

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

QUORUM: HON'BLE MISS R. SATHYABAMA, MEMBER (JUDICIAL)/RCT/NGP
HON'BLE SHRI SYED NISHAT ALI, MEMBER (TECHNICAL)/RCT/NGP

Case No.: OA (Ilu)/NGP/209/2019

Date of Filing - 11.10.2019

Date of Judgement - 25.10.2023

- APPLICANT'S:**
1. Smt. Asha Bai Wd/o Chandan Adiwasi
Aged about 25 years, Occu.: House wife
 2. Uma D/o Chandan Adiwasi
Aged about 07 years, Occu.: Nil
 3. Shailendra S/o Chandan Adiwasi
Aged about 05 years, Occu.: Nil
 4. Surendra S/o Chandan Adiwasi
Aged about 04 years, Occu.: Nil

(Applicant No.02, 03 and 04 are minor through her mother i.e. Applicant No.01)

5. Pahad Singh S/o Parvat Singh Adiwashi
Aged about 65 years, Occu.: Labour

R/o – Gram- Ram Nagar, Tal- Chanderi,
Dist – Ashok Nagar (MP) 473446

V/s

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

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

Applicant by Advocate S. Chaudhari (Absent)

Respondent by Advocate S. Mendiretta

JUDGEMENT

The applicant has filed a claim application seeking compensation for the unfortunate death of Chandan S/o Pahad Singh Adiwasi, aged 35 years which occurred allegedly in a train accident on 19.03.2019.

The case was listed for argument on 01.08.2023, 24.08.2023, 11.09.2023 and 21.09.2023 the applicant counsel is absent. The case was again listed for argument on 29.09.2023. The applicant counsel remain absent despite repeated call and the case was partly heard from respondent counsel. Hence the matter was taken under rule 18 (1) of Railway Claims Tribunal Act.

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. The matter taken up today. Even after repeated calls neither the applicant nor their Counsel are present to submit their case. Hence, the case is decided on merits as per Section 18 (1) of the Act after hearing the arguments advanced by respondent counsel and perusing the documents filed by both sides.

Basic Details relating to accident as contained in the Application:-

- a) Date of accident : 19.03.2019
- b) Person deceased : Chandan S/o Pahad Singh Adiwasi
- c) Relationship to the claimants : Applicant No.1 is wife of the deceased, applicant No.2 is minor of the daughter, applicant No.03 and 04 are minor son of the deceased and applicant No.05 is father of the deceased.
- d) Train involved and transit details: The deceased was holding general ticket No. 89049938 dated 19.03.2019 Rs.375/- from Ex. Madgaon to Bina for one adult.
- e) Untoward incident narrated: The case of the applicants is that on 19.03.2019 the deceased while travelling from Madgaon to Bina Jn. by train No. 12617, Mangala Express is accidentally fell down from the running train in between KM. No. 340/26 to 340/22 from Kajgaon to Waghali railway station Dist-Jalgaon and has sustained the serious injury to his head and died on the spot.

- f) Jurisdiction: The accident occurred on 19.03.2019 in between KM. No. 340/26 to 340/22 from Kajgaon to Waghali railway station Dist-Jalgaon, Maharashtra, this Bench of the Tribunal has territorial jurisdiction.

2. Salient features of reply:

- a) **Averments in reply:** It is denied by the respondent counsel that the deceased was travelling by train No.12617 DN Mangala Express from Madgaon to Bina and fell down from running train while going to the bathroom at KM No. 340/28-26 near Vaghli station. There is no eyewitness to the incident. The tickets were recovered by the police while panchnama but the said ticket was not signed by the punchas. The Dy. SS/ Vaghli station has indicated as per TSR book of the station the said train did not stop at KM 340/28-26 at Vaghli station. The PM report indicates that the death of the deceased was due to cardio respiratory failure due to injury to vital organs i.e brain. It is not mentioned that death is due to injuries due to fall from train. It is a case of self-inflicted injury resulting in death for which he himself is responsible and the railway is not liable for any claim.

