

BEFORE RAILWAY CLAIMS TRIBUNAL,
PATNA BENCH
Through Hybrid Mode

**Coram : Mr. Sanjay Singh Gehlot, Hon'ble Vice-Chairman /
RCT/Kolkata
Mr. S. D. Sharma, Hon'ble Member (Judicial)/
RCT/Kolkata**

Claim Application No. OA(IIu)/PNBE/126/2020 & 127/2020
Date of filing of claim application : 23.01.2019
Date of Judgement : 19.09.2025

Since the alleged claim in claim application no.126/2020 & 127/2020 has arisen out of the same alleged incident, both the cases were merged and a single judgement for both the cases is being prepared.

1. Banerash Mahto, husband of the deceased, Shanti Devi & father of the deceased, Dharmendra Kumar
2. Amit Kumar, minor son of the deceased, Shanti Devi and minor brother of the deceased, Dharmendra Kumar

Residing at :

Vill. Parsama, P.O. Parsama, P.S. NTPC, Barh, Dist. Patna, 803214

Presently residing at : Bhabha Colony, Hanuman Nagar,
P.O. Lohiya Nagar, P.S. Patrakar Nagar, Dist. Patna
800020

..... Applicant

-VS-

Union of India represented through

The General Manager, East Central Railway, Hajipur

..... Respondent

Claim for Rs.8,00,000/-

Recorded Advocate :

Shri P. K. Gupta, Ld. Counsel for the Applicant.

Shri R. K. Sinha, Ld. Counsel for the Respondent.

As per Order of Hon'ble Chairman, PB/RCT/Delhi, total 60 cases at the argument stage of RCT/Patna have been sent to RCT/Kolkata in the 2nd

phase for hearing of the final arguments of both sides in hybrid mode and it will be treated as Circuit Bench of RCT/Patna. Accordingly, Counsels for both the parties were informed.

Counsel for the applicant was not present at the time of argument through hybrid mode despite the fact that the cause list as well as intimation was given to him beforehand. Even at the time of hearing on hybrid mode, we were trying to contact him over phone, but he did not pick up the call. Counsel for the respondent joined and advanced his argument through virtual mode.

We have gone through the daily proceedings and observed that the Counsel for the applicant has already been given five consecutive adjournments since 24.05.2023 for arguments. Adverse inference is being drawn against the counsel for the applicant for his lackadaisical approach in dealing with the case.

This Circuit Court is being specially held by virtue of order of Hon'ble Chairman, Principal Bench/RCT/Delhi for early disposal of the cases which are already fixed for arguments. There are a huge number of cases pending in RCT/Patna at the stage of final arguments. This particular case has also been pending for a long time. We feel that the very purpose of forming this Circuit Court for RCT/Patna will fail if this matter is not decided early.

At the outset, we feel that no prejudice is going to be caused to the claimants. We shall adjudicate the case based on the available evidence of both sides.

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JUDGEMENT

1. This application has been filed under Section 16 of Railway Claims Tribunal Act, 1987 read with 124-A of Railways Act, 1989 by the applicants, Banerash Mahto & Amit Kumar for compensation on account of death of the victims, Shanti Devi & Dharmendra Kumar who allegedly died in an untoward incident.
2. Brief history of the case of the applicant is that on 24.05.2017 the deceased Shanti Devi along with her minor son aged 8 months was travelling as a bona fide passenger having 2nd class ticket from Raily Halt to Barh Railway station by Barauni Patna Passenger train. In the course of the journey she along with her minor son fell down from the said running train near Raily Halt due to heavy crowd as well as jerk of the train. Both died on the spot. Upon the information given by the villagers, the relatives of the deceased came to the spot and they recognized both the deceased. UD case No.17/17 dtd.24.05.2017 was registered in Mokama Rail P.S. The ticket was lost after the incident.
3. The respondent railway has filed a written statement denying the facts stated in the claim application. The respondent has emphatically denied the entire story of the applicant. The DRM report suggested that it was a case of run over while the deceased were crossing Railway track illegally. The witnesses were not independent. The FIR was lodged by GRPS based on fardbyan of the applicant and the final report of the UD case was submitted on the basis of the statements of the applicant without any proper inquiry. The body of the deceased was found on the



UP line track cut into pieces beyond the platform area. The position of the body also suggested the case of run over while crossing the Railway track. So, the respondent has prayed for dismissal of the case.

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

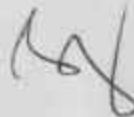
Issues :

1. Whether the incident on account of which the victim is alleged to have died can be termed as an untoward incident as defined under Section 123(c)(2) of the Railways Act, 1989 ?
2. Whether the victim was a bona fide passenger of the train on the date of incident, as alleged ?
3. Whether the applicants are the sole dependents of the deceased in terms of Section – 123 (b) of Railways Act and are entitled to get compensation from the respondent ?
4. Relief, if any.

4.1 In this case, Banerash Mahto, the applicant tendered his affidavit. He filed certain documents which were exhibited. He was cross-examined as AW/1 by the Ld. Counsel for the respondent.

