

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

QUORAM : HON'BLE SHRI RAJEEV JAIN, MEMBER (JUDICIAL)/RCT/NGP

Case No.: OA (IlU)/NGP/67/2024

Date of filing - 03.04.2024

Date of Judgement - 29.01.2025

APPLICANT's : 1. Aaruna wd/o Dilip Garule
Aged about 42 yrs., Occu. – Stitching Clothes
2. Sunil s/o Dilip Garule
Aged about 21 years, Occu. : Student
Both R/o Nagesh Wadi, Jawala Bazaar,
Hingoli – 431705, Maharashtra

V/s.

RESPONDENT : 1. Union of India
Through its General Manager
South Central Railway, Secunderabad

Private Resp. : 1. Gangaram B. Garule
Age : Major, Occu.: Labour
2. Kamlabai G. Garule
Age : Major, Occu.: Labour
Both are R/o c/o Janardhan G. Garule
R/o Nageshwadi, Post Jawla Bazar,
Ta. Aunda (Nagnath), Dist. Hingoli
(M.S.) Pin Code – 431705

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

Applicant by Advocate P. Thakare
Respondent by Advocate S. Thaokar

JUDGEMENT

1. 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 Dilip s/o

Gangaram Garule, aged 41 years which occurred allegedly in a train accident on 14.03.2020.

2. The applicants have contended in claim application that on 14.03.2020, at 3:00 p.m. deceased Dilip s/o Gangaram Garule informed his wife that he is going to search a job in company and left home. It is further contended that the deceased was travelling alone from Aurangabad to Parbhani with a valid railway ticket and due to sudden unexpected jerk in the train and push from the passengers, the deceased fallen down from the train and sustained head injury and died on the spot. On 15.03.2020, dead body was seen by localities at 9:30 am and they informed the Police Patil who informed to Police Station Karmad, Taluka Aurangabad regarding the lying of dead body of the deceased near railway track. The deceased was shifted to Ghati Hospital, Aurangabad and he was declared dead by the Doctors. During Panchnama, Aadhar Card of the deceased, railway ticket dated 14.03.2020 from Aurangabad to Parbhani and bus ticket was found in his pocket. 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. Upon receipt of notice the respondent Railway had contested the claim application by filing the written statement along with the statutory Report of DRM, 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. There was no eye witness to say that the deceased fell down from the alleged train and there is no evidence to say that the deceased 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 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 Railways Act?
 4. To what order/relief?
5. To prove their case, the applicant No.1 Aaruna Dilip Garule 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-21. No other witness has been examined by the applicants. On the other hand, respondent railway filed the DRM Report along with certain documents.

Discussion on the issues with reasoning:

ISSUE No. 3: (Untoward Incident)

6.1 The case of the applicant is that on 14.03.2020, the deceased Dilip s/o Gangaram Garule was travelling alone from Aurangabad to Parbhani with a valid railway ticket. There was heavy rush in the train and due to sudden unexpected jerk in the train and push from other passengers, the deceased fallen down from the train and sustained head injury and died on the spot. The deceased was seen lying dead on 15.03.2020 at 9:30 A.M. by local resident and they informed the Police Patil who later on informed to Police Station Karmad, Taluka Aurangabad regarding the lying of dead boy of the deceased near railway track in front of Sai Kala Kendra, Kumbhephal. The deceased

was shifted to Ghati Hospital, Aurangabad and he was declared dead by the Doctors. It is contended by the applicants counsel that the deceased was a bona fide passenger and died in an untoward incident, hence the applicants are entitled for claim compensation.

6.2 The applicants have examined Smt. Aaruna Dilip Garule as AW-1. It is deposed by AW-1 Smt. Aaruna Dilip Garule during her cross-examination that she had given statement to RPF on 19.05.2024 and the contents therein are true and correct and therefore she signed the said statement. It is admitted by her that her husband went to Aurangabad by bus. She was not accompanying the deceased therefore she cannot say how the incident took place. She had not personally witnessed the incident so also boarding in train by deceased and purchasing of railway ticket by deceased. She cannot say whether there was rush, jerk or jolt in train or not on the day of incident. It is also admitted by her that her deceased husband left home at 3 P.M. on 14.03.2020 by stating reason that he was having pain in stomach and he was going to Hospital for taking medicine.

