

रेल दावा अधिकरण, नागपुर पीठ, नागपुर

BEFORE THE RAILWAY CLAIMS TRIBUNAL: NAGPUR BENCH, NAGPUR

QUORAM: HON'BLE MISS R. SATHYABAMA, MEMBER (JUDICIAL)/RCT/NGP

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

Case No.: OA (Ilu)/NGP/38/2020

Date of filing - 17.02.2020

Date of Judgement - 25.10.2023

- APPLICANTS:**
1. Smt. Veena wd/o Rahul Ukey
Age about 45 years, Occu. – Household.
(Wife of deceased)
 2. Shri Nitesh s/o Rahul Ukey
Age about 24 years, Occu. – Student.
(Son of deceased)
 3. Ku. Ekta D/o Rahul Ukey
Age about 23 years, Occu. – Student.
(Daughter of deceased)
 4. Shri Sanket s/o Rahul Uke
Age about 20 years, Occu. – Student.
(Son of deceased)
 5. Shri Sawaji s/o Motiram Uke
Age about 84 years, Occu. – Farmer.
(Father of deceased)
 6. Smt. Vimal w/o Sawaji Uke
Age about 80 years, Occu. – Household.
(Mother of deceased)

All R/o Pipra Tah.- Umred,
Dist.-Nagpur (Mah.)- 441108.

V/s.

RESPONDENT: Union of India
General Manager, Central Railway,
Mumbai CST.

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

Applicant by Advocate R.G.Bagul.

Respondent by Advocate R.Naidu, absent.

JUDGEMENT

The applicants have filed a claim application seeking compensation for the unfortunate death of Rahul s/o Saoji Uke aged, which occurred allegedly in a train accident on 28.10.2017.

The claim application was filed along with condonation of delay application for a period of 1 year, 3 months and 10 days which was allowed on 09.10.2020 by the Tribunal.

The applicants have contended in claim application that on 28.10.2017 the deceased had gone to Wardha from Nagpur to visit one of his relative by Nagpur-Kolhapur Express and on the same day evening the deceased was returning back from Wardha to Nagpur for which he purchased a valid railway journey ticket Ex. Wardha to Nagpur and boarded in an unknown train. It is also contended by the applicants that when the said unknown train reached at KM No. 826/28 Dn between Khapri to Ajni railway station, the deceased accidentally fell down from the running train and died on the spot and during this incident the journey ticket Ex. Wardha to Nagpur of the deceased was lost. It is further contended that the loco pilot of train no. 8422 (Dn) Ajmer-Puri Express has given the information to the Station Master/Ajni that one unknown person is lying dead at KM No. 826/28 and on the basis of this information said Station Master issued memo to Sonegaon, Nagpur Police Station and the said police had attended the spot and brought the deceased to Government Medical College & Hospital/Nagpur. During

the course of inquest panchnama, the deceased was identified on 30.10.2017 and accordingly Police informed the Police Patil of the village-Pipra, Tah.-Umred, Dist.-Nagpur about the incident and after receipt of this information applicant no. 2 (son of the deceased) reached the Government Medical College & Hospital/Nagpur and identified as his father. It is also contended that the deceased was a bona fide passenger at the time of incident and died in an untoward incident, hence the applicants are entitled for claim compensation.

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 any train at the time of incident. The alleged incident of accident is not due to falling of deceased from the running train. 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 applicant is not entitled to any compensation. With these averments, a prayer is made to dismiss the claim application with costs.

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) of the Railway Act?
4. To what order/relief?

The applicant No.1 Nitesh s/o Rahul Ukey was examined as AW-1 and documents Exh. A-1 to A-21 were marked on behalf of the applicants. From the side of respondent railway, Shri Atulchandra s/o Arvind Hande, working as Loco Pilot, Ajmer-Puri Express train no. 18422 Dn was examined as RW-1 and Shri Prakash s/o Sudhakar Rao Khorgade, working as Dy. S.S., Ajni (A-cabin) was examined as RW-2 and documents Exh. R-2 to R-5 were marked on behalf of respondent railway. The respondent-railway placed on record DRM's enquiry report (Statutory Report) marked as Exh.R-1 along with a number of documents as prepared during the course of such enquiry.

Discussion on the issues with reasoning:

ISSUE No. 1:

The applicant no.1 is the widow of the deceased, applicant no.2 is the son of the deceased, applicant no.3 is the daughter of the deceased, applicant no.4 is the son of the deceased, applicant no.5 is the father of the deceased and applicant no.6 is the mother of the deceased. The copies of Aadhar cards of applicants no.1 to 6, death Certificate of deceased and ration card of applicants no. 1 to 4 have been filed by the applicants on record. On perusal, the documents prove the relationship between the parties. During the proceedings no other person staked claim as dependents of the deceased. The respondent did not produce any evidence which may establish that they are not dependents. Hence, this issue no. 1 is answered accordingly.

