

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

QUORUM : HON'BLE SHRI SYED NISHAT ALI, MEMBER (TECHNICAL)/RCT/NGP
ACTING AS CIRCUIT BENCH OF PARENT BENCH, i.e. RCT/PNBE BENCH

Case No.: OA(IIu)/PNBE/187/2019

Date of Judgment : 29.04.2025

APPLICANT's : 1. Md. Gafar Miya, aged about 43 years
(father of the deceased)

2. Mustari Khatun, aged about 42 years,
(Mother of the deceased)

All R/o Village + P.O. Lalpur, P.S.- Kawakole,
Ditt.- Nawada (Bihar) - 805106

V/s.

RESPONDENT : Union of India
Through General Manager
East Central Railway, Hajipur

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

Applicant by Advocate Shri Pramod Kumar (on hybrid mode)

Respondent by Advocate, Shri R.K. Sinha (on hybrid mode)

JUDGEMENT

1. As per order of Hon'ble Chairman/RCT/Delhi dated 06.03.2025, after taking the consent of both the counsels, Additional Registrar/PNBE sent this file for hearing through hybrid mode to RCT/Nagpur Bench to act as Circuit Bench of parent Bench i.e. Patna Bench. Hence the matter was listed for hearing on 15.04.2025 and after hearing of the arguments from both the sides, the matter is decided on merit of the case.



2. The applicants have filed a claim application seeking compensation for the unfortunate death of Md. Arman Ansari @ Md. Arman S/o Md. Gafar Miya, aged about 22 years which occurred allegedly in an untoward incident on 25.08.2018.
3. The applicants have contended in the claim application under item 6 as under

"..... (I) That Shortly brief is that the deceased Arman Ansari was travelling along with his friend Md. Jalal Son of Abdual Rajak from Gaya Junction to Chaupan Station to meet his Fufa Md. Jawed Husain Son of Late Abdual Rahim, Village+P.O.-Dala, P.S.-Chaupan, Dist.-Sonbhadra on dated 25/08/2018. He purchasing a valid and proper Journey ticket from Gaya Junction to Chaupan Station and boarding to the train No. 13348, Patna (Palamau Link Express).

(III) That in course of Journey Araman Ansari was accidentally fell down from the running train at Kashta Station (near pole No. 478/14) due to heavy Jolt and Jostling amongst the passengers. His friend Md. Jalal who was travelling with the deceased pulled the chain to stop the train. The train was stopped. He started to search out the deceased Araman Ansari and where he saw Araman Ansari was died. He informs to the family member and Station Master Kashta. Then station Master Kashta inform to the A.S.M. Gaya.

(IV) That a Memo has been issued by A.S.M. Gaya an U/D Case No. 91/18 dated 25/08/2018 was registered rail thana Gaya and A.S.I. Rakesh Kumar Raushan will be authorized to investigation in this case.

(V) That Investigation officer reached on the spot he found co-passenger Md. Jalal was present on the spot, they completed inquest report and send to dead body for P.M. examination. After P.M. Examination handed over the dead body to his family for last crimation.

(VI) That after investigation I.O. has been submitted final report that it is a case of incidental death due to fell down from Train No. 13348, Patna-Palamau Link Express and died on the spot this incident in true.



(VII) That due to gross negligence of Railway Administration this incident has been done. He is never taking care of its passenger except its own earning which leads heavy rush and zolt in the train and that of frequent untoward incident.

(VIII) That the applicant is entitled to compensation and other reliefs....."

(Reproduced as verbatim)

4. The respondent Railway had contested the claim application by filing the written statement along with DRM Report, wherein by way of preliminary objections taken in the written statement as under,

".....Preliminary Objection:- This is not a case of Untoward incident. After perusal of the Memo, inquest report, P.M. it seems that this is a highly hypothetical case therefore in absence of any merit of this case this case is fit to be dismissed. Even DRM report opined that is a case of run over from train No--2308-DN while this train was crossing throw.