6.3 The inquest proceedings in this case were started by Police Official, Karmad Police Station on information received from Subhash Bhaskarrao Bagal, Police Patil, R/o Ladgaon, Tq. & Dist. Aurangabad that one dead body of unknown person was lying near railway track in front of Sai Kala Kendra, Kumbhephal. During the course of Inquest proceedings, a personal search of the deceased was conducted by the police authorities. The applicants have placed on record copy of the documents Accidental Death Report Exh.A-2, Crime Details Form/Spot Panchnama Exh.A-3 and Inquest Panchnama Exh.A-4, a perusal whereof shows that in personal search of the deceased, Aadhar Card of the deceased, railway ticket dated 14.03.2020 from Aurangabad to Parbhani and bus ticket were recovered from the deceased.

6.4 It is argued by the counsel of applicants that the deceased was travelling from Aurangabad to Parbhani after purchasing of journey ticket.

While travelling, due to sudden unexpected jerk in the train and push from the passengers, the deceased fallen down from the train and sustained head injury and died on the spot. It is argued by the applicants counsel that the deceased was a bona fide passenger of the train at the time of incidence hence the claim application deserves to be allowed and the applicants are entitled to compensation.

6.5 Per contra, it is argued by the counsel for the respondent that although recovery of railway ticket has shown in inquest panchnama from the deceased but the deceased was not involved in any untoward incident at all. There was no eye witness to the boarding of the deceased and also purchasing of journey ticket by the deceased. AW-1 Smt. Aaruna Dilip Garule has not personally witnessed the incidence and any boarding or travelling of the deceased by the train. There is no any eye-witness who could say that the deceased was travelling in train after purchasing of journey ticket.

6.6 It is argued by the respondent counsel that there is no information to any railway officials about the alleged incident on the relevant date and not even later on. No memo has been issued by any of the Railway Authorities regarding the lying of deceased on incident spot. The applicants have also not informed about the incident to the GRP/RPF and/or Railway administration. The applicants are not an eyewitness to the purchasing of ticket by deceased, boarding in train and fall of the deceased from running train. The respondents counsel further argued that the paramount duty of the Rail passengers and/or his relatives is to report such type of incident to Railway Officials and in failure of this, the claim of the applicants appears to be fabricated.

6.7 It is also argued by respondent counsel that statement of Keyman Dhansingh s/o Bansiram placed on record at Page No.43 of DRM Statutory report by respondent railway wherein it is stated by Shri Dhansing s/o Bansiram that on 15.03.2020 he was working between Karmad-Chikalthana

station from morning 07:00 hrs. to evening 17:00 hrs. between KM No.136/0 to 130/0 as Keyman. During his duty hours at about 08:15 hrs. to 08:30 hrs., he has passed Sai Kala Kendra, Kumbephal village between KM No.132 to 133, but at that time he has not seen any person lying in injured/dead condition on railway track or nearby railway track. He did not received any information about such incident by any local resident or anyone else.

6.8 As per Inquest Panchnama, Spot Panchnama, Merg Khabri, the deceased was seen 20 feet away from railway track on 15.03.2020 at about 9:00 a.m. As per applicant version, the deceased was travelling from Aurangabad to Parbhani on 14.03.2020 whereas as per statement of Police Patil Shri Subhash s/o Bhaskarrao Bagal, the deceased was noticed lying 20 feet away from railway track on 15.03.2020 at about 09:00 hrs. After issuance of alleged journey ticket and prior to notice of deceased, during the huge span of time, 14 trains were passed from the incident spot, but no Loco Pilot, Passenger and Guard of any train noticed lying of deceased on the incident spot whereas the railway track where the deceased was noticed lying is on ground level and there is no depth of slope near the railway track. It is also argued by the respondent railway that if the deceased was fallen down from any train, the body of the deceased should have been found few feet away and nearby the railway track. How could the body of the deceased was found 20 feet away from the railway track. These facts itself speaks that the deceased was not performing the journey by any train and he was not fallen down from any train.

6.9 It is also pointed out by the respondent counsel that AW-1 Aaruna Dilip Gurule stated in her cross-examination that her deceased husband left home at 3 p.m. on 14.03.2020 by stating reason that he was having pain in stomach and he was going to hospital for taking medicine.

6.10 It is also argued by the respondent counsel that the opinion of police authorities in police documents that the deceased died due to fell down from

train is only their view keeping in mind the circumstances of incident spot and their opinion is based only on surmise and presumption as no one has seen the deceased falling from the train.

