

रेल दावा अधिकरण, नागपुर पीठ, नागपुर
BEFORE THE RAILWAY CLAIMS TRIBUNAL: NAGPUR BENCH, NAGPUR
QUORAM: HON'BLE SHRI SYED NISHAT ALI, MEMBER (TECHNICAL)/RCT/NGP

Case No.: OA(IIu)/NGP/77/2020

Date of filing - 16.12.2020.
Date of Judgement - 23.02.2024.

- APPLICANTS:**
1. Smt. Rajkumari wd/o Udaram Lasunte
Aged about 54 years, Occu. – Household.
 2. Walmik s/o Udaram Lasunte
Aged about 45 years, Occu. – Labour.
 3. Swalmik s/o Udaram Lasunte
Aged about 19 years, Occu. – Labour.
 4. Ku. Suhani d/o Udaram Lasunte
Aged about 15 years, Occu. – Student.

(The applicant no. 4 is minor through next guardian Mother/ applicant no.1)

Applicant no. 1, 3 and 4 R/o- Mitewani, Tah.-
Tumsar, Dist.- Bhandara, Maharashtra- 441912.

Applicant no. 2 R/o- Godawari nagar, Ward no.1,
Bori, Nagpur-441108.

V/s

RESPONDENT: Union of India
Through its General Manager
South East Central Railway, Bilaspur
Dist.-Bilaspur, State-Chattisgarh

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

Applicant by Advocate P. D. Naukarkar.

Respondent by Advocate S. Thaokar.

JUDGEMENT

1) The case was heard from both the counsels on 23.10.2023. The matter was relisted for argument on 11.01.2024 due to technical reasons and relisted for arguments on 12.02.2024 but on 12.02.2024 the counsel for the applicants remained absent and again the matter was posted on 19.02.2024. However, today also i.e. on 19.02.2024, Applicant Counsel or his representative counsel remained absent despite given many chances.

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.

2) The applicants have filed a claim application seeking compensation for the unfortunate death of Shri Udaram s/o Tikaram Lasunte, aged about 70 years which occurred allegedly in a train accident on 11.02.2020.

3) The applicants have contended in claim application that on 11.02.2020 the deceased had purchased a valid railway journey ticket from the ticket counter of Itwari railway station for his journey from Nagpur to Tumsar road and he was travelling in an unknown train. While travelling at about prior to 08.30 pm, the deceased fell down from the running train due to jolt and jerk to the train in between electric pole no. 1114/8 to 1114/12 at

about 20 feet away from the railway track in the cantonment area of Kamptee near the Zanzariya construction site on kaccha road where the construction work was going on. It is also alleged that in the said incident the right leg of the deceased from knee joint was amputated on the spot as well as he sustained serious injuries on his right hand and head. After receipt of the information the deceased was shifted to and admitted to Govt. Medical College, Nagpur for the treatment by RPF authorities but during his treatment he died on 17.02.2020 at about 12.30 hrs.

4) It is also contended by the applicants in the claim application that the travelling ticket of the deceased was misplaced at the time of untoward incident and it was not recovered by the Police authority. It is further contended that the deceased was having a valid journey ticket, which was lost after the incident, and, as such, he was a bonafide passenger and died in an untoward incident, hence the applicants are entitled to claim compensation.

5) 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 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 is not due to fall from the train. The respondents also filed Statutory Report of DRM and stated that there was no eye witness to say that the deceased fell down from the alleged train. No valid journey ticket was found from the deceased and there is no evidence to say that the deceased fallen down from the train and died. It is also not known under what circumstances incident was occurred. 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.

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 Railways Act?
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?
4. To what order/relief?

6) The applicant no.2, Walmik s/o Udaram Lasunte was examined as AW-1 and documents Exh.A-1 to A-15 were marked on behalf of the applicants. From the side of respondent, Shri V.J.Janware (Head Constable-0601174, RPF/Kamptee, Nagpur) was examined as RW-1. The respondent railway placed on record Statutory Investigation Report along with a number of documents as prepared during the course of such enquiry. The respondent railway has filed the DRM report along with written statement.

Discussion on the issues with reasoning:

ISSUE No. 2 & 3:

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

8) The case of the applicants is that the deceased while travelling from Nagpur to Tumsar road by an unknown train is accidentally fell down from the running train in between electric pole no. 1114/8 to 1114/12 at about 20 feet away from the railway track in the cantonment area of Kamptee near the Zanzariya construction site on kaccha road due to heavy jerk and jolt of the train, sustained serious injuries on his right leg, right hand and on his head and died later during his medical treatment. The alleged journey ticket of the deceased lost in the incident.