1. That this case is not maintainable on the facts as well as on Law.

(i) That it is important to state here that this is the statutory provision under the said Act/Rules that "The police on completion of investigation, shall forward the report thereof to the Magistrate, as required under the Cr.P.C" (section 10 (1) of the Railway Passengers (Manner of Investigation of Untoward Incidents) Rules 2003, but in this case the learned Magistrate has accepted the investigation report or taken cognizance on the said report or not has not stated here. Even in this case police final report has not been annexed with this application. Therefore, this case is fit to be dismissed on the sole ground alone.

(ii) That it is settled preposition of law that burden of proof of the events or matter in disputes is on judgement seekers. It is therefore reproducing **section 101 of THE INDIAN EVIDENCE ACT, 1872** 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."



It is also stated and submitted that on the point of ONUS of the case **HON'BLE DELHI HIGH COURT in GEETA vs UNION OF INDIA (2014 ACJ 1505)** after consideration of the all relevant law has observed that "Prima facie the burden was on the applicant(s) to have established in the first instance that the deceased was a bonafide passenger of a particular train and then only the question of factum of his death in an untoward incident would have arisen."

(iii) That document which has been annexed with this application which clearly supports the fact that this is highly superficial case and shows that this is a fabricated case and motive is to defalcate government money is against the settled principle of law.

2. That paragraph No 1 to 4 of the claim application is related to personal information of the applicant and the respondent is not aware of it. The applicant is put to strict proof thereof by documentary evidence.

3. That paragraph No- 5 of the claim application is matter of facts hence needs no comment.

4. That in respect of paragraph No-6 of the claim application as alleged is not admitted, hence denied. As per the facts stated here in and after perusal of the Memo, U.D. Case and after careful examination of the post mortem report, DRM report and inquest report indicates major contradictions therefore this claim application has been filed only to get unlawful gain. It is pertinent to state here that after perusal of O.A it is evident that this petition has been filed only on the basis of heresay evidence/ report and based on only on superficial and imaginary reports so genuineness of the instant case is doubtful therefore all exercise are superficial and on imaginary statements / reports so genuineness of the instant case is doubtful.

It is important to state here in that Statutory Provisions of Section 123 (2) of Railway Act, 1989 is very clear which defined the meaning of untoward incident meaning as:

Section 123 (2) of Railway Act 1989 is being reproduced for better consideration
"the accidental falling of any passenger from a train carrying passenger "

Meaning thereby two things are necessary for decision of any case (a) **accidental falling** and (b) **falling of any passenger from a train carrying passenger** therefore this is important to decide both issues apart from other important issues like bonafide passenger and others.

5. That paragraph No- 7 of the claim application is not admitted as onus is upon the applicant to prove that he was a bonafide passenger, otherwise the deceased will be treated as a trespasser. In this case ticket has not been annexed with this application or which has never been recovered from the possession of the deceased so deceased is/ was not a passenger of the train. Learned Tribunal has its prime duty to adjudicate this thing judicially. Documents filed along with O.A. are not primary or secondary evidence. These documents can't be accepted as evidence because these are not **a certified to be true copies or carbon copies of their original**; therefore it is violation of section 61 to 65 of the Indian Evidence Act so this document can't be accepted as evidence.

6. That the statement made in paragraph No-8 to 15 are not at all admitted and hence denied. Onus is upon the applicant to prove his statement. **It is also settled principle and settled by Law and adjudicated by Hon'ble Court that Onus shall lie on the applicant to prove his case.** Further the applicant has also not furnished the ticket with this claim application. The applicant has not furnished the affidavit regarding non filing of claim application in other RCTs except this one.

7. That it is important to state herein that according to the DRM Report this is a case of run over from **train No-2308 DN while this train was crossing throw on track.**

8. That paragraph No-16 of the claim application is not admitted, hence denied. Applicant is not entitled to get compensation.

9. That paragraph No-17, 18, & 19 of the claim application is the matter of record hence needs no comment.

10. That the pleading made in the applicant are hereby denied, save and except which are specifically admitted herein by the respondent.

