

**BEFORE THE RAILWAY CLAIMS TRIBUNAL,
PATNA BENCH.**

Case No. O.A(IIu)/PNBE/0032/2020

Date of Filing: 23.12.2019

Date of Judgement : 22.04.2025

1. Nandni Devi @ @ Nandani Devi, M/o late Prashant Kr. Dubey.
 2. Jai Prakash Dubey @ Jay Prakash Dubey, F/o late Prashant Kr. Dubey.
- ... Applicants.

Resident of Vill: Beldiha,
P.S: Sanokhar,
Dist: Bhagalpur,
Bihar.

- *VERSUS* -

Union of India represented through
General Manager, Eastern Railway, Kolkata.

Respondent.

Claim for Rs. 14,00,000/-

CORAM :-

- 1) Shri Sanjay Singh Gehlot, Hon'ble Vice-Chairman/RCT, Kolkata
- 2) Shri S.D. Sharma, Hon'ble Member (Judicial)/RCT/Kolkata.

Appearance :

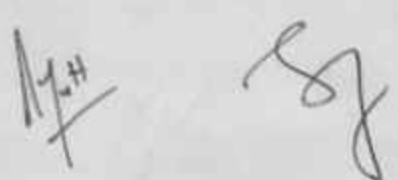
Counsel for the Applicant : Shri Sandeep Raj.

Counsel for the Respondent : Shri Radhika Raman.

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, Prashant Kr. Dubey (**the deceased**), who was allegedly travelling by a train met with an accident and died.

Contd.../2



1.1 It is alleged by the claimants in the claim application that on 08.05.2019 when the victim, Prashant Kr. Dubey, since deceased, did not reach home, the family member of the victim started searching him and on 09.05.2019, they came to know from Sanokhar P.S. that the victim, while travelling from Jagdishpur Station to Ekchari Halt Station with a valid second class ticket, fell down from the running train and died near Puraini Halt Station.

1.2 It is also alleged that the victim had a 2nd class railway ticket, which was lost during the alleged incident.

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.14,00,000/- with interest from the Railways/respondent.

In Reply :

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

2.2 The respondent has further stated that the victim was not a *bona fide* passenger as "no journey ticket" was found from the possession of the victim.

2.3 The respondent has also stated that there is no independent or eye-witness to the incident and the resident of the victim was nearby village of the place of occurrence.

2.4 The respondent railway has finally prayed for the dismissal of the claim application.

17/4

SV

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 21.06.2021 :-

- 1) Whether the deceased was a *bona fide* passenger of unknown train ?
- 2) Whether death of the deceased is covered under Section 123(c)(2) of the Railways Act, 1989 ?
- 3) Who are the applicant/dependents are dependents of the deceased ?
- 4) Whether the applicant/dependents are entitled to receive compensation, if yes, to what extent ?

4. In this case, the applicant no.1, Nandini Devi, mother of the victim, filed her affidavit and submitted all her evidence. She was examined as AW/1 and was cross-examined by the Ld. Counsel for the respondent.

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. In the course of argument of the case, Ld. Counsel for the applicant was found absent. No petition for adjournment has been filed on his behalf. On the other hand, Ld. Counsel for the respondent was present and advanced his arguments at length. The entire evidence of both the parties is already on the file, we feel no prejudice is going to be caused to any of the parties, if the matter is finally adjudicated.

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.

Issue Nos. 1 & 2

7.1 It is pertinent to mention here that the averment of the applicants is based on the evidence of (AW/1). During the cross-examination, (AW/1) has stated that the victim, Prashant Kumar Dubey was her son, aged about 24 years and was unmarried. On 08.05.2019, she was at her home. She got the information about the alleged incident on the mobile phone of her younger son.

7.2 In the instant case, Ld. Counsel for the applicant was absent. No petition for adjournment has been filed on his behalf. On behalf of the applicant, railway memo, Inquest Report, Final Police Report and P.M. Report are available on record, rather all the documents relied upon by the claimants are on the file.

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 DRM's Report argued that the victim was not a bona fide passenger, as no ticket was found from the possession of the victim and there was no witness who saw the victim falling down from the train. In the DRM's Report, Ld. Counsel for the respondent further argued that there is no eye-witness to the alleged incident and the body of the victim was found "inside 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 applicants are not entitled to get compensation from the railway.

7.4 At the outset, it appears from the evidence of the mother of the victim (AW/1) that she 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.

