



रेल दावा न्यायाधिकरण, पटना

RAILWAY CLAIMS TRIBUNAL, PATNA

No. OA(Ilu)/PNBE/194/2020

CORAM: Shri Syed Nishat Ali, Hon'ble Member (Technical), RCT/NGP, at RCT Patna

Date of Registration: 20.04.2020

Date of decision: 09.12.2024

Shalini Devi & Others

All R/o Village/ Mohalla- Govindpur,
P.O: Sonsa, P.S.: Rahui,
District- Nalanda,
Bihar. 803221

Present Address:

All R/o Village/ Mohalla- Sbaipura, Dinapur
P.O: Khagaul, P.S.: Khagaul,
District- Patna,
Bihar. 80110

... Applicant

Versus

Union of India,

Through the General Manager,
East Central Railway, Hajipur

... Respondent

Claim for ₹ 10,00,000/- with interest.

Appearances: Shri P.K. Gupta
Smt R.K. Sinha

Ld. counsel for the applicant
Ld. counsel for the respondent

निर्णय

JUDGEMENT

BY SHRI. SYED NISHAT ALI, MEMBER (TECHNICAL):

1. A claim application has been filed by Shalini Devi and Others before this Tribunal, under Section 16 of the Railways Act, 1987, for the payment of compensation of ₹ 10,00,000/- (Rupees Ten Lakh only) along with interest on account of death of Ajay Kumar, allegedly in an untoward incident.
2. The brief facts of the case as stated by the applicant are that on 12.03.2019 the deceased Ajay Kumar, having a 2nd class travelling ticket from Jehanabad to Patna boarded train no. 63260 Dn, Gaya- Patna passenger train. In the course of travelling, he fell from the said running train near Yadavchak Pul and he died on the spot. On the information given by the unknown person through the mobile of the deceased, the relatives of the deceased went to the spot and identified the deceased. Thereafter, the relatives of the deceased brought the deceased to his rental house. Thereafter the information was given by Vijay Kumar to the office of Patna High Court and thereafter as per the direction by the said office the body of the deceased was brought to G.R.P., Patna near Railway Electrical colony through Ambulance. The G.R.P., Patna entertained the body of the deceased and inquest report was prepared on that very place. On completion of all formalities the body of the deceased was sent for post mortem. After post mortem the dead body of the deceased was handed over to the relatives. On the basis of the fardbayan, a U.D. case no. 25/19 dated 13.03.2019 was registered at Rail P.S. Patna Jn. The journey ticket was lost in untoward incident.
3. On receipt of notice, the Respondent Railway Administration appeared before the Tribunal through its counsel and filed a written statement stating that after perusal of the U.D. case, written complaints, police final report and inquest report indicates major contradictions; therefore, the

claim application had been filed only to get unlawful gain. It was pertinent to state here that after perusal of written statement it was evident that this complaint had been given only on the basis of hearsay and based on superficial and imaginary reports. So the genuineness of the instant case was doubtful, therefore, all the exercise were superficial and on imaginary statements of the maker of the written report as he was not an eye witness. Ticket had not been recovered at the time of inquest. The inquest had not been prepared at the place of occurrence rather after movement on several places of the deceased body the inquest report was prepared at police station. The applicants were not entitled to get compensation. Dismissal of the case was prayed for.

4. Based on rival pleadings the Tribunal framed the following issues for adjudication on 02.07.2021:
 - a. *Whether the deceased was a bona fide passenger of train no. 63260?*
 - b. *Whether death of the deceased is covered under section 123 (c) (2) of the Railway Act, 1989?*
 - c. *Whether the applicant/ dependents are dependents of the deceased?*
 - d. *Whether the applicant/dependents are entitled to receive compensation, if yes, to what extent?*
5. In support of the claim, the applicant had filed the copies of the following documents along with the claim application:

Sr.	Document	Page
1.	Certified copy of fardbayan of Vijay Kumar	06-07
2.	Certified copy of Inquest report	08
3.	Certified copy of dead body challan	09
4.	Certified copy of dead body receiving	10
5.	Certified copy of application of Shalini Devi	11
6.	Certified copy of F.I.R.	12
7.	Certified copy of Final report	13-14

Sr.	Document	Page
8.	Certified copy of Postmortem report	15
9.	Photo copy of Aadhaar card of the deceased	16
10.	Photo copy of Aadhaar card of the applicants	17-20
11.	Photo copy of the bank passbook	21-22
12.	Photo copy of family member certificate	23

6. The applicant, Shalini Devi, AW-1 was cross-examined by Shri R.K. Sinha, Railway advocate on 27.06.2023.
7. Vijay Kumar, AW-2 was cross- examined by Shri Radhika Raman, Railway advocate on 12.09.2023
8. The Respondent filed the DRM's Report along with supporting documents, collectively marked as Ex.R1, but did not adduce any oral evidence.

