

1. Md. Arif, E/o late Md. Asif.
2. Azmat Khatoon, M/o late Md. Asif.

..... Applicants.

Resident of Ward No.8,
Mohalla Manak Tola,
Mokama,
P.O + P.S: Mokama,
Dist: Patna
Bihar
Pin Code – 803 302

- VERSUS -

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

..... Respondent.

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 Dibesh Nandan.

Counsel for the Respondent : Smt. P.R. Laxmi.

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 son of applicant nos.1 & 2, namely, late Md. Asif (**the deceased**), who was allegedly travelling by a train on 16.02.2022, met with an accident and died.



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1.1 It is alleged by the claimants that on 16.02.2022, the victim, Md. Asif, since deceased having a valid railway ticket, waiting for a train at platform of Gulzarbagh railway station. It is further alleged by the claimants that he was waiting at Gulzarbagh station to catch the train no.12567 Up and due to heavy rush at the platform, he fell down, sustained injuries and subsequently died.

1.2 It is also alleged that the victim had a railway ticket from Patna Jn. to Mokama Jn.

1.3 Thus, alleging that the deceased was a *bona fide* passenger and a sufferer of an untoward incident, as such, the claimants are entitled to a compensation to the tune of Rs.8,00,000/- with interest from the Railways/respondent.

In Reply :

2.1 The respondent has denied and disputed the incident, as alleged and stated that the deceased died while he was dashed by a train while crossing the railway tracks on the spot.

2.2 The respondent has further stated that there is no evidence on record to believe that the deceased had purchased any railway journey ticket and hence the deceased was not a *bona fide* passenger on the date of alleged incident.

2.3 The respondent railway has finally prayed for the dismissal of the claim application on the point that the deceased was not a traveler and a trespasser.

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3. We have pursued 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 15.09.2022 :-

- 1) **Whether the deceased was a *bona fide* passenger of the train, in question ?**
- 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 dependants of the deceased ?**
- 4) **Whether the applicants/legal dependents of the deceased, are entitled to get compensation, if yes, to what extent ?**

4. In this case, the applicant no.1, Md. Arif, father of the victim appeared filed his affidavit and tendered his evidence. He was examined as AW/1 and was cross-examined by the Ld. Counsel for the respondent. No other witness has been produced by the applicant.

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

6. Ld. Counsels of both sides were present and advanced their respective arguments at length. After perusing the record and appreciating the arguments of both sides Ld. Counsels, 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.**



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Issue Nos. 1 & 2

7.1 It is pertinent to mention here that the averment of the applicant is based on the evidence of (AW/1). During cross-examination, (AW/1) has stated that on 16.02.2022, he was at his residence at Mokama and on that date his son came to *big mojar* at Patna Sahib. He cannot say from which train his son got dashed or hit, but it is correct that his son dashed by a train at Gulzarbag station. It is correct that the ticket which he has attached with the claim petition was for the journey from Patna to Mokama. His son rang up at 10 a.m. in the morning and told him that he was going to *mojar* at Gulzarbagh. He got the information about the incident at about 12.00 hrs., from the police over phone which they got the number from the mobile of his son. In his cross-examination, the applicant (AW/1) stated that "only" one Aadhaar Card was recovered from his son. Getting the news of the incident at about 03.00/04.00 p.m., he went to Gulzarbagh station. He was not aware where was with his son when the incident took place. In his cross-examination, the applicant (AW/1) also stated that he saw the body of his son and found that head got fractured and left leg was amputated below knee. At the time of incident, his son was about 25 years old and was unmarried.

7.2 Ld. Counsel for the applicant and Ld. Counsel for the respondent were present and advanced their arguments. On behalf of the applicant, railway memo, Inquest Report, Final Police Report and P.M. Reports are available on record. Ld. Counsel for the applicant referring to the police documents and the evidence of the applicant (AW/1) argued that the victim died after falling down

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from the running train, which is an 'untoward incident' under the provision of Section 123(c)(2) of the Railways Act, for which the claimants are entitled to get compensation.

7.3 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 railway memo, police documents as well as *Fardbayan* of the applicant, argued that "**victim died dashed by train while crossing the railway track.** According to him, the alleged incident is not an 'untoward incident' as defined under Section 123(c)(2) of the Railways Act and the claimants are not entitled to get compensation from the railway.

7.4 At the outset it appears from the evidence of the father of the victim (AW/1) that he was not the eye-witness to the incident. No other witness has been produced by the applicant, to prove the "purpose of the journey" of the victim or his boarding any train, as alleged and claimed by the claimants.

7.5 Considering all aspects it is evident that the important point to be adjudicated is that whether the victim fell down from any train carrying passenger or not. In this regard, it is evident that the averment of the applicant is based on the police documents namely the Railway Memo, Inquest Report, Final Police Report and Post Mortem Report. In the Railway Memo dated 16.02.2022 issued by Dy.SM/ Gulzarbagh, which is one of the *prima facie* documents issued just after occurrence of the incident stated that **the victim**

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dashed by 12567 Up train and both of his legs got amputated. An application (Fardbayan) submitted by the applicant, Md. Asif wherein he specifically stated that on 16.02.2022 his son, aged about 25 years, while going to Mokama Station, he went to Gulzarbagh to catch a train and while crossing the railway track, dashed by train and sustained grievous injuries and subsequently died. This fact has also been corroborated in the FIR, Inquest Report and Final Police Report. On the other hand, respondent in the DRM's Report also stated that the victim sustained injuries and subsequently died dashed by train while crossing the railway track and it has been admitted by the applicant in his Fardbayan.

