk of the train, deceased fell down from running train near KM No.620/13-15. He was referred to Civil Hospital, Murtizapur and thereafter referred him to Akola from Murtizapur. During the treatment the deceased died on 25.10.2018. The journey ticket of the deceased was stated to be lost in the incident.

7.3 The inquest proceedings in this case were started by GRP, Akola on receipt of Memo (Exh.A-1) issued by Dy. Station Superintendent, Murtizapur Railway Station on 24.10.2018 at 04:30 hrs. wherein it is mentioned that “PWI – मुर्तिजापुर शंभुकुमार के टेलीफोन मेसेज के अनुसार कि.मी. 620/13-15 में एक अज्ञात व्यक्ति गिरा पड़ा है।” During the inquest proceedings, spot panchnama and inquest panchnama prepared by the investigating authority. The applicants have placed on record Spot Panchnama (Exh.A-3) and Inquest Panchnama (Exh.A-4). No journey ticket or any articles recovered from the deceased and from the incident spot during the course of spot and inquest proceedings.

7.4 It is pleaded by the applicants in claim petition that the deceased reached railway station Murtizapur along with his son namely Akash s/o Sukhdeo Awalwar

and purchased the ticket by paying the fare charges of Rs.60/- from Murtizapur to Shegaon and boarded in the train. The son of the deceased Akash s/o Sukhdeo Avalwar was examined as AW-1. It is deposed by him that on 14/9/23 mentioning therein that he purchased the journey ticket for his deceased father for travel from Murtizapur to Shaegaon. During the cross examination he confirmed that his father told him at 3.30 am hrs. to drop him to the station where he purchased the ticket and handed over the ticket. He confirmed that he did not know where his father boarded the train or in which coach. Hence he is not the eye witness of the incident.

7.5 Counsel for respondent brought out the fact mentioned by the son of the deceased Mr. Akash who made the statement before RPF on 11/9/2019 that on 23/10/2018 his father informed him at 9 pm that on next day he wants to go to Shegaon to visit Gajanann Marharaj darshan. And both the deceased father and he went to sleep. Again in the morning Madhukar Awalwar came to his residence at 6.30 am and woke him up and informed that his father met with an accident near Mutizapur railway station near Pole 620/13-15 and is lying there in serious condition.

7.6 The Respondent counsel highlighted this contradictory statements. The facts mentioned in the deposition of AW-1 and the statement given to RPF by Mr Akash spells the contradictions . He mentions that he was sleeping and then was woken up and got the information.

7.7 Moreover there was no journey ticket recovered at any stage of Pachnama or during investigation to establish that the deceased was a bona fide passenger. This non availability of the ticket stated to be misplaced in the application, does not hold true as the witness himself is giving contradictory statement diluting the fact and circumstances to mislead the case.

Based on this the bona fide is not established neither the boarding of the train or even mentioning of the train is not there.

7.8 I have gone through the pleadings, document and evidences available on record. I have also considered the arguments advanced by the respondent counsel. Admittedly no journey ticket was recovered from the deceased. The witness of AW-1 Akash s/o Sukhdeo is contradictory and not believable. The initial burden to prove that the deceased was a bona fide passenger is not discharged by the applicants. Applicants failed to prove that the deceased was a bona fide passenger by adducing any evidence to relate the facts of purchasing a ticket by the deceased son Akash. It is also held in case of Union of India V/s Rina Devi (CA No.4945 of 2018 arising out of SLP (C) No.10223) that *“mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained.”* In these circumstances, it cannot be believed that the deceased was a bona fide passenger of any train. So the inference can be drawn that the deceased was not a bona fide passenger. I find momentum of force in the contention of the respondent that the deceased was not a bona fide passenger as he had no valid journey ticket at the time of occurrence and also there are no reasons to accept it otherwise. Therefore, it is held that the deceased was not having valid railway journey ticket and as such, he was not a bona fide passenger of the train.

8.1 So far as the manner and circumstances leading to the death of the deceased is concerned, it is seen that nobody had seen the deceased boarding any train. Nobody also had seen him falling from any train. The applicants are also not sure from which train the deceased was travelling therefore they have not mentioned any train name or No. in claim application. AW-1 Akash s/o Sukhdeo Avalwar was not travelling with the deceased and he has no knowledge regarding the incident. His statement and evidence is also contradictory to each

other. There is Nothing on record to say that the deceased was travelling in any train on the day of incident.

