

रेल दावा अधिकरण, पटना न्यायपीठ
BEFORE THE RAILWAY CLAIMS TRIBUNAL,
PATNA BENCH.

Case No. O.A(IIu)/PNBE/0126/2019

Date of Filing : 10.01.2019
Date of Judgement : 19.05.2025

- 1) Bhuneshwar Yadav, Father of Late Vidya Prasad Applicants.
2) Gauri Devi, Mother of Late Vidya Prasad

Both are the Residents of : Vill.: Barahtarva, P.O. : Sarbahda,
P.S. : Tekari, Dist. : Gaya, Bihar,
PIN - 824 235.

- VS -

Union of India represented through Respondent.
General Manager, E.C Railway, Hajipur.

Claim for Rs. 8,00,000/-

CORAM :-

- 1) Shri Sanjay Singh Gehlot, Hon'ble Vice-Chairman/RCT, Kolkata
2) Shri S. D. Sharma, Hon'ble Member (Judicial)/RCT/Kolkata.

Appearance :

Counsel for the Applicant : Shri Pramod Kumar.
Counsel for the Respondent : Shri Alok Kumar.

JUDGEMENT

The claimants/applicants have preferred the present claim application, against the Railways/respondent, under Section 16 of the Railway Claims Tribunal Act, 1987, for seeking compensation, from the Railways/respondent, on account of death of their son, namely,

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late Vidya Prasad (**the deceased**), who was allegedly travelling Ex-Gaya Jn. to Jehanabad R/S by 63244 Gaya – Patna Passenger on 25.08.2018, met with an accident and died.

1.1 It is alleged by the claimants that on 25.08.2018, the victim, Vidya Prasad, since deceased, along with one, Kishori Yadav was going from Gaya Jn. to Jehanabad R/S by 63244 Gaya – Patna Passenger with a valid railway journey ticket.

1.2 It is also alleged that during the course of journey, the victim accidentally fell down from the running train near Habibganj and died on the spot.

1.3 In the claim application the applicants have taken a plea that the journey ticket of the deceased had been lost.

1.4 Thus, alleging that the deceased was a *bona fide* passenger and a sufferer of an untoward incident, as such, the claimants have claimed a compensation to the tune of Rs.8,00,000/- with interest from the Railways/respondent. The claim petition was filed in time.

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In Reply :

2.1 The respondent has denied and disputed the incident, as alleged by the claimants.

2.2 The respondent has further averred that the victim was not a *bona fide* passenger as no journey ticket was recovered from his possession.

2.3 The respondent railway has finally prayed for the dismissal of the claim application.

3. We have perused the claim application as well as the written statement filed by the Railways. Based on the above said pleadings, and material evidence placed on record, the following issues were framed for determination and adjudication in this case on 14.03.2019:-

- 1) Whether the deceased was a *bona fide* railway passenger of Train No. 63244?**
- 2) Whether the death of the deceased was caused in an untoward incident, as defined under Section 123(c)(2) of the Railways Act, 1989 ?**
- 3) Whether the applicants are the legal dependents of the deceased?**
- 4) Whether the applicants/dependents of the deceased are entitled to get compensation, if yes, to what extent?**

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4. In this case, the applicant No.1, Bhuneshwar Yadav, father of the victim and one, Yogindra Yadav filed their respective affidavits and tendered their evidence. They were examined as **AW/1 & AW/2** respectively and were cross-examined by the Ld. Counsel for the respondent.

5. On the other hand, the Railway has submitted the DRM's report and has marked the same as Ex-R/1 and has not examined any witness.

6. In the course of argument of the case, Ld. Counsel for the applicant was absent. No petition for adjournment has been filed on his behalf. More than six years have passed from the date of filing of claim application & since 25/9/23, i.e. for almost 2 years, the case has been detained at the argument stage. In the circumstances, the decision on the case cannot be postponed any further. Since the entire evidence of the parties is already on record, we feel that no prejudice is going to be caused to the claimant by adjudicating on this matter. Ld. Counsel for the respondent was present and advanced his argument at length. It is also evident that this Bench (Kolkata) of the Tribunal is the ample jurisdiction to try and dispose of the present case as per the Order of Hon'ble

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Chairman, RCT/Principal Bench, Delhi. After perusing the record and appreciating the argument of the Ld. Counsel for the respondent, we determined the issues as under: -

7. In order to avoid repetition of appreciation of evidence, and for the purpose of brevity, Issue Nos. 1 & 2 are taken up together for the purpose of discussion and orders.