कारणों सहित निर्णय

DECISION WITH REASONS

9. Heard the arguments of both the parties and perused the evidence on record, findings on the issues are as under:

Issue Nos. 1 & 2:

Since these two issues are interlinked, they are being taken up together:

10. The learned counsel for the applicant submitted that on 12.03.2019 the deceased Ajay Kumar, having a 2nd class travelling ticket from Jehanabad to Patna boarded train no. 63260 Dn, Gaya-

Patna passenger train. In the course of travelling, he fell from the said running train near Yadavchak Pul and he died on the spot. On the information given by the unknown person through the mobile of the deceased, the relatives of the deceased went to the spot and identified the deceased. Thereafter, the relatives of the deceased brought the deceased to his rental house. Thereafter the information was given by Vijay Kumar to the office of Patna High Court and thereafter as per the direction by the said office the body of the deceased was brought to G.R.P., Patna near Railway Electrical colony through Ambulance. The G.R.P., Patna entertained the body of the deceased and inquest report was prepared on that very place. On completion of all formalities the body of the deceased was sent for post mortem. After post mortem the dead body of the deceased was handed over to the relatives. On the basis of the fardbayan, a U.D. case no. 25/19 dated 13.03.2019 was registered at Rail P.S. Patna Jn. The journey ticket was lost in untoward incident. Ld. Counsel for the applicant submitted that the deceased was a *bona fide* passenger and died in an untoward incident, thus, the applicants being the dependents of the deceased are entitled to compensation claimed for in the claim application.

11. In addition to averments made in the written statement, learned counsel for the Respondent submitted that the deceased was neither a *bona fide* passenger nor untoward incident occurred. No journey ticket was recovered from the possession of the deceased. No station memo was enclosed with the original application. From perusal of the DRM's report it is evident that the deceased was not travelling with any train. There is no eye witness of the alleged incident. All the facts stated in the Original Application are far from the truth. From the above facts and circumstances of the case, the submissions made by the applicant are baseless and devoid of merits, hence, the Ld. Counsel for the Respondent submitted that the applicant was not entitled to any compensation claimed for and prayed for dismissal of the claim application.

12. The Railways Act, 1989 defines an untoward incident in Section 123 as the following:

[(c) "untoward incident" means—

(1) (i) the commission of a terrorist act within the meaning of sub-section (1) of section (3) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

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

13. As is clear from the word and spirit of the law under section 123 (c) (2) of the Railways Act, 1989, an untoward incident can only apply to a passenger. A passenger is also defined in Section 2 of the Act as follows:

2. Definitions- In this Act, unless the context otherwise requires,-

... (29) "passenger" means a person travelling with a valid pass or ticket;..."

As such, in absence of a ticket a person travelling on a train would not be considered a passenger and thus not comes under the purview of S. 123 (c) (2).

14. The Inquest report prepared on 13.03.2019 and mentioned the following in the body of the report:

Column 7:

शर्ट फुल उजला चेकदार टिशर्ट हाफ नीला रंग का फुल पैट उजला धारीदार जघिया भुरा रंग का

There was no recovery of journey ticket.

Column 9:

किसी चलती डाउन ट्रेन से गिरकर बुरी तरह से जख्मी होने से मृत्यु होना बताया गया।

15. The Final report submitted by Rail Thana, Patna Jn. concluded the following:

"... अतः मृतक अजय कुमार ... की मृत्यु गाड़ी सं० 63263 डा० सवारी गाड़ी से गीर कर मृत्यु होना अंतिम प्रतिवेदन सं० 25/19 दिनांक 24.9.19 समर्पित करता हूँ।"

16. The Post Mortem examination, was conducted on 13.03.2019 at 02:20 PM. The PM report concluded as follows:

Opinion

1. Death was due to combined effect of Head injuries and haemorrhage shock.
2. Caused by hard and blunt force impact
3. Time elapsed since death was within 24:00 hours (app.) from the time of PM examination

17. We shall be guided by the decision of the Hon'ble Supreme Court in the case of Civil Appeal No. 4945 of 2017 dated 09 May 2018, Union of India vs. Rina Devi, where it was held:

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 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.