11. That the respondent craves leave of this Hon'ble tribunal to file additional written statement if the occasion so arise or this Hon'ble Tribunal will so direct.

12. That it is there for prayed that Hon'ble Tribunal is graciously be pleased to accept this written statement and dismiss this OA with cost as the railway administration is not at all responsible for his wrongful and illegal act....."

(Reproduced as verbatim)

5. The conclusion drawn in Statutory Report of DRM is that there is no eyewitness to the accident, there is no information with the train manager, Signatories of the Accidental Death Summary are relatives of the deceased and no journey ticket was recovered.
6. Based on the facts of the present case and pleadings of the parties following issues were framed on 04.05.2021.
 1. क्या मृतक गाडी सं. 13348 का एक सदभावी यात्री था ?
 2. क्या मृतक की मृत्यु रेल अधिनियम 1989 की धारा 123 (C) की परिधि के अंतर्गत अनपेक्षित घटना में हुई थी ?
 3. क्या आवेदक/ आश्रितगण मृतक के आश्रित हैं ?
 4. क्या आवेदक/ आश्रितगण प्रतिकर की धनराशि प्राप्त करने के अधिकारी है और यदि है तो कितना ?
7. To prove their case, the applicant Gafar Miya appeared as AW-1 on 08.04.2022 and affirmed an affidavit and deposed regarding the incident that-

".....रेल दुर्घटना में मेरे बेटा का मृत्यु हुआ है। मेरा बेटा वाइक मेकैनिक का काम करता था। बेटा प्राइवेट में काम करता था। मेरा बेटा पलामु एक्सप्रेस से जा रहा था। ट्रेन 11 बजकर कुछ मिनट में थी। घटना की सूचना लगभग पौने बारह बजे मिली थी। मुझे खबर मिली कि मेरा बेटा कांस्टा स्टेशन पर दुर्घटनाग्रस्त हो गया है। मेरा पुत्र और मो. जलाल एक ही बोगी में सफर कर रहा था। वह दोनों गेट पर खड़े थे, क्योंकि बोगी में बहुत भीड़ थी। यह मैं नहीं बता सकता कि मेरा बेटा ट्रेन में लटक कर यात्रा कर रहा था। यह मैं नहीं बता सकता कि मेरा बेटा के आगे कुछ लोग खड़ा था कि नहीं। बेटा के



पास से यात्रा टिकट नहीं मिला था। मेरा बेटा और बेटा का दोस्त मो. जलाल का टिकट एक ही टिकट में था। मो. जलाल और मेरा बेटा एक साथ यात्रा कर रहा था, यात्रा का कोई लिखित सबूत कोर्ट में पेश नहीं किया है। मो. जलाल ने मेरा बेटा को गिरते हुए देखा था। मैं मो. जलाल का गवाही करायेंगे। यह कहना गलत है कि मेरा बेटा मो. जलाल के साथ यात्रा न कर रहे हो। यह कहना गलत है कि मैं झुठा गवाही दे रहा हूँ। यह कहना गलत है कि मेरा बेटा की मृत्यु रेलवे लाइन पार करने के दौरान हुई है। मैं बेटा के साथ यात्रा नहीं कर रहा था। मैं अपने पुत्र का टिकट कटाने गाड़ी पर चढ़ते या गिरते हुए नहीं देखा हूँ। मैं मो. जलाल के कहने पर यह गवाही दे रहा हूँ। यह कहना गलत है कि मेरा बेटा रेलवे का एक वैध यात्री न हो। यह कहना गलत है कि मेरा बेटा की मृत्यु रेलवे लाइन पार करने के दौरान हुई हो” (Reproduced as verbatim)