6.11 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 in the light of evidence and statement of AW-1 Aaruna wd/o Dilip Garule, it is crystal clear that the deceased was went to Hospital for taking medicines for his stomach pain. There is no whisper in evidence and statement of AW-1 Aaruna wd/o Dilip Garule that her deceased husband was travelling from Aurangabad to Parbhani by any train. The belief of applicants that the deceased was travelling and fell down from the train is only based on the railway ticket recovered from the deceased which was issued on 14.03.2020 at 23:07 hrs. whereas the deceased was noticed on 15.03.2020 at about 09:30 a.m. on the incident spot after passing of so many trains from the incident spot. No memo issued by the railway authorities and there is no any information regarding the fallen down of the deceased at any time during investigation. 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.

6.12 On the ground of above facts, the counsel for the respondent railway argued that the deceased was not travelling in any train and all the above facts clearly indicate that the instant case is not the case of falling down from the train. Therefore, it is appropriate to infer that the death was not due to any accidental fall from the train as contended by the applicants. It is not a case of untoward incident of accidental fall from train as defined in Section 123 (c) (2) of Railway Act, 1989. Hence Railway administration is not liable to pay any compensation to the applicants.

6.13 In the case of Union of India V/s Rina Devi (CA No.4945 of 2018 arising out of SLP (C) No.10223) it is held that 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. 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 the 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.”*** 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 in hand, the applicants have failed to submit any cogent/relevant facts along with affidavit that the deceased was travelling in any train even they have not reported the alleged incident to any of the railway authorities. The applicants have failed to prove that the deceased was travelling in the train and 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. 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 not a case of untoward incident of accidental fall from train as defined in Section 123 (c) (2) of Railway Act, 1989. Hence Railway administration is not liable to pay any compensation to the applicants.

6.14 The applicants have not adduced any evidence or witness or documents which could establish the circumstances under which the death of Dilip s/o Gangaram Garule (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 prove that the deceased was travelling in a train and he

had fallen down from any train carrying passengers. No memo issued by railway authority and there is no information to any of the railway authorities regarding fell down of the deceased by a train. No Loco Pilot of any train reported such type of incident and the deceased was not noticed until 09:00 am on 15.03.2020. Applicants are not sure in which train the deceased was travelling. The deceased left the home saying that he is going to Hospital for taking the medicine for his stomach pain. I cannot agree with the pleadings of the applicants on this point, since they have miserably failed to prove by bringing any evidence that the deceased had boarded any train and met with accident as a result of his fall from any train. The fact that Dilip s/o Gangaram Garule 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. 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 momentum in argument that the deceased was not involved in any untoward incident. It can, therefore, be concluded that the deceased was not involved in an untoward incident as defined in Section 123 (c) (2) of the Railways Act.

ISSUE No.2

7. The applicants have filed the railway journey ticket No.UPE 62960991, dated 14.03.2020 from Aurangabad to Parbhani and the recovery of alleged journey ticket is mentioned in spot panchnama. But it is argued by the respondent counsel that Section 124-A of The Railways Act, 1989 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*. In present case in hand, the deceased was not involved in any untoward incident at all. Though the applicants have filed the journey ticket on record, but on perusal of above paras discussed in

issue No.3 and the issue decided against the applicants as the deceased was not involved in any untoward incident, the journey ticket has no relevance and weightage. The definition of passenger is given in Railway Act, 1989 in section 2(29) "passenger" means a person travelling with a valid pass or ticket;" and as per explanation given in Sec.124A of Railways Act, 1989 "Passengers" 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. As per this section, mere recovery of journey ticket is not sufficient to prove that the deceased was travelling in a train as a bona fide passenger. Travelling or purchasing of journey ticket is also required to be prove by way of legal evidence. In the present case in hand, it is crystal clear that the deceased was not involved in any untoward incident of fell down from the train. Applicants have miserably failed to prove purchasing of valid journey ticket by the deceased and travelling with a valid ticket in a train. Also the death of the deceased was not due to any accidental fall from the train as contended by the applicants and the alleged incident was not a untoward incident as decided in issue No.3 and the applicants have failed to prove that the deceased was travelling in any train and he was fallen down from the train. In these circumstances, the deceased cannot be held as a bona fide passenger of alleged 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."* It can, therefore, be concluded that the deceased was neither a bona fide passenger nor involved in an untoward incident as defined in Section 123 (c) (2) of the Railways Act. This issue, therefore, decided accordingly against the applicant.

ISSUE No.1

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

ISSUE No. 4 (Relief)

9 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

10. The claim application is dismissed with no order as to costs.
11. File to be consigned to the record-room.
12. Dictated to the P.S. transcribed by him, corrected and pronounced by me in open Tribunal on 29.01.2025.

(Rajeev Jain)
Member(Judicial)

Pronounced in open Court.
Nagpur.
Date : 29.01.2025
/DK/