Issue Nos. 1 & 2:

8.1 It is pertinent to mention here that the averment of the applicant is based on the evidence of (AW/1). In his affidavit, the applicant (AW/1) has stated that the victim, Vidya Prasad was his son and on the date of the incident the victim purchased a second class journey ticket Ex- Gaya Jn. to Jehanabad and boarded Train No.63244 Gaya – Patna Passenger and the said journey ticket of his son was lost. During cross-examination, he (AW/1) stated that at the time of the incident he was at home, he (AW/1) did not see the incident and got information from Police over phone. It is evident that during cross-examination, AW/1 stated that his son was going to attend the marriage ceremony of his own sister, but AW/1 did not even know the date of that marriage. Under the

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circumstances, we surprisingly observe that as the victim was the son of AW/1, the own sister of the victim was definitely the daughter of AW/1. But AW/1 did not not know the date of that marriage. AW/1 also stated that he went to the station, his son, namely, the deceased purchased Platform Ticket for him (AW/1) and ticket for his own journey. But AW/1 could not state the fare of the ticket. He also did not see the incident, he made a hearsay statement and the inquest was done in his presence and he put his signature on the Fardbayan.

8.2 It is evident that Yogindra Yadav (AW/2), even though during cross-examination has stated that he saw the incident, he pulled the Alarm Chain, he intimated the incident to the parents of the deceased, police made physical search of the dead body in his presence etc., but comparing with the Inquest Report and statement of the applicants both in the OA and in the affidavit of AW/1, the entire statement of AW/2 appears to be concocted, and misleading. That apart, AW/2 is a cousin (*Mouserai Bhai*) of the victim. Accordingly, the evidence of the witness AW/2 appears to us as nothing but a chance witness & an interested party.



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But in the OA his name was not pleaded at all. In fact it was pleaded that one Kishori Yadav was the co-passenger of the victim. Applicants did not produce him at all. Instead they produced one, Yogindra Yadav (AW/2), as an alleged co-passenger. **Further AW/2 has no credibility because of gross discrepancies appearing in his statement before the court. Moreover, AW/2 was not pleaded in the OA at all. Hence adverse inference is being drawn against the applicants for going beyond their original pleadings without having amended the application.** At this juncture, we observe that **No evidence can be led without pleadings** — No evidence can be led on a plea not raised in the pleadings and no amount of evidence can cure defects in the pleadings. No amount of evidence or arguments can be looked into or considered in absence of pleadings and issues. Emphasis given & equivalent citations are:

- 1) Ravinder Singh -Vs- Janmeja (2000) 8 SCC 191
- 2) U.O.I. -Vs- R. Bhusal (2006) 6 SCC 360
- 3) Anathula Sudhakar -Vs- P. Buchi Reddy 2008(2) AWC 1768 (SC).



8.3 In the instant case, Ld. Counsel for the applicant was absent. No petition for adjournment has been filed on his behalf. On behalf of the applicant, railway memo, Inquest Report, Final Police Report and P M Report are available on record.

8.4 The respondent's side did not lead any oral evidence, though it has filed DRM's Report (Exhibit – R/1) along with relevant Annexures. Ld. Counsel for the respondent referring to the DRM's Report argued that the victim was not a bona fide passenger. Referring to the DRM's Report, Ld. Counsel for the respondent further argued that on enquiry, it is learnt that **"the victim was not travelling by any train and the victim died being dashed by a running train while crossing the railway track"**. According to him, the alleged incident was not an 'untoward incident', as defined under Section 123(c)(2) of the Railways Act. Hence the railway was not responsible to pay any compensation and accordingly the applicant was not entitled to get compensation from the railway.

8.5 At the outset it appears from the evidence that the father of the victim (AW/1) was not the eye-witness to the alleged incident nor did he

have any personal knowledge about the death of the victim. Furthermore, as already brought out above AW/2 has no credibility because of gross discrepancies in his statement before the court. He was not pleaded in the OA at all.

8.6 It is seen that the applicant has filed a certified copy of Inquest Report, Police Final Report etc. Names of two witnesses are there on the Inquest Report and they allegedly opined that the deceased may have fallen down from an unknown train. But at the same time it is also evident from the Inquest Report that the right leg of the victim was cut below the knee, head was crushed and there were heavy injuries all over the body. In the DRM's Report, the same thing has been corroborated. It was also contended that the deceased was not a *bona fide* passenger of any train, as no journey ticket was recovered from the dead body. The conclusion as to the cause of the death as reported in the Inquest Report was based on surmises and conjectures. On perusal of the Inquest Report, it is seen that though in the said report, it has been mentioned that cause of the death of the victim was due to a fall from an unknown train, and the names of two witnesses have been

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mentioned in the Inquest Report. It is seen that out of these two inquest witness, one is Kishori Yadav who has been impleaded in the OA as a co-passenger of the victim and AW/1 has mentioned the name of Kishori Yadav in his affidavit. But the applicants neither produced the said Kishori Yadav nor appears to have taken any steps to produce the said Kishori Yadav as witness before the Tribunal. Instead the claimants have produced one of their relatives, Yogindra Yadav as witness (AW/2) as per their own choice and convenience just to set up a concocted story, suppressing the truth and ultimately to mislead the Tribunal. Accordingly, we observe that for suppressing the apparently best possible witness by the applicants, an adverse inference has to be drawn against them within the provision of Section – 114(g) of Indian Evidence Act (equivalent to Section – 119(g) of the Bharatiya Sakshya Adhiniyam, 2023). It is seen that the applicant No.1 (AW/1) stated during cross-examination that Police took his signature in the 'Fardbayan' without explaining its contents to him (AW/1). Accordingly, we feel that *ab initio* the police investigation process was faulty and as such, the entire police investigation process, in our opinion, does not attract any credence.