8. In his affidavit he has affirmed as under –

“..... यह कि यह अपेक्षित घटना दिनांक 25.08.2018 की है इस घटना में मो० अरमान अंसारी उर्फ मो० अरमान की मृत्यु हुई थी जो मेरा लड़का था वह अविवाहित था मेरा लड़का काफी तेज तर्रार एवं मेहनतकश था महीने के करीब पन्द्रह से बीस हजार रुपये कमा लेता था जिससे सारा घर का खर्च बिजेता था अब हमलोग बेसहारा हो गये हैं।

2. यह कि मेरा लड़का अपने दोस्त मो. जलाल पिता अब्दुल रजक ग्राम लालपुर के साथ अपने फुफा मो. जावेद हुसैन ग्राम- डाला, थाना- चौपाल, जिला – सोनभद्रा से मिलने जा रहा था।

3. यह कि मेरा लड़का मृतक मो. अरमान अंसारी उर्फ मो. अमीन गया जं. से चौपाल स्टेशन तक का साधारण टिकट खरीदकर अपने दोस्त मो. जलाल के साथ पटना पलामू लीक ए. से गया से चौपाल जा रहा था उक्त ट्रेन में काफी भीड़ थी ट्रेन में आई जर्क एवं यात्रियों के भीड़ के कारण मो. अरमान अंसारी चलती ट्रेन से काष्ठा स्टेशन के पास गिर गया था दोस्त मो. जलाल के द्वारा ट्रेन रोकी गई थी। घटना पर जाने के बाद पाया गया कि मो. अरमान अंसारी मर चुका था।

4. यह कि दोनों व्यक्ति का यात्रा टिकट एक ही साथ था जो मृतक अरमान अंसारी के पास था, वह भी घटना के कारण खो गया है।

5. यह कि इस दावा बाद में दाखिल दस्तावेज जैसे (1) मेमो (2) एफ० आई० आर० (3) मृत्यु समीक्षा रिपोर्ट (4) शव चालान (5) पोस्टमार्टम रिपोर्ट (6) अंतिम प्रतिवेदन (7) पारिवारिक सूची (8) बैंक पासबुक (9) आधार कार्ड आदि को प्रदर्श करने की कृपा की जाय।

6. यह कि मेरा पुत्र अविवाहित था उसके उपर निम्नलिखित लोग आश्रित थे

(1) गफार मियाँ 46 वर्ष पिता

(2) मुसतरी खातुन उम्र करीब 45 वर्ष माँ

यह कि हमलोगों द्वारा लाया गया दावा बाद सही वो सत्य है तथा इसके अलावे अलग, से दूसरा कोई केश दाखिल नहीं किया है.....” (Reproduced as verbatim)



9. In this case, on 08.04.2022 after the evidence of AW-1, the applicant counsel requested to give time to produce additional evidence. After that several opportunities were given to produce additional evidence, but they opted not appear before the Hon'ble Tribunal despite several opportunities given from 13.07.2022, 19.01.2023, 20.09.2023, 28.02.2024, 04.09.2024 and then on 09.10.2024. On 09.10.2024 the respondent counsel also opted not to lead any evidence. Hence, this case was decided on the basis of documents available on the file and the arguments advanced by the counsels.

Heard both the counsels and our findings are as follows.

Findings with reasons:

ISSUE No. 1 & 2:

10. Both these issues being inter-connected are being taken up together for discussion and decision.
11. Applicant counsel mentioned that the deceased Arman Ansari was travelling along with his friend Md. Jalal Son of Abdual Rajak from Gaya Junction to Chaupan Station to meet his relatives on dated 25/08/2018. He purchasing a valid and proper Journey ticket from Gaya Junction to Chaupan Station and boarding to the train No. 13348, Patna (Palamau Link Express). In course of Journey Araman Ansari was accidentally fell down from the running train at Kashta Station (near pole No. 478/14) due to heavy Jolt and Jostling amongst the passengers. His friend Md. Jalal who was travelling with the deceased pulled the chain to stop the train. The train was stopped. He started to search out the deceased Araman Ansari and where he saw Araman Ansari was died. He informs to the family member and Station Master Kashta.

