

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

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

Case No.: OA (Ilu)/NGP/180/2019

Date of filing - 09.08.2019

Date of Judgement - 22.02.2024

- APPLICANT's :**
1. Smt. Sushila wd/o Vinod Chavre
Aged – 42 years, Occu. – Labour
 2. Khushi d/o Vinod Chavre
Aged – 15 years, Occu. – Education
 3. Yash s/o Vinod Chavre
Aged – 13 years, Occu. – Education

Applicant No. 2 & 3 is under the guardianship of their Mother i.e. applicant No.1

All are R/o Tarfail, Ward No.2,
Pulgaon, Taluka Devil,
District – Wardha, Maharashtra - 442302

V/s.

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

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

Applicant by Advocate N.R. Mankar (absent on the day of final hearings)
Respondent by Advocate S. Dutonde

JUDGEMENT

1. The case was listed on 09.02.2024 and neither applicants nor their counsel were present and prior to this the applicant counsel remained absent on 25/1/24 and also applicants remained absent on 28.11.23. 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.

2. The applicants have filed a claim application on 09/8/2019 seeking compensation for the unfortunate death of Vinod s/o Ramesh Chavre, aged 50 years which occurred allegedly in a train accident.

3. The applicants have contended in claim application that on 12.03.2019, the deceased Vinod s/o Ramesh Chavre was travelling in the general compartment of unknown train from Nagpur to Pulgaon after purchasing of journey ticket bearing No. UFE 14080128/- amounting Rs.30/-. The train was overcrowded and during the journey when the train was passing from KM No.728/34 towards Pulgaon, due to sudden jerk and pushed by other passenger, the deceased fell down from the running train and died on the spot. It is contended that the deceased was a bona fide passenger and died in an untoward incident, hence the applicants are entitled for claim compensation.

4. 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 has 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 and he was not involved in any untoward incident. The alleged incident of accident is not due to fall from the train. It is contended by the respondent that the deceased was illegally crossing the railway track and during this he was dashed by Train No.12859 Dn. It is contended by the respondent that the deceased died due to his gross negligence and self-inflicted injuries. Hence, the

Railway is in no way responsible for the death of the deceased and claim for compensation from Railway administration does not arise in this application.

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

- 1) Whether Applicants are the dependents of the deceased within the meaning of Section 123 (b) of the Railway 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) of the Railway Act?
- 4) To what order/relief?

6. To prove their case, the applicant No.1 Smt. Sushila wd/o Vinod Chavre has affirmed an affidavit and produced herself as witness AW-1. On behalf of applicants, certain documents are furnished which are marked as Exh. A-1 to A-14. No other witness has been examined by the applicants.

7. On the other hand the respondent railway has examined Shri Yadvendra Singh s/o Bhura Singh Chandel, Head Constable as RW-1 who filed certified copy of Daily Diary (Roznamcha) Exh.R-3 dated 12.03.2019 which is part and parcel of DRM's Report Exh.R-1. His statement recorded by RPF on 22.10.2019 marked as R-4. Shri Machhindra s/o Parashram Bhagat, Station Manager, Pulgaon Railway Station was also examined as RW-2 who filed Memo submitted by RPF on 12.03.2019 at Exh.R-5, Memo dated 12.03.2019 at Exh.R-6, Station Master Diary dated 12.03.2019 at Exh.R-7 and TSR at Exh.R-8. Respondent railway filed DRM Report (R-1) along with Annexures.

Discussion on the issues with reasoning:

ISSUE No. 2 & 3:

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

9. The case of the applicant is that on 12.03.2019, the deceased Vinod s/o Ramesh Chavre was travelling in the general compartment of an unknown train from Nagpur to Pulgaon after purchasing of journey ticket bearing No.UFE 14080128/- amounting Rs.30/- and due to sudden jerk and pushed by other passenger, the deceased fell down from the running train KM No.728/34 and died on the spot.