Crux of DRM Report:- After investigation, it is concluded in DRM Report that Dy. SS/Vaghli was informed by Gateman of gate No. 123 Shri Anil Pardeshi that an unknown person was lying at km no. 340/28-26. After receiving the message, he attained the spot and seen that the dead body of one unknown person was lying on Up track at KM. 340/28-26 and the said track was made safe by removing the dead body from the up track. In the column No. 4 (ix) of the spot Panchnama prepared by the police shows that the recovery of a train journey ticket No. 89049938. Along with the said ticket, two other tickets No. 89049939, 89049940 dated 19.01.19 issued from Madgaon to Bina at time 02.35 are attached. All three tickets were not signed by the punchas. As per TSR book of Dy SS/Vaghli station the said train did not stop at KM 340/28-26 at Vaghli station. There is no eyewitness to this incident that the deceased Chandan Adivasi died after fallen down from train no 12617 down,

- c) **Line of defense at trial, if pleaded or if it contradicts DRM Report: –**
None.

- d) **Precedent cited and their import** : None

3. Evidence & Documents: The applicant No.5 Shri Pahad Singh S/o Parvat Singh Adiwasl was examined as AW-1 on 05.07.2023 and filed documents which were marked as Exh A-1 to A-21 on behalf of the applicants. The respondent railway placed on record DRM's enquiry report along with a number of documents as prepared during the course of such enquiry.

4. Issue-wise Reasoning for the judgement:

ISSUE No. 1:

1. Whether Applicants are the dependents of the deceased within the meaning of Section 123 (b) of the Railways Act?

As per averment made in Affidavit and claim application, the Applicant No.1 is wife of the deceased, Applicant No.02 is minor daughter of the deceased Applicant No.03 and 04 are son of the deceased and applicant No.05 is father of the deceased. The Death certificate of the deceased issued by gram panchayat, Wadali, Chalisgaon (Exh. A-20), copy of Parivar patr (Ration Card) issued by Nayab Tahasildar, Chanderi (Exh.A-19) copy of Aadhar card of deceased (Exh. A14) and copy of Aadhar card of Applicant No. 02, 03,04 and 05 (Exh. A-15 to A-18) placed on record by the applicants reveal the relationship between the parties. Aadhar card of applicant No.01 is not marked as exhibit.

Sr.No.	Name (s)	Relationship with the deceased
1.	Smt. Asha Bai Wd/o Chandan Adiwasl	Wife of the deceased
2.	Uma D/o Chandan Adiwasl	Daughter of the deceased
3.	Shailendra S/o Chandan Adiwasl	Son of the deceased
4.	Surendra S/o Chandan Adiwasl	Son of the deceased
5.	Pahad Singh S/o Parvat Singh Adiwasl	Father of the deceased

During the proceedings no other person staked claim as dependent of the deceased. Respondent did not produce any evidence which may establish that they are not dependents of the deceased. The applicants are held to be the dependents of the deceased within the definition of Section 123 (b) of the Railways Act, 1989. The issue is answered accordingly.

ISSUE No. 2 & 3

2. Whether deceased was a bonafide 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?

Both these issues being interconnected are being taken up together for discussion and decision.

The case of the applicants are that on 19.03.2019 the deceased was travelling along with his wife Asha, brother in law Kalyan Khuman Adiwasi and children from Madgaon to Bina Jn. He was doing labour work at Goa and due to Holi festival, he had to go his home town Ramnagar, Dist-Ashok Nagar (MP) with his family. Accordingly, for going to Bina deceased along with his wife, children and brother in law came to Madgaon Railway station and purchased three valid general class railway ticket No. 89049938, 89049939 and 89049940 Amt Rs. 375/- each from Madgaon to Bina. The deceased kept all the three tickets in his pocket and they all are boarded in the general compartment of train No. 12617 Dn Mangala Express. The valid railway travelling tickets which was purchased by the deceased is recovered at the time of panchnama.

Deceased along with his wife, children and brother in law all are boarded in the train. After passing the Manmad railway station deceased informed his wife that he is going to wash room. Even after so much time passed since deceased was not returned back then his wife and brother in law searched him everywhere in the train. Wife of the deceased heard a discussion in the train that after passing of Chalisgaon railway station one person lost his balance and fell down from the running train due to jerk and rush of people. So, wife of the deceased and brother in law get down in Bhusawal railway station and told the whole fact to railway police Bhusawal. Bhusawal Police telephonically contacted to Chalisgaon railway station and while enquired they came to know that one person fell down from train between Kajgaon to Chalisgaon railway station. Then they came to Chalisgaon and police shown them the body of the deceased. The wife of deceased identified the deceased and confirmed that the deceased was her husband. After investigation, Chalisgaon police handed over the body along with the articles recovered from the body to brother in law of the deceased. Wife of the deceased shifted the dead body through ambulance to their native place and performed the final rites on the body of the deceased as per their religious tradition.

