

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

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

Case No.: OA (IlU)/NGP/28/2022

Date of filing - 03.01.2022
Date of Judgement - 20.12.2023

APPLICANT's :

1. Bebi wd/o Shakil Pinjari
Aged about 50 years, Occu. – Household
2. Yasmin d/o Shakil Pinjari
Aged about 21 years, Occu. – Education
3. Karishma d/o Shakil Pinjari
Aged about 20 years, Occu. – Education

All R/o in the house of Ramkishan,
New Plot, Tambepura, Amalner, Tq. Amalner,
Distt. Jalgaon (M.S.) PIN 425401

V/s.

RESPONDENT : Union of India
Through General Manager
Western Railway, Church Gate, Mumbai

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

Applicant by Advocate K.N. Marathe
Respondent by Advocate S. Mendiretta

JUDGEMENT

1. The applicants have filed a claim application seeking compensation for the unfortunate death of Shakil s/o Ahmad Pinjari, aged 52 years which occurred allegedly in a train accident on 25.02.2019.
2. The applicants have contended in claim application that on 25.02.2019, the deceased was travelling from Amalner to Paldhi by Train No.59075 Surat-Bhusawal Passenger after purchasing the journey ticket. Due to heavy rush in

the bogie of passenger train, the deceased was standing near the door of the bogie. When the train reached near KM No.263/06 to 263/08, Line No.1 Railway Station Takarkheda, Dist. Jalgaon, due to heavy jerk, the deceased lost his balance and fell down from the bogie and sustained severe injuries and died on the spot. It is further contended that the deceased was having valid journey ticket and he was bona fide passenger and died in an untoward incident, hence the applicants are entitled for claim compensation.

3. The respondent-railway has contested the claim application by filing the written statement, 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 train at the time of incident. 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 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) (2) of the Railway Act?
- 4) To what order/relief?

5. The applicant Bebi wd/o Shakil Pinjari was examined as A.W.1 and documents A-1 to A-13 were marked on behalf of the applicant. The respondent

railway placed on record Statutory Investigation Report along with a number of documents as prepared during the course of such inquiry.

Discussion on the issues with reasoning:

ISSUE No. 1:

6. The applicant No.1 is the wife and applicant No.2 and 3 are the daughter of the deceased. It is deposed by AW-1 Bebi wd/o Shakil Pinjari in her cross-examination that father and mother of the deceased expired but no documents produced by her. It is also deposed by her that she had not made the married daughter of the deceased namely Mumtaz as a party in the present case. The copies of Aadhar Card of deceased and applicants placed on record by the applicants reveal the relationship between the parties. The applicants are held to be the dependents of the deceased within the definition of Section 123 (b) of the Railways Act, 1989. Though the applicants are held to be the dependents of the deceased within the definition of Section 123 (b) of the Railways Act, 1989, they did not produce either Ration Card or Legal Heirship Certificate to prove that they are the only dependants of the deceased. The issue is answered accordingly.

ISSUE No. 2 & 3:

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

7.1 The case of the applicants is that on 25.02.2019, the deceased while travelling from Amalner to Paldhi by Train No.59075 Surat-Bhusawal Passenger after purchasing of journey ticket due to heavy jerk, the deceased lost his balance and fell down from the bogie near KM No.263/06 to 263/08, Line No.1 Railway Station Takarkheda, Dist. Jalgaon and sustained severe injuries and died on the spot.

7.2 The inquest proceedings in this case were started by G.R.P. Nandurbar on receipt of Memo (Exh.A-2) issued by Station Superintendent, Takarkhede on 25.02.2019 wherein it is mentioned that it is informed by Motormen/Loco Pilot of Train No.69179 Udhana-Paldhi Memu train that an unknown person was run-over at KM 263/06 to 263/08 on line No.1. During the inquest proceedings, railway ticket No.T-66178922, Amalner to Paldhi, dated 25.02.2019, issue time 17:09 hrs. for one person was recovered from the personal search of the deceased along with other things.

7.3 It is argued by the counsel of applicants that the deceased was having valid journey ticket from Amalner to Paldhi which was purchased by the deceased and the same was recovered from the deceased during the inquest proceedings. The applicants have filed the alleged journey ticket on record. It is further contended that the deceased was bona fide passenger and died in an untoward incident and the claim application deserves to be allowed and the applicants are entitled to compensation.

7.4 Learned counsel for the respondent-railway denied that the deceased was bona fide passenger at the time of incident and he was died in an untoward incident due to fallen down from the train. It is argued by the respondent counsel that the deceased died while he was crossing the railway track from the incident spot. The counsel for the respondent railway pointed out that the deceased was found lying dead near KM No.263/06 to 263/08, Line No.1 Railway Station Takarkheda, Dist. Jalgaon by the Loco Pilot of Train No.69179 Down. It is mentioned in statutory report that the Loco Pilot of Train No.69179 Dn. Shri Anil Amle informed through Walkie-Talkie to the Station Master Takerkhede that one person is lying dead at Line No.1. After receipt of Memo, GRP Amalner attended the spot of the incident and seen that an unknown

person was lying dead at KM No.26306-08 and his body was cut into two pieces from waist.