10. The inquest proceedings in this case were started by GRP Wardha on receipt of Memo (Exh.A-2) by Dy. Station Manager, Pulgaon on 12.03.2019 wherein it is mentioned that as per information received from RPF, one unknown injured person found at KM No.728/34 between Kaotha to Pulgaon. It is also informed by Medical Officer, Rural Hospital, Pulgaon to Pulgaon Police Station (Exh.A-3) that Shri Vinod Ramesh Chavre aged about 42 years, r/o Tarfail, Pulgaon has been brought on 12.03.2019 at 06:00 p.m. in dead condition (due to railway accident). During the course of inquest proceedings, personal search of the deceased was conducted by the GRP Officials. The applicants have placed on record copy of document, Inquest Panchnana (Exh.A-5) and Spot Panchnama (Exh. A-6), a perusal whereof shows that in the personal search of the deceased, one ticket No.14080128, Nagpur to Pulgaon has been recovered from the person of the deceased.

11. It is contended by the applicants in their claim application that the deceased was travelling in the general compartment of an unknown train after purchasing of journey ticket from Nagpur to Pulgaon bearing No.UFE 14080128 which was recovered from the deceased during the inquest proceedings. The alleged journey ticket is placed on record as Exh.A-1. It is contended that the

deceased was bona fide passenger and the applicants are entitled to compensation.

12. Per contra, it is argued by the counsel for the respondent that the alleged journey ticket which was said to be recovered during inquest proceedings and was placed on record by the applicants is a Sr. Citizen Journey ticket which is valid only for Sr. Citizen passenger aged 60 years and above. As per Death Certificate of the deceased, the age of the deceased was 50 years at the time of his death. As per Aadhar Card, the year of birth of the deceased is 1969. It is also admitted by AW-1 in her cross-examination that on the date of incident her husband was aged about 44 years. Hence the journey ticket filed by the applicants is not valid for the deceased. It is also argued by the respondent counsel that the inquest panchnama was prepared on 13.03.2019 whereas the incident was occurred on 12.03.2019 and the deceased was brought in to the Hospital in dead condition at 12.03.2019 at 6:00 p.m. Hence the alleged journey ticket which was shown recovered from the deceased in inquest panchnama is planted one and moreover it is valid only for Sr. Citizen passenger aged 60 years and above. AW-1 Smt. Sushila wd/o Vinod Chavre was not travelling with the deceased and she had not personally witness the purchase of ticket by the deceased as well as happening of incident. It is also argued by the respondent counsel that as per statement of an eye-witness Shri Yadvendra Singh Chandel (Exh.R-4), the deceased while crossing the railway track at about 17:20 hrs. to 17:30 hrs., in the meantime Train No.12859 Dn. was passing through from down line and the deceased dashed by the train. The residents of Mohalla Tarfail which is near railway track came at incident spot and identified the deceased as Vinod Chavre. He informed the same to Station Master and recorded the incident in Daily Diary (Roznamcha) Exh.R-3 dated 12.03.2019. It is also concluded in Statutory Report Exh.R-1 that “उक्त टिकट जो मृतक के पास मरणोत्तर पंचनामा में पाया गया वह सीनियर सिटीजन हेतु टिकट था जबकि मृतक की उम्र 50 वर्ष थी। मृतक के पास पाया गया टिकट एक गलत टिकट है जो सिर्फ रेल को गुमराह करने के लिए तथा रेलवे से क्लेम लेने के लिए प्रस्तुत किया गया

है। जीआरपी द्वारा घटना की जो कार्यवाही की गयी है उससे पहले मृतक के पास उसके ही मोहल्ले वाले उसके पड़ोसी तथा मृतक के समाज के व्यक्ति थे। मामले में मरणोत्तर पंचनामा घटना के दूसरे दिन दिनांक 13.03.2019 को बनाया गया। इस दौरान मृतक के जेब में उक्त टिकट उपलब्ध कराया जा सकता है। टिकट वरिष्ठ नागरिक के लिए है।” It is argued by the respondent counsel that in these circumstances, it is crystal clear that the deceased was not having any journey ticket and he was not at all bona fide passenger at the time of occurrence.

13. Section 124-A of The Railways Act, 1989 (for short, ‘the Act’) entitles a ‘passenger’ to claim compensation, who has been injured or the dependents of the deceased, who has been killed in an untoward incident as defined under Section 123 (c) of the Act *ibid*. The word ‘passenger’ has been defined under Section 2(29) of the Act as a person travelling with a valid pass or ticket. As per Section 124 (A) “passenger” includes – (i) a railway servant on duty; and (ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident. It is only when the fact of the injured or the deceased being a bona fide passenger of the train is established, the question of payment of compensation arises in case the incident is held to be an untoward incident. Therefore, if a person has purchased a valid ticket, then only he/she is a bona fide passenger of the train. Even circumstantial evidences do not indicate any acceptable reason for possible loss of ticket in the said case as per Rina Devi case.