12. Per contra the learned Counsel for the Respondent contended that as per the Statutory Report of DRM the deceased was not travelling by any train and no any journey ticket was recovered from the deceased. In this case ticket has not been annexed with this application or which has never been recovered from the possession of the deceased so deceased was not a bonafide passenger of the train. As per the record of Station Dairy/ Kashtha the deceased died due to run over by train 2308 DN at KM near 478/14. No ticket is mentioned in the claim application and it is also not mention in the inquest report also. Applicants mentioned in their claim application that Md. Jalal who was travelling with the deceased pulled the chain to stop the train and when the train was stopped, he started to search for the deceased Araman Ansari. Md. Jalal may be the eyewitness of the incidence but the so-called eyewitness had not come up to before any investigation authority to record his statement. Even applicant failed to produce him before the court as eyewitness. In view of above the facts it is clear that deceased has not travelled by any train and not purchased any journey ticket for the intended journey. There was no eye witness of the incident to prove that the deceased was travelling and fell down from any running train.
13. Section 124-A of The Railways Act, 1989 (for short, 'the Act') 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*. 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 bonafide 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 is a bona fide passenger of the train.

14. I have gone through the pleadings, documents and evidence available on record. I have also considered the argument on the behalf of respondent railways and applicants. In this regard, it is held by the Hon'ble Supreme Court in the matter of Union of India v/s Rina Devi 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 negative 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 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."

15. In this case it is an admitted fact that no journey ticket was recovered from the deceased. From the touch stone of the landmark judgment of the Hon'ble Supreme Court it is required that the filing of affidavit with the relevant facts are needed to establish it further. In this case it is an admitted fact that no journey ticket was recovered from the deceased in the inquest. Now, it is to be decided whether the applicants have discharged their initial onus burden to prove the bonafide or not. Although AW-1 had filed an affidavit but Gafar Miya (AW-1) in his cross



examination had admitted that no journey ticket was recovered from the deceased. The deceased and his co-passenger friend Md. Jalal had the same ticket. It is clear that AW-1 was not an eye witness of the purchasing of the journey ticket and no any luggage was recovered from the deceased. In his affidavit he submitted that the deceased had purchased the journey ticket and travelled with his friend Md. Jalal. But no corroborative evidence is filed by the applicants regarding the journey ticket of the deceased. There is no mention of seizure of any luggage or railway ticket from the deceased in the Inquest Panchnama. DRM's Statutory Report also concludes the victim was not found in possession of any ticket for journey by train. Based on the pleading made by both the parties and the evidence on record, the train journey of the deceased cannot be established in the absence of a journey ticket. Applicant had failed to prove that on the relevant day the deceased having a valid ticket and traveling as a bona fide passenger because till date applicant had not produced any documentary evidence i.e. journey ticket to establish his bonafide.

16. In the present case, it is crystal clear that the no journey ticket was recovered from the deceased at the time of inquest. It is clearly shows that the deceased was not purchased any Railway journey ticket and he was not a Bonafide Passenger of any train.
17. Respondent counsel maintained that in the absence of any direct or indirect proof with relevant facts regarding this issue of journey ticket and its possession only fact surface that the deceased was not traveling with a valid ticket, hence cannot be termed as a bonafide passenger. It is concluded that the initial onus of proving the bonafide is not discharged by the applicants and hence, this issue is decided against the applicants.