The inquest proceedings in this case were started by the Chalisgaon police, on receipt of Memo issued by Station Manager/Vaghli on 19.03.2019 at 22.00 hrs., wherein it was informed by Shri P.R. Patil Loco Pilot/N-PNV/Goods train that one unknown person is lying in dead condition on Up line at KM No. 340/28-26. On receipt of the said information Chalisgaon Police attended the incident spot and prepared General Diary Detail, A.D. Report, Spot and Inquest panchnama. In the inquest panchnama prepared by the Chalisgaon Gramin Police on 20.03.2019 in column No. 24 it is mentioned that on the body of the deceased colorful red, black, green color shirt, black color pant. In the pocket of the deceased 03 railway tickets No. 89049938, 89049939 and 89049940 of dated 19.03.2019 from Madgaon to Bina is recovered.

The applicant No. 5, Shri Pahad Singh S/o Parvat Singh Adiwasi was examined as AW-1 on 05.07.2023. Admittedly, he deposed in his cross examination that he is illiterate and doing labour work. He does not know English language. The deceased was his son. He did not witness the purchasing of alleged journey ticket nor witness boarding in the train nor witness happening of alleged untoward incident nor he was accompanying with the deceased at the time of alleged incident. He received the information about the alleged incident through police. He did not know the date on which he received the information. The name of his wife was Muliya and she expired around 20 years ago. He has two sons namely Dayaram and another was deceased Chandan. He has two daughters. He was not aware about the whereabouts the applicant No.01 and 04. He had not lodged any missing complaints with police officials about applicant No.01 and 04. He do not know who is Kalyan Adiwasi.

In his affidavit he submitted that applicant No.1 daughter in law of Pahad Singh and wife of deceased Chandan Adiwasi ran away from his house. She left applicant No.2 and 03 which are presently with him. The applicant No. 01 Asha Bai ran from his house 03 years ago, though he had searched her a lot but could not find out. At present he don't know where about of his daughter in law and his grandson. She ran away with the documents, therefore he cannot produce the documents of Asha Bai. On 19.03.2019 the deceased while travelling from Madgaon to Bina Jn. Deceased Chandan Pahad Singh Adiwasi along with his wife Asha, brother in law Kalyan Khuman Adiwasi and children went to Goa for labour work. After 4 to 5 months residing at Goa due to Holi festival they all have to go their home town at Ramnagar, Dist-Ashok Nagar (MP). Accordingly, for going to Bina deceased along with his wife, brother in law and children come to Madgaon railway station and purchased three valid general class railway ticket No.

89049938, 89049939 and 89049940 of Rs. 375/- each from Madgaon to Bina and boarded in the general compartment of train No. 12617, Dn Mangala Express on 19.03.2019. The deceased kept all the three tickets in his pocket. While travelling in the general compartment of the train there was heavy rush. Somehow, they boarded in the train but due to heavy rush and jerk in the train the deceased fell down from running train and sustained serious injury to his head and died on the spot.

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 bonafide 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 is a bona fide passenger of the train.

We have gone through the pleadings, documents and evidences available on record. we have also considered the argument on the behalf of the applicants and respondent railways. In this regard, it is held by the Hon'ble Supreme Court in the matter of Union of India v/s Rina Devi that:

"17.4 We thus hold 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. However mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. 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 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."

On perusal of all the above, it is clear that the applicants can discharge the burden that the deceased was a bonafide passenger by filing of affidavit of the '**relevant facts**' if the ticket is not recovered or handed over. In the instant

case the applicants have filed a journey ticket. Now it is to be decided whether the said journey ticket pertaining to travel of the deceased for his alleged journey on the alleged incident day.

Now, it is to be decided whether the applicants have discharged their burden to prove by way of filing of affidavit of AW-5 Shri Pahad Singh S/o Parvat Singh Adiwasi that the deceased was a bonafide passenger and died in an untoward incident. AW-5 Shri Pahad Singh S/o Parvat Singh Adiwasi, in his cross-examination admits that he was not accompanying with the deceased. He had not personally witnessed the incident and not personally witnessed him purchasing the journey ticket.