9) The inquest proceedings in this case were started by ASI, Police Station, New Kamptee on receipt of memo (Exh.A-1) issued by Station Manager, Kamptee, SECR on 11.2.2020 at 22.07 hrs. wherein it is mentioned as informed by on duty Station Master one unknown person was found in injured condition in between Kamptee and Kanhan (near railway military gate) at about 06.00 pm and the said person was taken to the Govt. Hospital by RPF for further treatment by ambulance. During the course of inquest proceedings, Crime Details Form (Exh.A-3) and Inquest Panchnama (Exh.A-4) were prepared by the Police authority. In the Crime Details Form in column 7 the police authority have mentioned that one Aadhar card of the deceased, pass of Maharashtra Rajya Pariwahan, platform ticket of Itwari railway station and 4 passport size photographs were recovered from the deceased. Apart from the said articles nothing valuable or any other suspected things were recovered from the body of the deceased. Police seized nothing other than the above mentioned items and there is no mention of recovery of any journey ticket or railway pass from the deceased.

10) It is contended by the applicants in claim application that the deceased was having valid journey ticket from Nagpur to Tumsar which was purchased by the deceased himself at Itwari railway station. It is also

contended that the deceased was a bonafide passenger and died in an untoward incident hence the applicants are entitled to get compensation.

11) Per contra, it is contended by respondent-railway that from the deceased (then injured) one Aadhar card of the deceased, pass of Maharashtra Rajya Pariwahan, platform ticket of Itwari railway station and four passport size photographs were recovered but no journey ticket was not recovered/seized either at the time of preparing of Crime details form or inquest panchnama from the body of the deceased. Nothing is mentioned by the investigating authority in the panchnama regarding the finding of journey ticket. Nothing was seized by the investigating authority. The factum of non-recovery of the railway ticket, in itself, goes to prove that the deceased was not having any journey ticket in his possession otherwise the same would have been recovered alongwith other articles.

12) 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.

13) I have gone through the pleadings, documents and evidences available on record. I 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. 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 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.

14) So far as the manner and circumstances leading to the death of the deceased is concerned, it is seen that nobody had witnessed the deceased boarding in a train. Nobody also had seen him falling from any train. The applicants have not adduced any evidence or witness in the instant case who could prove that the deceased boarded in any train. Nothing on record to say that the deceased was travelling by any train and fell down in an untoward incident.

15) Also, no journey ticket was found during the investigation by Police authority. There is nothing on record to show that the deceased was a bonafide passenger. There is also 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.

16) During the course of investigation, statements of Station Master, Kamptee Rly. Stn, Loco Pilot of train no. 68716, applicants, Shri Rafiuddin Moinuddin Chisti (first informer of the incident) etc. were recorded by RPF which are filed alongwith DRM report at page no. 1 to 4. In the statement of Statement of Station Master recorded on 15.01.2021 he has stated that on 11.02.2020 he was on duty Station Master of Kamptee Rly. Stn. and his duty hours were from 16.00 hrs to 24.00 hrs. During his duty hours at about 20.30 hrs he received information from RPF official that some passenger had informed him that one unknown person is lying in injured condition in between Kamptee-Kanhan near Military gate.

17) In the statement of loco pilot of train no. 68716 recorded by RPF, he has stated that his train departed from Itwari railway station and reached at Kamptee railway station at 19.07 hrs and from there it departed at 19.11 hrs and from there it reached at Kanhan Rly. Stn. at 19.15 hrs. During this duration he has not received any information regarding any ACP, jerk or regarding falling down of any passenger from his train.

18) Statement of AW-1 was also recorded by RPF wherein he has stated that the deceased on 11.02.2020 had left his house at about 10.00 am for visiting Waaki Dargah but on the same day at about 20.30 hrs his younger brother had received a phone call on his phone from Police Station, Kamptee that the deceased was injured in railway accident and at 21.30 hrs he again received information from Police station that the deceased was admitted to Trauma Centre Medical. During his treatment the deceased died on 17.02.2020.