18. So far as the manner and circumstances leading to the death of the deceased is concerned there is no eye witness to the incident. Neither any such evidence was produced during the proceedings by the Applicant and his counsel to prove it.
19. Although, the applicant submitted in their claim application that Md. Jalal was travelling with the deceased and he was the eyewitness of the alleged incident. After perusal of the records, it is seen that the Hon'ble Tribunal has given number of chances to record his statement as a witness, but applicant failed to produced him before the court.
20. The inquest proceedings in this case were started by GRP/Gaya after receiving the Memo issued by on Dy. Station Manager/Gaya on 25.08.2018 wherein it is mention that
 "कक्षा स्टे. मा. श्री राजकुमार द्वारा प्राप्त सूचनानुसार एक अज्ञात व्यक्ति पुरुष उम्र लगभग 22 वर्ष कक्षा स्टेशन पर किमी सं. 478/14 अप लूप लाईन व डाउन मेन लाइन के बीच मृत अवस्था में है कृपया उचित कार्रवाई करें।" (Reproduced as verbatim)
21. After receiving the information GRP/Gaya attended the spot and prepared inquest report (मृत्यु समीक्षा रिपोर्ट). After perusal of documents inquest report where in it is mentioned that
 ".....शव चित्त अवस्था में, सिर पूरब, पैर पश्चिम, आंख खुला। शव का सिर फटा हुआ, आंख के पास फटा हुआ, दोनों पैर टूटा हुआ, पूरे शरीर में खरोंच के निशान....." (Reproduced as verbatim)
22. Such extensive damage and destruction would result only when the person is run over by a running train but not in the case of a mere fall from the train during the travel.
23. In the post mortem report of the deceased, the injuries mentioned is as under- A) Lacerated wound (i) Right, temporal parietal and occipital scale

(5" X 2" X cervical cavity) with protrusion contraire and lacerated brain tissues. ii) Right forehead (1"X 2" muscle deep), iii) Right Arm (2"x1" bone deep) with fracture arm bone, iv) Left knee posterior (3"X1½") bone deep left upper leg posterior (3"X1") bone deep with fracture of leg bones. B) Contusion Lt arm (3"X2") with fracture of arm bone. Opinion - All injuries are ante-mortem can be hard and blunt forces substance /Surface. This would clearly indicate that the deceased must have been run over by the train as otherwise the body of the deceased could how have been damaged so extensively.

24. Hon'ble High Court of Judicature at Bombay has also passed judgment in First Appeal No.290 of 2021 Meenadevi Jaiprakash Gupta and others v/s UOI in which Hon'ble High Court dismissed the appeal of the applicants on the basis of injuries suffered by the deceased. It is held by the Hon'ble High Court in para 12 that :

12 *Coming to the nature of injuries sustained by the deceased which are reflected in the inquest panchanama and the postmortem report, it is apparent that the injuries are deeply eschewed on the body of the deceased and from the stomach back side, the injury is described to be 15 X 16 cm long curve injury, with flesh being protruding out. The accident had broken the left ear of the deceased and right leg ankle was found to be torn and skin was seeing hanging. The nails of the tow were removed and stretching marks were noticed on various parts of the body.*

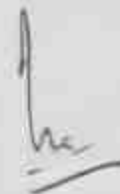
The nature of injuries that has been described in the inquest panchanama and in the postmortem note which referred to fracture of upper femur as well as lower hip radius bone and fresh injuries



to the ankle as well as multiple abrasions over various parts of the body like the upper arm, abdomen and chest are reflective of the deceased being dragged over some distance and the injuries are not indicative of fall from the running train. The cause of death is opined as "Haemorrhagic shock due to polytrauma".

In para 13, it is held by the Hon'ble High Court that:

- 13. Having a close assessment of nature of injuries sustained by the deceased, it is indicative of he being knocked down by a train and the Tribunal has rightly concluded that the injuries are not a result of accidental fall. Further since no material brought on record by the applicants to establish that the injuries are sustained by a fall, in this circumstance the Tribunal is justified in placing reliance upon the DRM report, recording that the alleged incident dated 28.04.2013 occurred due to the deceased's own negligence and carelessness as he sustained serious injuries as the deceased was present in the Railway operational area (tracks) unauthorizedly.*
25. The nature of injuries sustained by the deceased and the manner in which parts of the dead body of the deceased were severely injured will be suggestive of the fact that the deceased must have been run over by the train. It is not the case of an untoward incident and this type of injuries only possible in a case of runover by a train. The deceased did not travel by any train but got runover by train while crossing the railway track unauthorizedly.
26. Here in the instant case, the applicant has not been able to prove that the deceased was traveling by any train. No journey ticket was recovered from the deceased. Applicant stated in his claim application that the deceased was travelled by train No. 13348 Palamau Link Express from