The wife of deceased Smt. Asha Bai Wd/o Chandan Pahad Singh Adiwasi had given a statement to RPF on 15.01.2020. In her statement she stated that her husband was doing labour work at Goa and they all residing in Goa. For Holi festival she along with her deceased husband, children and her brother boarded in the train. After passing the Manmad railway station deceased informed her that he is going to wash room. After so much time passed, since deceased was not returned back then she searched him everywhere in the train. She heard a discussion in the train that after passing of Chalisgaon railway station one person lost his balance and fell down from the running train due to jerk and rush of people. So, she and his brother get down in Bhusawal railway station and told the whole fact to railway police Bhusawal. Bhusawal Police telephonically contacted to Chalisgaon railway station and while enquired they came to know that one person fell down from train between Kajgaon to Chalisgaon railway station. Then they came to Chalisgaon and police shown them the body of the deceased. She identified the deceased and confirmed that the deceased was her husband. After investigation Chalisgaon police handed over the body along with the articles recovered from the body to her brother. Then she shifted the dead body through ambulance at their native place and performed the final rites on the body of the deceased as per their religious tradition.

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 having boarded any train. Nobody also had seen him as falling down from any train. On receipt of the memo issued by Station Manager/Vaghli on 19.03.2019 at 22.00 hrs., which is marked as A-2 wherein it was informed by Shri P.R. Patil / Loco pilot of PNV/Goods Train that one unknown person is lying dead in Kajgaon to Vaghli at Up line on KM No.340/26-22. Chalisgaon police had done further course of action.

Shri Anand Baldev Chahande/ Dy. SS/ Vaghli, had given the statement to RPF on 28.01.2020 (Page No.58 of DRM Report). In his statement he stated that on 19.03.2019 he was on duty at Vaghli Station from 16.00 hrs to 01.00 hrs. At 20.55 hrs. Shri P.R. Patil/Loco pilot of N-PNV Goods train had informed on walkie talkie that one unknown person was lying down on UP track at KM. 340/28-26. After receiving the information, he informed Shri Anil Pardeshi/Gateman of gate no. 123. He attended the spot and removed the body from track and informed that the person was in dead condition. Then he informed section controller, RPF, GRP Chalisgaon, Gramin Police Chalisgaon for necessary action.

Shri Anil Daulat Pardesi/Gateman of gate No. 123 Vadala gate, had given the statement to RPF on 02.02.2020 (Page No.59 of DRM Report). In his statement he stated that on 19.03.2019 he was on duty at gate No 123 from 14.00 hrs. to 22.00 hrs. At 20.55 hrs. Shri Anand Baldev Chahande/ Dy. SS/ Vaghli, had given the information that the dead body of one unknown person was lying on KM. 340/28-26. After receiving the information he attended the spot and cleared the track by removing the said dead body from Up track and informed to Dy SS that track is clear.

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, it is the case of self inflicted injury by him. The counsel for the respondent argued that the act of the deceased was totally imprudent, irrational, callous and unmindful of the consequences. It is further argued by the respondent counsel that the act of the deceased was an offence and a potential danger to life. The above incident comes within the term “self-inflicted injury” defined in section 124-A proviso (a) & (b) of the Act.

It is pleaded by the applicants that the deceased suffered an accidental fall from the train and sustained serious injury and died on the spot. Hence 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 due to his own criminal act. The learned counsel for the respondent railway further contended that the conduct of the applicant is itself inflicted injury which is an exception under provision Section 124 A of Railway Act. That, the present case is not a case of “Untoward incident” coming within the purview of section 124-A of the Railway Act. 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.

The counsel for the respondent further argued that deceased was not indulged in an untoward incident as there is no eye witness of this case. Applicant No. 01 and wife of deceased Smt. Asha Rani wd/o Chandan Adiwasi who is also a co-passenger with the deceased and Shri Kalyan Adiwasi, brother-in-law of deceased was not appeared before the court to clarify the incident. They both are the eyewitness of the purchased of the journey ticket and boarding of deceased in train and co-passenger with deceased also. They are most prominent witness in this incident. Applicants were not able to produce both the co-passenger in the court.