4.2 The respondent filed DRM's report with all annexures which were exhibited R/1.

5. In order to avoid repetition of appreciation of evidence, and for the purpose of brevity, issue no.1 & 2 are taken up together for the purpose of discussion and orders.



Issue No. 1 & 2 :

6. First, we shall discuss the documents filed by the applicants as part of evidence. As per fardbayan of the applicant, Baneras Mahto before Mokama Railway P.S. that he had received the information from the villagers that his wife and minor son were lying splintered. He came to know from the villagers that his wife and minor son fell down from the train. Based on the fardbayan of Banerash Mahto, UD case No. 17/17 dtd.24.05.2017 was registered. The inquest was conducted by the I.O. of Mokama Rail P.S. The inquest report revealed that as per version of the inquest witnesses, both the deceased fell down from the train and were run over by the train. The inquest witnesses were Banerash Mahto, the applicant and Anil Kumar. The findings of the inquest report was also found to be based on the inquest witnesses. In the P.M.Report, the cause of death was stated by the autopsy surgeon that death was due to ante mortem injuries caused by heavy hard and blunt injury. We examined the final report which referred to the fardbayan of the applicant and based on the averment of the applicant in the fardbayan the I.O. agreed that the deceased fell down from the train. There was no mention of recovery of anything like Railway journey ticket or any other article. The inquest witness no.1 was found to be the applicant himself.

6.1 Baneras Mahto, the applicant was present in the court to adduce his oral evidence as AW/1 who was examined and cross-examined by the Ld. Counsel for the respondent. He deposed that he got information from Anil Mahto about the incident. The bodies of his wife and son were in the middle of the Railway track. The police prepared all the papers in

the house of the applicant. He did not see the papers of the police. The police took his thumb impression on a blank paper. He did not see the deceased purchasing the ticket, boarding the train and falling down from the train. He was at his house at the time of the alleged incident.

6.2 The respondent had filed DRM's report. It concluded that there was no eye-witness evidence that the death of the deceased was caused by falling down from the train. The deceased died due to being run-over by train. There was no mention in the police reports about recovery of any ticket from the deceased.

7. We observed that the applicant in the claim application pleaded that the ticket was lost after the alleged incident.

7.1 In the inquest report, the witness no.1 is found to be the applicant (Husband of deceased, Shanti Devi and father of deceased, Dharmendra Kumar). The witness no.2 was Anil Kumar who is alleged to have informed about the incident to witness no.1. The witness no.1 is found to be a direct beneficiary of the claim and an interested party. He could, therefore, not be considered as an independent witness. As per judgement passed by Hon'ble High Court Calcutta in **FMA 323 of 2018 in case Azad Sk. vs. U.O.I. Hon'ble High Court of Calcutta clearly held that reliance should be placed on independent witnesses.** It is obvious that the evidence of interested parties cannot be given full cognizance to. Interested parties have a vested interest in the outcome of the case in their favour. As far as the witness no.2 is concerned, neither his statement was recorded by the I.O. of GRPS which was required to be recorded as per Section 161 & 172 of Cr.PC nor was he produced by

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the applicant in the court. Hence, the evidence of both the witnesses were not conclusive. The statutory reports are found to have been prepared referring to the above witnesses who have not been able to prove themselves as eyewitnesses. Hence, the statutory reports are not proved to be cogent and conclusive. They have proved to be based on conjecture rather than hard evidence. There was also no other evidence adduced by the applicant in support of his claim.

Hence, the fall of the deceased was not getting proved at all. There was no eye witness who saw the deceased travelling on the train or falling from a train. As already brought out above the evidence given by inquest witnesses cannot be given cognizance to.

7.2 The DRM's report concluded that the deceased died due to run-over by a train. **There was also no mention in the police reports about recovery of any ticket from the deceased.** The findings of the DRM's report were not challenged by the counsel for the applicant by filing a specific affidavit countering the conclusion drawn in the DRM's report.

7.3 **The dead bodies of both the deceased are found to be splintered inside the Railway track. Therefore, in this particular case, preponderance of probability clearly does not point in the direction of a fall from a running train. Rather it gives rise to an overwhelming probability of being knocked down by a train.**

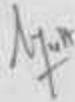
7.4 In the claim application the applicant pleaded that the deceased while travelling in train had a valid 2nd class Railway journey ticket



which was lost after the incident. As far as the statutory reports of the GRPS are concerned, in the inquest report there was not even a whisper about recovery of any ticket.

7.5 The Ld. Counsel for the applicant argued on the point that as per ruling of Hon'ble Supreme Court in a case Union of India and Rina Devi, burden of proof regarding availability of ticket will shift to the railways provided an affidavit is filed with relevant facts. But, here the applicant did not mention about the purchase & loss of the ticket in any train on the alleged date in the affidavit filed before the court. In the affidavit it was simply mentioned that he was travelling with a valid ticket. There was absolutely no mention in the affidavit about any relevant facts about the loss of the ticket. So, in obedience to the ruling of Hon'ble Supreme Court, the onus did not shift on the railways to prove that he did not have a ticket..