7.5 The Statement of Loco Pilot of Train No.69179 Dn. Shri Anil Amle was also recorded during the course of enquiry. It is deposed by Shri Anil Eknath Amle in his statement dated 06.12.2022 that “दिनांक 25.02.2019 को मेरी ड्यूटी गाड़ी संख्या 69179 डाउन उधना-पालधी मेमो को नंदुरबार स्टेशन से पालधी स्टेशन तक ले जाने की थी। ड्यूटी के दौरान समय लगभग 18:25 बजे गाड़ी टाकरखेड़ा स्टेशन प्लेटफार्म नं.1 पर पहुंची तभी मेमो स्टाप बोर्ड से लगभग 30 फीट पहले स्टेशन मास्टर बिल्डिंग के सामने से थोड़ा आगे की तरफ एक अज्ञात व्यक्ति दो भागों में कटा हुआ एक हिस्सा ट्रैक के अन्दर तथा एक ट्रैक के बाहर की तरफ मृत अवस्था में पड़ा हुआ था। मैंने तुरन्त गाड़ी को व्यक्ति की डेड बॉडी पड़ी थी उससे पहले ही रोक दिया तथा ऑन ड्यूटी स्टेशन मास्टर डाकरखेड़ा को एवं गाड़ी के गार्ड को तुरन्त वाकी-टाकी के माध्यम से उक्त घटना की सूचना दी गयी।” It is also mentioned in Report of Untoward Incident Exh.A-3 in the Col. No.7 (Position of human body in relation to track) that the body of the deceased cut in two parts, one out of track and one between track. It is also mentioned in Accidental Death Report Exh.A-4 and Inquest Panchnama Exh.A-6 that the deceased cut down under the running train in two pieces from waist and died. The counsel for the respondent railway contended that there is no eye-witness to the incident as alleged by the claimants and the deceased was not at all travelling by the alleged train No.59075 Surat-Bhusawal Passenger train nor has fallen down from the train. It is also argued by the respondent railway counsel that the manner in which the body of the deceased was found in cut in two pieces from waist, in these circumstances, it is clear that this is not a case of accidental fall from running train but it is a case of suicide.

7.6 It is also argued by the respondent counsel that all the documents i.e. Report of Untoward Incident Exh.A-3, Accidental Death Report Exh.A-4 and Inquest Panchnama Exh.A-6 says that the deceased came under the train and cut it two pieces from waist. None of these documents says that the deceased

died due to fallen down from the train. As per Inquest Panchnama and Post Mortem Report (Exh.A-7), there is no other injuries on the body of the deceased except cut into two pieces from waist. It is also opined in post mortem report that the deceased died due to crush injury at waist level (Hip Joint) due to Railway cutting accident. As per statement of Loco Pilot of Train No.69179 Udhana-Paldhi Memu, the one portion of the body was lying outside of track and other portion of the body was lying inside the track. In case of a fall from the train the person would be falling at least a few feet away from the track. The nature of injuries sustained by the deceased and the manner in which two pieces of the dead body of the deceased were lying do not suggest that deceased had fallen down from the running train. It is hard to believe that a person falling down from the train would be coming underneath the wheels of the train and lying between the tracks. Any person falling from the train would certainly fall away from the track and would not come underneath the wheels of the train. The location of the body right in the middle of the tracks coupled with the nature and extent of injuries of the body would only support the contention of the respondents that it was a case of run-over by the train.

7.7 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 but there is only possibility that the deceased while crossing the railway track run-over by train. The counsel for the respondent argued that the act of the deceased was totally imprudent, irrational, callous and unmindful of the consequences.

7.8 It is pleaded by the applicants that the deceased suffered an accidental fall from the train 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

while he was crossing the railway track and cut in two pieces and died on the spot. In these circumstances there is nothing to believe that the deceased had fallen down from the train. The learned counsel for the respondent railway further contended that the applicants failed to prove that the deceased was bona fide passenger and he was accidentally fell down from running train in an untoward incident. 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.

7.9 After perusal of record & arguments advanced by both sides, it is clear that AW-1 is not an eyewitness to the incident and she has no personal knowledge about the incident. The applicants neither examined any eyewitness who could establish the circumstances under which the death of Shakil s/o Ahmad Pinjari (deceased) had occurred, nor they have stated that there was any eyewitness to the incident. The applicants could not establish that the death of the deceased occurred as a result of fall from the train.

7.10 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.”*** The facts put forth by the applicants is improbable in the light of the nature of injury sustained by the deceased. The applicants have not been able to prove that the deceased was fallen down from any train carrying passengers. All that we can notice is that except the fact that the deceased had been run-over, it will be difficult for us to believe that the deceased was died due to fallen down from the train. Therefore, it is concluded that the deceased was not involved in an untoward incident as defined in Section 123(c)(2) of the Railways Act as proven above. Hence these issues 2 and 3 are decided against the applicants.

ISSUE No. 4 (Relief)

8. In our 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

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 20.12.2023.

(Syed Nishat Ali)
Member (Technical)

(Sanjeev Aggarwal)
Member (Judicial)

Pronounced in open Court.

Nagpur.

Date : 20.12.2023

/DK/