19) Further statement of Shri Rafiuddin Moinuddin Chisti, Supervisor of Zanzariya Construction Company (Spot of incident) was recorded by RPF. In his statement he has stated that on 11.02.2020 hrs he was present at the office of Zanzariya Construction Company at about 20.00 hrs when one of his employee informed him that one unknown person was lying in injured condition at a distance of 20-25 feet away from the railway track on kaccha road near the Cantonment area of Kamptee and after receipt of the information he went to the incident spot and informed about the same to Shri Mohanlal, RPF/New Kamptee. Thereafter, an ambulance came and took the injured to the Hospital for further treatment. The said Shri Mohanlal, RPF/New Kamptee also stated the above same facts in his statement also recorded on 04.02.2021.

20) In the cross examination AW-1 he has deposed that on the day of incident he was not accompanying the deceased, he is not aware about the purchase of journey ticket by deceased nor about his journey. Also he stated that he is not aware about the mode of journey by the deceased. He also stated that during the inquest panchnama the Police had found only platform ticket and no journey ticket was found with his father. From the Respondent side, Shri V.J.Janware, Head Constable 0601174/RPF/Kamptee was examined as RW-1. In his cross examination he has stated that on 11.02.2020 at about 20.40 hrs he received the information about the accident of one person who was lying near the track, when he approached on the spot he found that a leg of the said person was amputated and his hand were also injured. He also stated that this injured person was lying more than 20 feet away from the track.

21) It is pointed out by the respondent counsel that as per the statement of Rafiuddin Moinuddin Chisti, the deceased was noticed lying in injured condition on 11.02.2020 at about 20.00 hrs at a distance of 20-25 feet away from the railway track on kaccha road near the Cantonment area of

Kamptee. In these circumstances, it is argued by the respondent counsel that it is specific pleadings of the applicants that the deceased was travelling from Nagpur to Tumsar by an unknown train and he had fallen down from the said train due to jerk and jolt to the said train. However, if the deceased had fallen down during the alleged journey, the body of the deceased should have been found either on the tracks or between the Up and Down track but he was found away from the track at a distance of 20-25 feet. How could the body of the deceased was found 20-25 feet away from the track as it is the pleadings of the applicants that the deceased was travelling and fell down while travelling and if a person falls down from a running train then he would be found near the tracks and it is not possible that a person would be thrown away from the train at a huge distance of 20-25 feet from the railway track and, moreover, at some construction site. The respondent counsel also argued that at the spot of incident a kaccha road was present at the time and there is a possibility that anyone can also enter from this road to railway premises. This fact itself speak that the deceased was not performing the journey by any train.

22) It is argued by the respondent counsel that the applicants have placed on record document, Exh.A-3, Crime Details Form prepared by the police authorities during the course of official duties and it is opined by the police authority in spot panchnama that the deceased fell down from running train, which 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.

23) The counsel for the applicants also pleaded that the deceased died due to accidental fall from unknown running train at Cantonment area of Kamptee near electric pole no. 1114/8-1114/12, sustained serious injuries and died. On the other hand, it is argued by the respondent counsel that there is no supporting evidence that the deceased was travelling by any train. No journey ticket recovered during Crime Details Form and Inquest Panchnama. The respondent counsel further contended that the lying of the dead body of the deceased was noticed 20-25 feet way from the track. 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.

24) After perusal of record & arguments advanced by respondent sides, it is clear that AW-1 is not an eyewitness to the incident and has no personal knowledge about the incident. The applicants neither examined any eyewitness who could establish the circumstances under which the death of Udaram s/o Tikaram Lasunte (deceased) had occurred, nor they have stated that there was any eyewitness to the incident. The fact that the 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. Also, apart from the say of the applicants, there is no other support/evidence to show that the deceased was travelling by a 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 Railways Act.

25) 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.

26) Respondent has a force of argument that the deceased was not involved in any untoward incident. It can, therefore, be concluded that the deceased was neither a bonafide passenger nor involved in an untoward

incident as defined in Section 123 (C) (2) of the Railways Act. These issues no.2 & 3 are, therefore, decided accordingly against the applicant.

ISSUE No. 1

27) In view of the findings on Issues No. 2 and 3, discussion on this issue would be redundant exercise. This issue is disposed of accordingly.

ISSUE No. 4 (Relief)

28) 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

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 23.02.2024.

File be consigned to the record-room.

(Syed Nishat Ali)
Member (Technical)

Pronounced in open Court.
Nagpur.
Date: 23.02.2024.
/SW/