We also do not agree that in every case the onus was always on the Railways to prove that the deceased was not a bona fide passenger. To our mind there must be some reason to believe that the deceased was travelling by a train. To our mind, there has to be some reason to believe that the deceased entered the train after purchasing the ticket. To our mind there can be no sweeping presumption that in all cases the ticket of every deceased was necessarily lost. We cannot agree that the onus was always on the Railways to prove that the ticket has not been purchased in every case. It is seen that nowhere in the case, *Rathi Menon vs. Union of India* Hon'ble Supreme Court



held that every person who falls from a train and dies as a result of accidental fall from the train must be presumed to be a bona fide passenger travelling with the ticket. There is no such blanket liberty given to the applicants by any judgement of Hon'ble Supreme Court. Therefore as per the facts and circumstances of the case, it was not proved by the applicants that the deceased was a bona fide passenger. The claim application submitted by the applicants definitely lacks honesty.

7.6 In this particular case neither of the two sides has been able to bring any direct eyewitness evidence. Therefore we have no choice but to rely on circumstantial evidence & preponderance of probability. Preponderance of probability in the present case is that the claimants have failed to prove that the deceased was a bona fide passenger.

7.7 Section 124-A of Railways Act, 1989 unambiguously stipulates that compensation for death or injury pertaining to an untoward incident shall be admissible only in a case when the victim would have proved to have been a bona fide passenger. To put it simply, the scheme of compensation explicitly requires proof of the victim's status as a bona fide passenger. This scheme of compensation is no doubt a beneficial piece of legislation but it is meant for law abiding citizens & not for free trippers and vagabonds. Now we need to reproduce the Section 124-A of Railways Act -



Section 124-A of Railways Act states that – " Compensation on account of untoward incidents.- *When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall notwithstanding anything contained in any other law, be liable to pay compensation to such an extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident.....*"

7.8 Section 2(29) of Railways Act, 1989 has defined the meaning of a passenger. Section 2(29) of the Railways Act, 1989 defined that a "passenger" means a person travelling with a valid pass or ticket;"

Section 123(c) of Railways Act, 1989 sets out that -

"Untoward incident" means -

(1)(i) xxxxxxxxxxxx

ii) xxxxxxxxxxxx

iii) xxxxxxxxxxxx

(2) the accidental falling of any passenger from a train carrying passengers."

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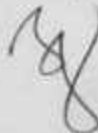
The above statutes clearly indicate that the victim who faces an untoward incident must be a passenger of a train. In the instant case the applicant could not prove the travel of the deceased at all on train.

7.9 In Appreciation of Evidence in Civil Cases it has been introduced that - "Evidence is the currency by which one fulfils the burden of proof. In order to arrive at a decision in civil, criminal or administrative cases to establish and prove the matters of defence or mitigation or to overcome a prima-facie case or presumption the essential question which one needs to answer is whether the evidence placed before them meets the required parameters or adequate enough to give such evidence."

7.10 Section 101 of Indian Evidence Act 1872 bears the heading "Burden of Proof". It reads as follows : "Whoever desires any Court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist".

When a person is about to prove the existence of any fact, it is said that the burden of proof lies on that person."

7.11 Here, in the instant case, the applicant did not produce any cogent evidence to prove the fall of the deceased from the train and bona fide of the deceased either by adducing oral evidence or by producing the necessary documents. In view of Section 101 of Evidence Act, quoted above, it is absolutely explicit that the burden of proof was upon the applicant to prove the case. But the

applicant has miserably failed to prove the case regarding the travel of the deceased on a train and that he was a bona fide passenger.

7.12 It is indisputable that the purpose of Section 124A of the Act is to provide a speedy remedy to an injured passenger or to the dependant of the deceased passenger involved in an untoward incident. Though the provision relating to the payment of the compensation in the Act can be said to be a piece of beneficial legislation, it cannot be stretched too far to reward a person who has not come with clean hands. Definitely this provision has been enacted as a piece of beneficial legislation for the injured person or the dependents of the deceased who is a law abiding citizen. This tribunal is committed to awarding compensation to the injured or the dependants of the deceased who are rightfully entitled to benefit under Section 124A of Railways Act, 1989. Simultaneously, it is also the tribunal's duty to safeguard the Government exchequer by screening out fraudulent claims.

7.13 Considering the factual elements coming out from the discussion, these issues are held against the applicant by holding that there was no untoward incident as defined under Section 123(c)(2) of the Railways Act, 1989 involving the victim and that the victim was not a bona fide passenger.



Issue No. 3 :

8. In view of the foregoing, this issue is not required for further consideration.

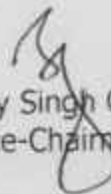
Issue No. 4 :

9. The applicants have failed to prove Issue Nos. 1 & 2. Hence, they are not entitled to any relief as prayed for.

ORDER

The case is dismissed with no order as to costs.


(S. D. Sharma)
Member (Judicial)


(Sanjay Singh Gehlot)
Vice-Chairman