Gaya Junction to Chaupan Station with his friend namely Md. Jalal and fell down from the running train at KM 478/14 near Kashta Station. His friend and co-passenger with the deceased pulled the chain to stop the train and after the train stopped, he reached out the spot and informed to the family members of the deceased and Station master/Kashta. The co-passenger and the eye witness of the alleged incident never came before the investigation officer and not given any statement regarding the alleged incident. After perusal of the records, it is found that this Hon'ble Tribunal had given number of chances to the applicant to produce eyewitness before the court but they failed. Applicant had failed to prove that on the relevant day the deceased was traveling and fell down from the running train because till date applicant had not produced any documentary evidence or any eye witness. Neither the relevant facts are proving is that are brought out during the argument advanced by the applicant counsel. In these circumstances, it cannot be said that the deceased was traveling in the train on he had suffered an accidental fall from the train.

27. Shri Arvind Prasad Varma/ Guard of the train No. 13348 had given the statement to the investigating authority. Wherein it is stated that on 24.08.18, he was on duty in train no. 13348 UP Palamu Barkakana Express as a Guard. His train departed from Gaya station at 22.24 hrs. The train stood in the UP loop line at Kashta station at 22.40 hrs and after Rajdhani Express passed from the UP Main line, his train departed at 23.35 hrs when the signal turned green. Further, the train kept stopping and departing at its regular halting stations and reached Garhwa Road station at 03.50 hrs on 25.08.18. After finishing his duty, he handed over the charge to the next guard and went to the running room for rest after getting relieved from duty. During his duty, he did not see any passenger falling from the train and getting run over at Kashta station, nor did



anyone tell him about such incident. He did not find the train overcrowded and no passenger made any complaint to him and there was no ACP in the train as well.

28. Respondent counsel maintained that the death of the deceased was not due to untoward incident. It is the case of runover and the deceased was runover by 2308 DN. It is mentioned in the station diary of Kashta station that on dated 24.08.2018 one unknown person runover by 2308 DN at KM near 478/14 age approximate 22 year old (Male) Reported to SCNL, GRP/ Gaya through PA Gaya 23.42. Train No. 2308 DN Express through passed Kashta station at 23.17 hrs. Hence, the deceased was not involved in any untoward incident.
29. The applicant has not adduced any evidence or witness or documents which could establish the circumstances under which the death of Md. Araman Ansari s/o Gafar Miya (deceased). The applicant has not been able to prove that the deceased was travelling in any train and he had fallen down from any train carrying passengers. Respondent counsel mentioned that the pleadings of the applicant sufficiently indicate that they have not come up with clean hands and have coined a fictitious story based upon conjecture and presumption. There is no evidence on record even to remotely suggest that the death of Md. Araman Ansari s/o Gafar Miya (deceased) was due to fall from the train so as to bring the case within the meaning of untoward incident defined u/s 123 (c) (2) of the Railways Act, 1989. *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 the deceased was not involved in any untoward incident and he had



run over by train No. 2308 DN while passing the track unauthorizedly. It is, therefore, 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. These issues, therefore, decided accordingly against the applicant.

ISSUE NO. 3

30. In view of the findings on Issues No. 1 and 2, discussion on this issue would be redundant exercise. This issue is disposed of accordingly.

ISSUE No. 4

31. In my considered view and opinion, the findings on issue No.1 and 2 go against the applicants and the applicant is not entitled to any compensation. This issue is answered accordingly.

ORDER

32. The claim application is dismissed with no order as to costs.
33. File to be sent to the parent Bench i.e. RCT/PNBE Bench.



(Syed Nishat Ali)

Member (Technical)/RCT/NGP

Acting as Circuit Bench of parent Bench

i.e. RCT/PNBE Bench

Nagpur

Date : 29.04.2025