14. I have gone through the pleadings, document and evidences available on record. I have also considered the argument advanced by the respondent counsel. Admittedly the journey ticket placed on record was issued for the journey of Sr. Citizen passenger whereas the deceased was aged 44 years. The deceased was residing nearby place of incident. As per witness and statement of Shri Yadvendra Singh s/o Bhura Singh Chandel, Head Constable, the deceased was crossing the railway track. This fact shown that the deceased was

not travelling in any train at the time of incident hence question of purchasing of journey ticket not arise. Moreover, the inquest panchnama was prepared on 13.03.2019 after a day of incident. Statutory Report also concluded that the journey ticket planted by the local people and the alleged journey ticket was issued for the journey of Sr. Citizen Passenger. All the above facts clearly indicate that the deceased was not having any journey ticket and the alleged journey ticket is planted one and not valid for the deceased. The initial burden to prove that the deceased was a bona fide passenger is not discharged by the applicants. 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 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.

15. So far as, the manner and circumstances leading to the death of the deceased is concerned, the applicants has no knowledge about the train from which train the deceased was travelling therefore they have not mentioned any train name or No. in claim application. AW-1 Smt. Sushila wd/o Vinod Chavre was also not travelling with the deceased and she was not an eye-witness to the incident.

16. It is argued by the respondent counsel that the deceased died while he was crossing the railway track. In support of this, respondent railway examined Shri Yadvendra Singh s/o Bhura Singh Chandel, Head Constable as RW-1. It is stated by him in his affidavit RW-1 that on 12.03.2019, he was working as a

constable at Pulgaon Railway Station and his duty hours were from 16:00 hrs. to 24:00 hrs. At about 17:20 hrs. to 17:30 hrs., he saw one person while crossing the railway track was hit/dash by the Train No.12859 Gitanjali Express. He had informed the same to the Station Master, Pulgaon. In this connection it was pointed that the applicant counsel did not cross examine RW-1. **It is established that failure to question witness on any aspect of his deposition - Amounts to admission of those facts.** It is deposed by RW-1 that the deceased was permanent resident of Tarfail which is near about 50 meters away from the spot of incident. The deceased was not travelling by any train. RW-1 Yadvendra Singh also filed the Roznamcha dated 12.03.2019 at Exh.R-3 wherein it is clearly mentioned by him that “आ. वाय.एस. चन्देल ने K.M. No.728/34 के मध्य एक व्यक्ति नाम विनोद चवरे उम्र करीबन 45 वर्ष निवासी तारफैल, वार्ड नं.2 को लाइन क्रॉस करते समय Tr.No.12859 Dn. श्रू गीतांजली एक्सप्रेस द्वारा टक्कर मारी गयी जिससे उक्त व्यक्ति जगह पर ही गिर गया जिसे बाद मोहल्ले के व्यक्तियों के साथ मिलकर सरकारी अस्पताल पुलगांव में भर्ती कराया गया जिसे इलाज के दौरान ऑन ड्यूटी डॉक्टर ने मृत घोषित किया उक्त मृत व्यक्ति की पत्नी वहां पर मौजूद थी जिसे बाद में अस्पताल कर्मचारियों द्वारा P.M. के लिए मुर्दाघर में रखा गया।” The above facts are also stated by Shri Yadvendra Singh Chandel in his statement dated 22.10.2019 recorded by RPF and the same was placed on record by the respondent railway as Exh.R-4.

17. Shri Machhindra s/o Parashram Bhagat was examined by the respondent as RW-2 who was working as a Station Master at Pulgaon Railway Station on 12.03.2019. It is stated by him in his affidavit Exh.RW-2 that at about 19:45 hrs. he had received information from RPF Shri Yadvendra Singh Chandel through memo that one person while crossing the railway track was hit/dash by the Train No.12859 Gitanjali Express. He had informed the incident to GRP Pulgaon for necessary action.