ISSUE No. 2 & 3:

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

The case of the applicants is that on 28.10.2017 the deceased was travelling from Wardha to Nagpur by an unknown train and while travelling he accidentally fell down from the running train at Km No. 826/28 Dn between Khapri to Ajni railway station and died on the spot.

The Inquest proceedings in this case were started by City Police, Sonegaon on receipt of memo (Exh.A-2) from Dy. S.M., A-Cabin, Ajni, CR on 28.10.2017 at 21.45 hrs, wherein it is mentioned that, as per the information received by loco pilot of train no. 18422 Shri Hande, HQ-Bhusawal, one unknown male person aged about 40 to 45 years is lying in dead condition in between Ajni-Khapri station on Dn line at KM no. 826/28. During the course of inquest proceedings, personal search of the deceased was conducted by Police officials and the applicants have filed on record copy of Police documents i.e. Crime Details Form (Exh.A-5) and inquest Panchnama (Exh.A-6), a perusal whereof shows that in the personal search of the deceased one bus ticket of AC sleeper bus and two contact numbers were found from the pant pocket of the deceased during the preparation of Crime Details Form and while preparing inquest panchnama only one railway ticket bearing no. 24126534 Ex. Nagpur to Wardha was found with the body of the deceased.

Learned counsel for the respondent-railway, while drawing attention of this Tribunal to the document, Crime Details Form (Exh.A-5) and Inquest Panchnama (Exh.A-6), contended that only one bus ticket of AC sleeper bus, two contact numbers and one railway ticket bearing no. 24126534 Ex. Nagpur to Wardha was recovered from the body of the deceased and besides this nothing was recovered or seized in the personal search of the deceased, then, there was no reason why the alleged journey ticket Ex. Wardha to Nagpur for the alleged journey could not be recovered from his body, if he was having the same and the factum of non-

recovery of the alleged railway ticket, in itself, goes to prove that the deceased was not having the said journey ticket in his possession otherwise the same also would have been recovered along with the other articles.

Per contra, Ld. Counsel for the applicants contended that the deceased was having a journey ticket in his possession, which was purchased by him and the same is misplaced/lost during the incident. The applicant counsel further contended that AW-1, Nitesh Rahul Ukey has deposed the factum of purchase of ticket by the deceased in his evidence affidavit. While concluding his arguments, Id. Counsel contended that even otherwise also, burden lies heavily on the respondent-railway to prove that the deceased was not a bonafide passenger and as such a burden has not been discharged by the respondent-railway by adducing any evidence in this regard, therefore, the finding of deceased being a bonafide passenger may be recorded in his favour and the claim application deserves to be allowed and the applicants are entitled to compensation.

Respondent counsel argued that the only witness examined by the applicants was Nitesh Rahul Ukey (son of the deceased) as AW-1. He is not an eyewitness to the incident and so also for the purchase of journey ticket. He was also not accompanying the deceased while travelling. Police had handed over him one bus ticket from Nanded to Nagpur and one railway ticket Ex. Nagpur to Wardha after 2-3 days of the incident when he came to know about the incident. The witness in his affidavit has deposed that the deceased was coming from Wardha to Nagpur by boarding in the general compartment of the train and the said train received jerk and due to push of the passengers the deceased lost his balance and fell down from the running train & died. The evidence is totally vague and unspecific as AW-1 himself had admitted during his cross-examination that he had no knowledge about the incident and had not witnessed the incident. Further,

in the affidavit, AW-1 has deposed that he came to know from one of his relative Shri Milind Mendhe that the deceased had went to Wardha in search of a job and the said relative dropped the deceased at Nagpur railway station and in his presence the deceased had purchased the railway ticket from Nagpur to Wardha but the applicants have failed to adduce the evidence of Milind Mendhe to establish the truth of the deceased travelling as a bonafide passenger. No explanation has been offered as to why he has not been examined. Probably, the relative of the applicants, Milind Mendhe does not have the courage to step into the witness-box and face the test of cross-examination. Hence, the testimony of AW-1 does not inspire confidence. There is, thus, no cogent evidence leading to prove that the deceased was a bonafide passenger at the time of incident. No other witness has been examined by the applicants.

Section 124-A of The Railways Act, 1989 (for short, 'the Act') entitles a 'passenger' to claim compensation, who has been injured or the dependants 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.