The applicant No. 5, Shri Pahad Singh S/o Parvat Singh Adiwasi clearly stated in his affidavit that applicant No.1 Smt. Asha Bai W/o Chandan Adiwasi and wife of deceased ran away from his house from 03 years ago, though he had searched her a lot but could not find out her. At present he don't know where about of her daughter in law and his grandson. She ran away with the documents, therefore he cannot produce the documents of Asha Bai. He was not aware about the whereabouts of the applicant No.01 and 04. He had not lodged any missing complaints with police officials about applicant No.01 and 04. He does not know who is Kalyan Adiwasi.

Moreover, the body of the deceased was found lying down in dead condition on between UP track at KM. 340/28-26. Whereas the deceased was travelling by train No 12617 Dn Mangala Express from Madgaon to Bina Jn. It is rare possibility that the deceased was fallen down from running which was running on down track and the body was thrown away on Up track. In this incident, the deceased was traveling in a train which was going on the down track and his dead body was found between the UP track. Generally, a person fell down from running train come under the wheel of the train or caught by the same train but in the instant case the body of the deceased was found on the other track which is not possible if fallen down from running train case. The post mortem report of the deceased, it is mentioned in opinion as to the cause probable cause of death that **“Cardio respiratory failure due to injury to vital organ i.e. Brain.”** This condition gives rise to a suspicious situation and the death of the deceased is self inflicted injury.

It is settled law that initially it is the duty of the applicants to prove about the happening of untoward incident. The applicants have failed to establish

about happening of an untoward incident because there is no eye witness to prove that anyone saw the deceased falling from the running train. In the DRM's enquiry report also, the conclusion drawn is that during investigation, no eyewitness or evidence was found who saw the deceased was falling from the moving train. Further it cannot be ascertained in the absence of any evidence how the unexpected incident happened to the said person. The DRM report was not rebutted by the applicants either through the documentary evidence or eyewitness. Thereby the applicant counsel admitted the DRM Report and become conclusive.

After perusal of record & arguments advanced by both sides, it is clear that AW-5 is not an eyewitness to the incident and he has no personal knowledge about the incident. The applicants neither examined any eyewitness or the alleged co-passengers who could establish the circumstances under which the death of Chandan S/o Pahadi Singh Adiwasi had occurred. The fact that deceased died on account of an untoward incident, must be proved by the applicants in order to claim compensation under Section 124-A of the Railways Act. This could not be established by the applicants that the death of the deceased occurred as a result of fall from the train.

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 death of the deceased is self inflicted injury due to his own criminal act which fall under the proviso of Section 124 A (b) of the Railway Act, according to which no compensation shall be payable by the railway administration. Though untoward incident legislation is a humanitarian legislation in spirit and intends to benefit train travelers in a distressing situation, it cannot be stretched too much to include a deceased person whose authenticity as a bonafide passenger could not be established and whose demise also could not be linked to a fall from a running train. Even as per the judgement of the Hon'ble Apex Court in Rina Devi the initial onus lies with the applicant to show that there is a death due to untoward incident of a bona fide passenger of course by filling of the affidavit and depending on the facts of a particular case that initial onus can be a light onus which can shift on the Railways, however it is not even the initial onus to prove which has to be discharged is always on the Railways. Here in this particular case though the applicants have filed affidavit they have failed to corroborate the evidence that the deceased was a bona

fide passenger and died due to an untoward incident as per section 124 (A) of the Railway Act.

In overall view of the matter, more particularly having regard to the peculiar facts and circumstance of the case and the judgment cited above we are not inclined to appreciate the applicants claim.

It is, therefore, we conclude that, though the deceased was a bonafide passenger but did not die due to any untoward incident as defined in Section 123(c)(2) of the Railways Act. The issue No. 03 decided accordingly against the applicants.

ISSUE No. 4 (Relief)

In our considered view and opinion, the findings on issue No. 03 go against the applicants and the applicants are not entitled to any compensation and this issue is answered accordingly.

ORDER

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

File to be consigned to the record-room.

Dictated to the P.S. transcribed by him, corrected and pronounced by us in open Tribunal on 25.10.2023.

(Syed Nishat Ali)
Member (Technical)

(Miss R. Sathyabama)
Member (Judicial)

Nagpur.

Date : 25.10.2023

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