18. It is argued by the respondent counsel that Shri Yadvendra Singh s/o Bhura Singh Chandel, Head Constable is an eye-witness to the incident and his

direct evidence is sufficient enough to prove that the deceased died while he was crossing the railway track. It is also argued by the respondent counsel that as per Train Signal Register submitted by Dy. S.S. Pulgaon, no passenger train was arrived at Pulgaon Station on 12.03.2019 from Nagpur station prior to alleged accident time. As per TSR Train No.18030 up arrived at Pulgaon at 16:32 hrs., Train No.12810 UP arrived at 16:43 hrs. and Train No.12106 UP arrived at 18:56 hrs. Whereas as per witness of Shri Yadvendra Singh s/o Bhura Singh Chandel, the incident was occurred between 17:20 hrs. to 17:30 hrs. as Shri Yadvendra Singh has seen the deceased crossing the railway track and during this the deceased was hit/dashed by the Train No.12859 Gitanjali Express.

19. On the basis of above facts, it is argued by the respondent counsel that all the above facts clearly indicate that the instant case is not the case of falling down from the train. The deceased, illegally, was crossing the railway track and during this he was dashed by through Train No.12859 Geetanjali Express and died. The counsel for the respondent argued that the act of the deceased was totally imprudent, irrational, callous and unmindful of the consequences. It is also argued by the respondent counsel that the deceased died due to his own criminal negligence. It is not a case of untoward incident of accidental fall from train as defined in Section 123 (c) of Railway Act, 1989. Hence Railway administration is not liable to pay any compensation to the applicants.

20. It is pleaded by the applicants that the deceased suffered an accidental fall from the train and died and the alleged incident was untoward incident and the applicants are entitled for compensation from the respondent railway. On the other hand, the counsel for respondents vehemently opposed the contention of the applicants and argued that the deceased died while he was crossing the railway track and at that time he was dashed by Geetanjali Express and sustained injuries and died due to injuries and it is not a case of accidental falling from a train. The learned counsel for the respondent railway further contended that the applicants failed to prove that the deceased was accidentally fell down

from the alleged running train due to heavy rush as alleged in claim application. The deceased was himself responsible for the incident and the alleged act of the deceased is an exception under provision of Section 124-A of the Railway Act. It is not a case of untoward incident of accidental fall from train as defined in Section 123 (c) of Railway Act, 1989. Hence Railway administration is not liable to pay any compensation to the applicants.

21. Based upon the facts and circumstances in preceding paras, I am of the view that the deceased did not die due to falling down from the train but while he was crossing the railway track and dashed by Geetanjali Express Train No.12859 Dn. The alleged incident was not an untoward incident. Deceased was not involved in any untoward incident as defined in Section 123 (c) of Railway Act. Material available on record clearly indicates that deceased died while he was crossing the railway track nearby his residence and dashed by a train.

22. 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.”*** As per the judgement of the Hon’ble Apex Court in Rina Devi (Supra) the initial onus lies with the applicant to show that there is a death due to untoward incident of a bona fide passenger by filling of the affidavit and depending on the facts of a particular case it can be shifted on the Railways. In the present case the applicants have failed to prove that the deceased died due to an untoward incident as per section 123 (C) of the Railway Act and not able to discharge the initial onus lies on them.

23. It is important to mention here that death or injury of victim due to an ‘untoward incident’ under section 123 (C) of the Railway Act is *sine qua non* to succeed in the claim u/s 124-A of the Railway Act’ 1989.

24. The above facts clearly establish that the deceased died while he was crossing the railway track on incident spot which is nearby his resident and during this he was dashed by a through train and the deceased sustained injuries and died. It is, therefore, concluded that the deceased was not involved in any untoward incident as defined in Section 123(c)(2) of the Railways Act. Therefore, this issue is decided accordingly against the applicants.

ISSUE No.1

25. In view of the findings on issue No.2 and 3, discussion of these issues would be redundant exercise.

ISSUE No. 4 (Relief)

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

ORDER

27. The claim application is dismissed with no order as to costs.

28. File to be consigned to the record-room.

29. Dictated to the P.S. transcribed by him, corrected and pronounced by us in open Tribunal on 22.02.2024.

(Syed Nishat Ali)
Member (Technical)

Pronounced in open Court.
Nagpur.
Date : 22.02.2024
/DK/