8.7 So circumstantially & from preponderance of probability it looks more a case of run over rather than a fall from a train. On the other hand, in the DRM's Report, it is specifically mentioned that "**victim died dashed by train while trespassing**". From the circumstantial evidence and preponderance of probability it points more in the direction of being run over by any train while crossing the railway track. Moreover, the DRM's Report cannot be brushed aside without any reliable and cogent contrary evidence on the part of the applicant's side. Thus, considering all the documents and evidence on record, the Tribunal holds that the applicant has failed to prove beyond any reasonable doubt that the victim fell down from a train.

8.8 With regard to the *bona fide* of the victim as a passenger, in the claim application the applicant has taken a plea that the victim was travelling with a journey ticket which was lost. On the other hand, in the DRM's Report the respondents have contended that the victim was not a *bona fide* passenger as "no journey ticket was found" from the possession of the deceased. With regard to the loss of the alleged ticket, as pleaded by the Ld. Counsel for the applicant, we are guided by

the observation of Apex Court judgement in the case of **Union of India –vs- Rina Devi** reported in 2018 ACJ 1441 (S.C.) wherein the Hon'ble Supreme Court has held 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 negate 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 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 is explained accordingly".*

Therefore, the onus was on the applicant to produce the said Kishori Yadav who would have been the best person to describe the purchase as well as the loss of the alleged ticket & also about the alleged journey. At this juncture, onus has not shifted on the railways with respect to loss of ticket.

8.9 It has already been decided on the basis of available documents and the evidence that the victim did not die as a result of fall from the train in which he was allegedly travelling. In this context, the Tribunal views that a liberal view on the loss of ticket would have been possible if it was established beyond doubt that the victim travelled by a train and his death was caused due to injuries sustained as a result of fall from any train. In this case it is already held that the applicant has failed to establish that the victim was travelling by a train and that the proximate cause of his death was a fall from any train. Even in Rathi Menon's case, the Hon'ble Supreme Court has held that every person, who falls from a train and dies as a result of an accident or fall from the train must not be presumed to be a *bona fide* passenger travelling with a ticket. No doubt train ticket is lost in many cases of untoward incident and non-recovery of train ticket and non-filing of train ticket is not conclusive as to whether a person is or is not a *bona fide* passenger. **Even in this judgement, no such blanket declaration is given, as claimed by the claimant.**

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8.10 It is further important to mention here that, it is not even *prima facie* established that the deceased had boarded any train. In such a situation where it is not proved that the deceased had boarded any train, the onus is definitely on the applicant to establish the same and prove that the victim was a *bona fide* passenger. It has already been brought out above that the evidence of the witness (AW/2) regarding purchase of the alleged ticket is not at all reliable & does not have any evidentiary value.

8.11 Since nothing was recovered from the physical custody of the deceased, in such a situation it is difficult to believe that the deceased had purchased the ticket or she was a traveller.

8.12 To our mind, there has to be some reason to believe that the deceased entered the train after purchasing the ticket and travelled in the train. The question of placing the onus on the Railways comes only after establishing at least *prima facie*, the above belief. There cannot be any sweeping presumption that in all cases the ticket of every deceased is necessarily lost.

8.13 In this regard, the observation of the Hon'ble Allahabad High Court in a case titled Dinesh Kumar Singh Maurya –Vs- UOI, FAO no.1023 of 2010 is relevant.

8.14 It is mentioned in the above judgement that in case a ticket is not found from the body of the deceased or from its vicinity the presumption could be that such a person was not a bona fide passenger. Of course evidence can be led to prove otherwise.

8.15 Finally, it is pertinent to mention here that in the present case, it is not proved that the deceased had boarded any train. This coupled with the fact that no journey ticket has been filed on record nor any ticket was recovered from the dead body. Accordingly, the Tribunal cannot conclude that the victim was a *bona fide* railway passenger at the time of occurrence of the alleged incident which resulted in his death.

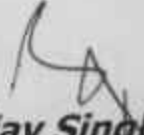
8.16 In view of our above discussions, we are of the view that the claimant has failed to prove that the deceased was a *bona fide* passenger or sufferer of an untoward incident. Accordingly, both the issues are decided against the applicant.

8.17 Since the Issue nos. 1 & 2 are decided against the applicant and in favour of the Railways, as such, it will be a redundant exercise to adjudicate qua the remaining issues.

8.18. In view of the discussion held above, the claim application, being devoid of merits, is hereby dismissed with no order as to costs.

8.19. Accordingly, the claim application is dismissed. However, there is no order as to cost. File be consigned to records. The copy of this order be sent to the parties free of cost.


(S.D. Sharma)
Member (Judicial)
RCT/Kolkata.
(Through hybrid mode)


(Sanjay Singh Gehlot)
Vice-Chairman
RCT/Kolkata.
(Through hybrid mode)