8.2 The counsel for respondents vehemently opposed the contention of the applicants and argued that the deceased was not involved in any untoward incident. Memo (Exh.A-1) issued by Dy. Station Superintendent, Murtizapur Railway Station on 24.10.2018 at 04:30 hrs. says that the deceased was lying in injured condition at incident spot. It is mentioned in spot panchnama that the victim sustained injuries due to dashed by some unknown running train. It is also mentioned in inquest panchnama that the deceased died due to railway accident. There is no whisper in these documents that the deceased died due to fallen down from any train.

8.3 It is also pointed out by the respondent counsel that the Memo was issued at 04:30 hrs. on 24.10.2018 whereas it is stated by Akash that that on 23/10/2018 his father informed him at 9 pm that on next day he wants to go to Shegaon to visit Gajanann Marharaj darshan and both the deceased father and he went to sleep. It is also concluded in Post Mortem Report that deceased died due to head injuries in a case of railway accident.

8.4 The respondent railway also examined Shri Vaibhav Ashok Jamnik, Trackman was examined as RW-1 who deposed that on 24.10.2018 when he was on duty , he saw an unknown person lying in between the track at about 04:00 hrs. to 04:15 hrs. It is also deposed by RW-2 Shri Vijay Narayanrao Gawali, Dy.S.S. Murtizapur railway station that the injured person was lying at KM No.620/13-15 which is about 500 meters away from Murtizapur Railway Station.

8.5 It is argued by the respondent counsel that there is no eye witness of the said incident nor there is any report of ACP in any train, therefore it cannot be conclude that the deceased was fallen down from the train. The story of the applicant in claim application is concocted, bogus and not reliable. It is also

concluded in DRM enquiry report filed by the Respondent railway that the deceased was not travelling in any train and he was died during treatment due to dashed by unknown train. The DRM Report along with other documents was given to the applicants counsel, but no plausible rebuttal has been given by the counsel/applicant. Hence the DRM Report becomes final and we have no hesitation to say that the incident is not an untoward incident and the applicants are not entitled to claim as stated above. The applicants are not sure in which train the deceased was travelling. No journey ticket recovered from the deceased. The counsel for respondents vehemently opposed the contention of the counsel of applicants and argued that there is no evidence placed on record to show that the deceased was on board in any train. Hence the deceased was not involved in any untoward incident under Section 124-A of the Railways Act and the deceased died in self inflicted injuries, which come under the provision of Section 124-A.

8.6 The applicants have not adduced any evidence or witness or documents which could establish the circumstances under which the death of Sukhdeo s/o Ramkrishna Awalwar (deceased) had occurred, nor they have stated that there was any eyewitness to the incident. A reading of the aforesaid paras shows that the incident in question is not an untoward incident. The applicants have not been able to discharge their burden in this respect along with the circumstantial consequence. The applicants have not been able to prove that the deceased was a bona fide passenger and that he had fallen down from any train carrying passengers. As such, there is no evidence on record even to remotely suggest that the death of Sukhdeo s/o Ramkrishna Awalwar (deceased) was due to fall from the train so as to bring the case within the meaning of untoward incident defined u/s 123 (C) (2) of the Railways Act, 1989. It is also held in case of Union of India V/s Rina Devi (CA No.4945 of 2018 arising out of SLP (C) No.10223) that *“mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained.”* Respondent has a force of argument that

the deceased was not a bona fide passenger and he was not involved in any untoward incident at all. Hence I concluded that the incident is not a fallen down case to claim compensation and death of deceased squarely falls under the proviso of Section 124 A of the Railway Act, according to which no compensation shall be payable by the railway administration if the passenger suffer self-inflicted injury. It is, therefore, I conclude that the deceased was not involved in an untoward incident as defined in Section 123(c)(2) of the Railways Act. These issues, therefore, decided accordingly against the applicant.

ISSUE No.1:

9. In view of the findings on issue No.2 and 3, discussion on this issue would be redundant exercise.

ISSUE No. 4 (Relief)

10. In my considered view and opinion, the findings on issue No.2 and 3 go against the applicants and the applicants are not entitled to any compensation and this issue is answered accordingly.

ORDER

In the result, the claim application is dismissed leaving the parties to bear their own costs.

File be consigned to the record-room.

(Syed Nishat Ali)
Member (Technical)

Pronounced in open Court.

Nagpur.

Date : 01.01.2024

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