7.6 Regarding bona fides of the deceased, it is seen that in support of the plea that the deceased was travelling with a valid journey ticket, the applicant has filed one copy of ticket bearing no 11404856 dated 16.02.2022 Ex. Patna Jn. to Mokama Jn. During cross-examination, the applicant no.1 (AW/1) has stated that only one Aadhaar Card was recovered from the possession of his son. In the claim petition, the applicant has stated that his son was having a railway ticket Ex. Patna Jn. to Mokama Jn. But, in the instant case, neither any seizure list nor any zimmanama has been filed on record. Moreover, recovery of the ticket has also not been mentioned in any police document namely Inquest Report and Final Police Report. In this regard, ***the observation of Hon'ble Patna High Court in Misc. Application No.840 of 2011 (Maghu Sah – Vs – The Union of India thorough General Manager, Eastern Railway is very much relevant wherein the Hon'ble High Court has held that the***

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"the Court is of the opinion that once inquest report was prepared immediately after recovery of the dead body on the railway track, non-mentioning of the recovery of ticket in the inquest report was sufficient to come to the conclusion that the deceased was not having any railway ticket." That apart, no evidence has been produced on record to show the victim purchased a ticket or boarded any train.

7.7 Further, in the DRM's Report, it has been concluded that though the applicant has filed a railway ticket bearing no.11464856 and it has been verified by the Booking Examiner, Patna wherein it is mentioned that the said ticket was issued on 16.02.2022 from Window No.8 between the shift from 00.00 hrs. to 08.00 hrs. Ex. Patna to Mokama. In the said DRM's Report, it has further mentioned that the Memo issued by Dy.SM/Guljarbagh at 11.18 hrs., that the victim sustained serious injuries, dashed by 12567 train. The train no.12567 Up (Rajrani Express) was coming to Patna from Saharsa. In the claim petition, the ticket filed in this case was issued at 07.58 hrs for the journey from Patna to Mokama. Thus, the occurrence of the incident and the issuance of the ticket, it is clear that the ticket filed in this case is not matching with the alleged incident, as claimed by the claimant.

7.8 Thus, from the evidence and documents available on record, it is evident that the railway ticket filed in this case is the manipulative one and does not match with the alleged incident. **Respondents in the 'WS' as well as DRM's Report has specifically contended that the victim was not a bona fide passenger.**

[Signature]

[Signature]

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7.9. In Appreciation of Evidence in Civil Cases it has been introduced that - "Evidence is the currency by which one fulfills 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. The Court always will 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."

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7.12 In this case the applicant has not been able to marshal sufficient reliable evidence to prove the contention that the victim fell down from a train.

7.13 In Civil cases, we are guided by preponderance of probability and circumstantial evidence where no direct eye-witness is available. It is quite obvious that the applicant could not prove his case by adducing cogent and substantial evidence with regard to the incident as an 'untoward incident' as defined U/s 123(c)(2) of the Railways Act, 1989.

7.14 It is 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.

7.15 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 he was a traveller.

7.16 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.



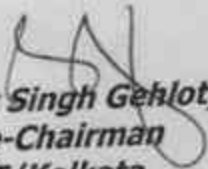
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7.17 Since the Issue nos. 1 & 2 are decided against the applicant and in favour of the Railways, as such, it will be a redundant exercise to adjudicate qua the remaining issues.

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

7.19. 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.
Holding Circuit Bench
At RCT/Patna.


(Sanjay Singh Gehlot)
Vice-Chairman
RCT/Kolkata.
Holding Circuit Bench.
At RCT/Patna.

ORDER SHEET

Nature of application _____ Number O.A.No.(IIu)0237 Year 2022

Md. Arif & Ors.

-Versus-

UOI/G.M/E.C. Railway

Date	Proceeding of the Bench	Notes of the Registrar
05.06.25	Record is put up for delivering judgment. Final argument of this case was heard on 05.03.2025. As per Rule 31(1) of the RCT (Procedure) Rules, 1989, "The Tribunal, after hearing the applicant and respondent, shall pass an order either at once, or as soon as thereafter, as may be practicable, but not later than twenty-one days from the date of conclusion of the arguments, and where it is unable so to do, it shall record its reasons for such inability". The judgement in this case could not be delivered within the stipulated period of 21 days due to disposal of the cases of Circuit Benches. Now, the judgement has been passed. Vide separate judgement, the claim application is dismissed without any cost. Let the case file be consigned to the record room.  (S.D. Sharma) Member (Judicial) RCT/Kolkata Holding Circuit Bench At RCT/Patna  (Sanjay Singh Gehlot) Vice-Chairman RCT/Kolkata. Holding Circuit Bench At RCT/Patna	