We have gone through the pleadings, documents and evidences available on record. We have also considered the argument advanced by the respondent counsel and the applicant counsel was absent. Admittedly, no journey ticket was

recovered at the time of panchnama. The initial burden to prove that the deceased was 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. We 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.

So far as the factum of untoward incident is concerned, the Respondent has led the evidence of RW-1, Shri Atulchandra s/o Arvind Hande, Loco Pilot of Ajmer-Puri Express train no. 18422. RW-1 in his affidavit had deposed that on 28.10.2017 he was working as Loco Pilot of Ajmer-Puri Express train no. 18422 from Bhusawal to Nagpur station, the said train departed from Bhusawal station at 15.08 hrs and arrived Wardha station at 20.22 hrs & departed from Wardha at 20.25 hrs. The said train stopped at Gumgaon and Khapri stations for getting line clearance signal and from Khapri the train departed at 21.34 hrs and reached at Nagpur at 21.50 hrs. He noticed one person lying in the middle of the Dn track in between Khapri and Ajni station at km no. 826/28 and immediately informed to Ajni A-Cabin through Walkie-Talkie. He also stated that as the body was lying in the middle of the track, the train passed over the body from the track and his train did not stop at the said spot. He also stated that there was no ACP, rush or jerk to the train.

The respondent also lead the evidence of RW-2, Shri Prakash Sudhakar Rao Khorgade, Dy. S.S, Ajni (A-Cabin). In his affidavit, RW-2 has deposed that on 28.10.2017 he was on duty Dy. S.S., Ajni (A-Cabin) and his duty hours were from 18.00 hrs to 24.00 hrs and at about 21.40 hrs loco pilot of Ajmer-Puri Express train no. 18422 had informed him through walkie-talkie that one person is lying in the middle of the down track in between Khapri and Ajni at km no. 826/28 and accordingly he informed the same to SCOR through control phone, PWI at 21.42 hrs. and RPF at 21.45 hrs. He also deposed that down train CONCOR run from Khapri by giving caution order and at 22.20 hrs the loco pilot of CONCOR informed him through VHF that the body is lying in the middle of the track and at 22.45 hrs PWI and Patrolman informed him that the said body was removed from the track. He also issued a memo to P.S./Sonagaon at 21.45 hrs regarding the incident. RW-2 has further stated that three trains pass through from Ajni, A-cabin as per the following timings:

- a) train no. 12159 (Amravati-Jabalpur Express) at 21.19 hrs on down line.
- b) train no. 12993 (Puri Superfast Express) at 21.32 hrs on down line.
- c) train no. 18422 (Ajmer-Puri Express) at 21.41 hrs on down line.

RW-2 also stated that he had no message regarding ACP, rush or jerk to any of these trains.

The Respondent Counsel argued that it is specific pleading of the applicants that the deceased was travelling on 28.10.2017 from Wardha to Nagpur. It is also seen supra that the dead body of the deceased was first noticed by the on duty loco pilot of train no. 18422 on the same day at 21.41 hrs lying in between the tracks on down line of the spot of incident. It is pointed out by the respondent counsel that as per the TSR filed on record by Respondent it is noticed that prior to passing of train no. 18422, one train no. 12993 had passed from the incident

spot but this train did not have schedule halt at Wardha railway station and it passed through from Wardha at 20.13 hrs which means the deceased could not have travelled & boarded in this train no. 12993 at Wardha station. Further as per the statement of Guard of train No. 12159 Amravati-Jabalpur Express recorded on 21.07.2020 and filed alongwith DRM report at page no.9, his train halted at Khapri station as there was no signal at 20.58 hrs and later departed at 21.11 hrs, again his train stopped at Ajni A-Cabin at signal S-32 because of no signal for 10 minutes and arrived at Nagpur at 21.38 hrs. He also stated that there was no ACP and he was not reported about any untoward incident or any jerk to the train.

Also, as per the statement of the loco pilot of train no. 12993 dated 28.08.2020 filed alongwith DRM report at page no. 38 he stated that he had not noticed any person lying down in between Khapri, Ajni and Nagpur stations. It is clear that if the deceased had fallen down prior to 21.41 hrs then some railway officials (loco pilot or guard) of the two previous trains i.e. train no. 12159 (Amravati-Jabalpur Express) at 21.19 hrs and train no. 12993 (Puri Superfast Express) at 21.32 hrs passing from the same spot of incident would have noticed the lying of the dead body as the body was lying in the middle of the tracks, but as stated above no loco pilot or guard of these two previous trains have noticed anything unusual nor there was any ACP or jerk to their trains, meaning thereby, the deceased had not fallen by any train because, if such case had happened then somebody would have noticed the occurrence of untoward incident but no untoward of ACP or rush or jerk was reported/informed by any railway authority. There is nothing on record to show that the deceased was a bonafide passenger. There is nothing on record to even remotely suggest that the death of the deceased was due to fall from the train so as to bring it within the meaning of untoward incident as required u/s 124-A of the Railways Act.