18. AW-1 Shalini Devi in her cross- examination stated:

" घटना 12.08.2019 को मेरे पति अजय कुमार की मृत्यु हुई थी। घटना के समय मैं अपने घर पर थी। पति से मुझसे बात हुई थी। पति अजय कुमार ने मुझे बताये थे कि मैं जहानाबाद जा रहा हूँ रात को मैं वापस आऊंगा। घटना के पश्चात् मेरे पति के जेब से टिकट मिला था। गवाह को मृत्यु समीक्षा रिपोर्ट दिखाया गया उन्होंने देखकर बतायी कि मृत्यु समीक्षा रिपोर्ट में टिकट का कोई जिक्र नहीं है। यह यू डी केस मेरे लिखित प्रार्थना- पत्र के आधार पर दर्ज की गयी है। लिखित

आवेदन पत्र जो अनेकवार 5 में संलग्न है को दिखाया गया उसमें भी टिकट न के बारे में कोई जानकारी नहीं है। घटना करथौल में हुई थी। मैं घटनास्थल पर गयी थी। घटनास्थल से मैं मृतक को अपने किराये के मकान में ले गया। विजय कुमार मेरे जेठ हैं राजीव रंजन मेरे छोटे देवर हैं। आज मैं गवाही सच- सच दे रही हूँ। *

19. AW-2, Vijay Kumar in his cross- examination stated :

* 12.03.2019 को मैं अपने कार्यालय में था । अजय कुमार मेरे छोटे भाई हैं। शालिनी देवी मेरे मृतक भाई के पत्नी हैं। मैंने मृतक को भाई को टिकट कटाते एवं ट्रेन से गिरते हुए नहीं देखा था। सूचना मिलने के बाद डेड बॉडी को पहचान किया ।

यह कहना गलत है कि शालिनी देवी को मुआवजा की राशि मिल जाये इसलिए मैं न्यायालय में झुठी गवाही देने के लिए आया हूँ। *

20. However, there was no mention of recovery of journey ticket in the inquest report. AW-2, Vijay Kumar in his cross examination admitted that he had not seen the deceased purchasing the journey ticket and falling from it. Thus, it is evident from the testimony of AW-1 and AW-2 that they were neither eye witness of the said incident nor purchasing of the journey ticket by the deceased. Further, the applicant has not produced anyone who had seen deceased purchasing journey ticket and falling from the alleged train.

21. There was neither any eyewitness of the purchase of the said journey ticket nor of the alleged incident. Since there was no corroborative evidence of the purchase of a valid journey ticket, the applicant was not able to discharge their initial burden of establishing that the deceased was a bona fide passenger with a valid ticket. Thus, the onus could not be shifted to the Respondents.

22. The DRM's report mentioned:

* जांच में पाये गये साक्ष्यों, गवाहों के बयान तथा परिस्थितिजन्य साक्ष्यों के आधार पर यह तथ्य स्पष्ट होता है कि मृतक अजय कुमार पौ० स्क० राजेन्द्र राम, सा०- गोविंदपुर, था०- रुहई, जिला-

नालंदा जो किसी ट्रेन से यात्रा नहीं कर रहा था और न ही उनके पास से कोई रेल यात्रा टिकट पाया गया। घटित घटना का कोई प्रत्यक्षदर्शी गवाह नहीं है। मृतक की मृत्यु रेल/ रेलक्षेत्र से सम्बंधित नहीं है। अतः उपरोक्त परिस्थिति में रेल प्रशासन कि कोई जिम्मेवारी नहीं बनती है। ... "

23. In view of the above discussion, I am of the view that the applicant failed to prove that the deceased was a *bona fide* passenger and met with an alleged untoward incident during his valid train journey in terms of Section 123(c)(2) of the Railways Act, 1989. Accordingly, the issue no. 01 & 02 are decided against applicant.

Issue Nos. 3 & 4:

24. In the light of findings on the issues No. 1 & 2 above, wherein it is held that the deceased was not a *bona fide* passenger of the train in question nor met with the alleged untoward incident, any further discussion on the issues no. 3 & 4 of dependency and compensation will be a redundant exercise.

ORDERED

25. That the applicants are not entitled for any compensation and the claim application of the applicant being devoid of merits is dismissed on contest with no order as to costs.
26. Copy of this order be supplied to both the parties free of costs, and the file, after its due completion, be consigned to the Record Room.


(Syed Nishat Ali)
Member (Technical)
RCT Nagpur
At RCT Patna
09.12.2024