

BEFORE RAILWAY CLAIMS TRIBUNAL,
PATNA BENCH

Through Hybrid Mode in the Circuit Bench at RCT/Bhubaneswar

**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/192/2020
Date of filing of claim application : 26.02.2020
Date of Judgement : 15.09.2025

1. Pinkee Devi, wife of the deceased, Mahesh Saw
2. Gautam Kumar, son of the deceased, Mahesh Saw
3. Satyam Kumar, son of the deceased, Mahesh Saw

Residing at :
Vill. Dargahi Tola, P.O. Lemua Bagh, P.S. Pandarak,
Dist. Patna, PIN 803221 PatnaApplicant

-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.
Mrs. P.R.Laxmi, Ld. Counsel for the Respondent.

निर्णय

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 applicant i.e. wife and two sons of the deceased, Mahesh Saw for



compensation on account of death of the victim, who allegedly died in an untoward incident.

2. Brief history of the case of the applicant is that the deceased, Mahesh Saw was travelling as a bona fide passenger having 2nd class ticket from Khusrupur to Pandarak Station by train no.18621 Dn. Patlipurtra Express on 19.12.2019. In the course of his journey he fell down from the said running train near Karauta Station and he died on the spot. The relatives of the deceased went to the spot and they identified the deceased. Based on the complaint lodged by Pinkee Devi, UD case No.54/19 dtd.19.12.2019 was registered and thereafter inquiry was made by Khusrupur GRPS.

3. The respondent railway has filed a written statement denying the facts stated in the claim application. It was also contended that there was no mention of the alleged incident in the station diary of Khusrupur.

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, Pinkee Devi, wife of the deceased, tendered her affidavit. She filed certain documents which were exhibited. She 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.2 is taken up first for the purpose of discussion and orders.

Issue No. 2 :

6. First, we shall make a critical determination regarding the deceased's legitimacy as a passenger holding a valid ticket because 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 will be proved to be a bona fide passenger.

6.1 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.

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6.2 Pinkee Devi, wife of the deceased tendered her affidavit and was present in the court as AW/1. When she was cross-examined by the counsel for the respondent, she stated that she had neither seen her deceased husband purchasing the ticket or boarding the train nor did she see him falling down from the train. So, the witness (AW/1) has emerged as hearsay evidence.

6.3 As far as the statutory reports of the GRPS are concerned, both in the inquest report as well as in the Final Report, there was no whisper about recovery of any ticket.

6.4 The respondent had filed DRM's report wherein it was highlighted that there was no evidence in the police report about recovery of any Railway journey ticket from the deceased.

6.5 In the claim application it was pleaded that the ticket was lost after the alleged incident. In the event of loss of the ticket, in the case Union of India Vs Rina Devi, Hon'ble Apex Court held that burden of proof regarding availability of ticket will shift to the railways provided an affidavit is filed with relevant facts that ticket was purchased but lost. Here in this case nothing was mentioned by the applicant towards loss of ticket in the affidavit filed by the applicant. Hence the burden of proof has not shifted to the railways.

6.6 We do not agree with the contention of the Ld. Counsel for the applicant on the point that onus on the Railways to prove that the deceased was not a bona fide passenger, because to

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our mind there must be some reason to believe that the deceased was travelling by the train. To our mind, there has to be some reason to believe that the deceased entered the train after purchasing the ticket & travelled in the train. To our mind there can be no sweeping presumption that in all cases the ticket of every deceased is necessarily lost. In view of what has been brought out above, the onus that the deceased was a ticketless traveller has not shifted on the Railways. It is seen that nowhere in the case, *Rathi Menon vs. Union of India* Hon'ble Supreme Court holds 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. As per the facts and circumstances of this case, it is not proved by the applicants that the deceased was a bona fide passenger. The claim application submitted by the applicants definitely lacks honesty.

6.7 A Civil case is decided on preponderance of probabilities. Preponderance of probabilities in the present case is that the claimants have failed to prove that the deceased was a bona fide passenger.

6.8 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 will be proved to be 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.....*"

6.9 Section 2(29) of Railways Act, 1989 has defined the meaning of passenger. Section 2(29) of the Railways Act, 1989 defined that "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."

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 that he was a bona fide passenger.

6.10 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."

6.11 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."

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6.12 Here, in the instant case, the applicant did not produce any cogent evidence to prove the bona fides of the deceased either by adducing oral evidence or by producing the documents which were relied upon by the applicants. 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 that he was a bona fide passenger.

6.13 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. From the foregoing discussion, *no conclusive evidence of bona fide of the victim has emerged.*



7.1 The Court will always give due cognizance to the best available evidence. Hon'ble High Court of Andhra Pradesh has held in case No.CMA 947 of 2008 (Jetty Naga Lakshmi Parvathi & Others v/s The Union of India) that ".....from Section 101 of the Indian Evidence Act, 1872, it is clear that the applicants, having come to the court asserting some facts, must prove that the death of the deceased had taken place in an untoward incident and that the death occurred while the deceased was travelling in a train carrying passengers as a passenger with valid ticket. Therefore having asserted that the deceased died in an untoward incident and he was having a valid ticket at the time of his death, **the initial burden lies on the applicants to establish the same. The initial burden of the applicants never shifts unless the respondent admits the assertions made by the applicants. Such evidence is lacking in this case.**"

7.2 **In the instant case, it is clear that the applicant could not adduce cogent evidence to prove that the deceased was a bona fide passenger nor did she affirm through an affidavit the relevant facts that ticket was purchased but lost. In obedience to the ruling in Union of India Vs Rina Devi passed by Hon'ble Apex Court the burden of proof has not shifted to the railways regarding bona fides of the deceased.**

7.3 Considering the factual elements coming out from the discussion wherein it has become crystal clear that the deceased was not a bona fide passenger. This issue is, therefore, 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.



Issue No. 1 :

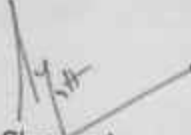
8. Since, the victim has not been proved to be a bona fide passenger, the alleged incident cannot be considered as an untoward incident as per section 123 (c) (2) of the Railways Act. Therefore, it is superfluous to discuss this issue any further.

Issue No.3 & 4 :

9. Since the applicants have failed to prove Issue Nos. 1 & 2. Hence, these issues are not relevant for discussion at this stage.

ORDER

The case is dismissed with no order as to costs.


(S. D. Sharma)
Member (Judicial)


(Sanjay Singh Gehlot)
Vice-Chairman