In these circumstances, it is argued by the respondent counsel that it is specific pleadings of the applicants that the deceased was travelling from Wardha to Nagpur on 28.10.2017. But respondent argued that even after assuming, but not admitting, that if the deceased would have infact travelled by any train on the alleged date and fallen down at the incident spot, then it was not possible that the body of the deceased was not found/noticed by any Loco Pilot or Guard of the said trains which passed from the said section. This fact itself speak that the deceased was not performing the journey by any train.

All the above facts and attending circumstances indicates that the deceased was not travelling in any train and he had no journey ticket and he was not a bona fide passenger. Hence the alleged incident is not an untoward incident as defined in Section 123(c)(2) of the Railways Act, 1989 and the case of the applicants needs to be dismissed.

After perusal of record & arguments advanced by the parties, it is clear that AW-1 is not the eyewitness to the incident and he has no personal knowledge about the incident. The applicants neither examined any eyewitness which could establish the purchase of ticket and the circumstances under which the death of deceased had occurred, nor they have stated that there was any eyewitness to the incident. The initial burden that deceased died, on account of an untoward incident, lies on the applicants in order to claim compensation under Section 124-A of the Railways Act. In every case of death of a passenger, which occurs during the course of the journey by train, no amount of compensation is given, unless the death of the deceased passenger had occurred on account of an "untoward incident" within the meaning of Section 123(c) of the Act. Therefore, the burden of proof rests on the applicants to prove that the death of the passenger had occurred on account of an "untoward incident" within the meaning of Section

123(c) read with Section 124A of the Act. But, this does not mean that the applicants, who have come before the Tribunal for relief, must necessarily prove it by direct evidence; they may prove it by circumstantial evidence but in the instant case, admittedly AW-1 is neither direct nor circumstantial witness. Therefore, it can be concluded that the deceased was not involved in an untoward incident as defined in Section 123(c)(2) of the Railways Act.

Apart from the say of the applicants, there is no other support/evidence that the deceased was travelling by the train and met with an untoward incident. The applicants have not been able to prove that the deceased had fallen down from any train carrying passengers. The applicants have not been able to prove their case under section 123(c)(2) of the Railway Act.

The fact that deceased sustained injuries & 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. The applicants have not been able to discharge their burden in this respect along with the circumstantial evidences. On the other hand respondent has a force of argument that the deceased died, 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. The burden to prove that the deceased died in an untoward incident is not discharged by the applicants.

As per the judgement of Hon'ble High Court of Judicature at Bombay Nagpur Bench at Nagpur in First Appeal No. 347 of 2022, the High Court held that,

“The Railways Act, though a beneficial legislation, provisions whereof have undoubtedly to be construed liberally and not narrowly, however, cannot be used to allow claims in all cases, where the death occurs in a railway premises by

casting a negative burden on the Railway Administration. There is no such presumption in Section 124-A of the Railways Act, which needs to be rebutted by the Railway Authorities.”

The evidence is not cogent and are not sufficient to draw any conclusion that the deceased was travelling by a train and had met with an accident in the course of his journey.

After hearing the arguments advanced by both the parties we are of the view that the instant case is covered by judgement passed by Hon'ble High court of Judicature at Bombay, Nagpur Bench in “First Appeal no. 666 of 2018 dated- 22.8.2019” and “First Appeal no. 212 of 2019 dated- 07.10.2019”

It is pertinent to mention here that mere finding of a dead body or a person in injured condition on or by the side of the track does not, ipso facto, prove that the said person/deceased fell down from the train. The applicants have neither been able to prove that deceased had fallen down from any train carrying passengers nor that the deceased had fallen down from some train in an untoward incident and died. The conditions necessary for sustaining the claim namely the status of the deceased as a bonafide passenger and the incident as untoward are not established by the applicants. Considering all the above facts, the issue No. 2 and 3, as such, stand decided accordingly against the applicants.

ISSUE No. 4 (Relief)

In our considered view and opinion, the findings on issues no. 2 & 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.

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

File be consigned to the record-room.

(Syed Nishat Ali)
Member (Technical)
Pronounced in open Court.
Nagpur.
Date: 25.10.2023.
/SW/

(R. Sathyabama)
Member (Judicial)