7.5 Considering all aspects it is evident that the important point to be adjudicated is whether the victim fell down from any train carrying passengers or not. In this regard, it is evident that the averment of the applicant is based on the police documents namely the Inquest Report, Final Police Report and Post Mortem Report. It appears from the Inquest Report as well as Final Police Report available on record relied upon by the applicant, the victim fell down from the train. The conclusion as to the cause of the death as reported in the Inquest Report and Final Police Report are based purely on surmises and conjectures. On perusal of the Inquest Report, it is seen that though in the said report, it is mentioned that cause of the death of the victim was due to fall down from an unknown train, but on what source, this report was prepared has not been clarified. Moreover, the names of witnesses as mentioned in the Inquest Report, have not been produced by the applicant to substantiate their claim. Further it appears from the Final Police Report wherein it is mentioned that the victim fell down and run over by the same train. On perusal of the P.M. Report it is seen that the **cause of the death of the victim was due to haemorrhage and shock due to heavy hard and blunt objects in motion.** Thus, the Post Mortem Report also does not support the version of the

M.A.

g

Contd.../6

claimants. That apart, the applicants have not produced any witness to prove their case, as claimed. Further in the 'Fardbayan' written by Shri Ranjan Kumar Dubey, brother of the victim, wherein he stated that the victim told over phone that he was travelling by a train. But he did not mention in which train his brother was travelling. The applicants have not produced the brother of the victim, Shri Ranjan Kumar Dubey, as witness, for reasons best known to the applicants. Therefore, an adverse inference is being drawn against this failure of the applicants under the provision of Section 114(g) of the Indian Evidence Act. Thus, considering all the documents and evidence on record, the Tribunal holds that the applicants have failed to prove beyond any reasonable doubt that the victim fell down from a train. There is nothing on record to show as to why the deceased had intended to travel and what was the purpose of his journey. Thus, considering all the documents and evidence on record, the Tribunal holds that the applicants have failed to prove that the victim fell down from a train, as alleged.

Contd.../7

17/4 18/4

7.6 With regard to the *bona fide* of the victim as a passenger, in the claim application the applicants have taken a plea that the victim was travelling with a journey ticket which was lost. On the other hand, in the DRM's Report the respondents have contended that the victim was not a *bona fide* passenger as "no journey ticket was found" from the possession of the deceased. With regard to the loss of the alleged ticket, as pleaded by the Ld. Counsel for the applicant, we are guided by the observation of Apex Court judgement in the case of **Union of India -vs- Rina Devi** reported in 2018 ACJ 1441 (S.C.) wherein the Hon'ble Supreme Court has held 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 negate 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. The legal position in this regard is explained accordingly". In this particular case no affidavit of relevant facts regarding purchase of the ticket, or boarding of a train of the deceased have been filed by the applicants. Therefore the onus has not shifted on the railways with respect to loss of ticket. It has already been decided on the basis of available documents and the evidence that the victim did not die as a result of fall from the train in which he was allegedly travelling. In this context, the Tribunal views that a liberal view on the loss of ticket would have been possible if it was established beyond doubt that the victim travelled by a particular train and his death was caused due to injuries sustained as a result of fall from any train. In this case it is already held that the applicants

Contd.../9

17-11

Sy

have failed to establish that the victim was travelling by a train and that the proximate cause of his death was a fall from any train. Even in Rathi Menon's case, the Hon'ble Supreme Court has held that every person, who falls from a train and dies as a result of an accident or fall from the train must not be presumed to be a bona fide passenger travelling with a ticket. No doubt train ticket is lost in many cases of untoward incident and non-recovery of train ticket and non-filing of train ticket is not conclusive as to whether a person is or is not a bona fide passenger. **Even in this judgement, no such blanket declaration is given, as claimed by the claimants**

7.7 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 applicants to establish the same and prove that the victim was a bona fide passenger.

7.8 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.

7.9 Further, it is pertinent to mention that both the Inquest Report and Final Police Report do not mention about the recovery of the ticket. 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 "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."*

7.10 To our mind, there has to be some reason to believe that the deceased entered the train after purchasing the ticket and travelled in the train. The question of placing the onus on the Railways comes only after establishing at least prima facie, the above belief. There cannot be any sweeping presumption that in all cases the ticket of every deceased is necessarily lost.

7.11 In this regard, the observation of the Hon'ble Allahabad High Court in a case titled **Dinesh Kumar Singh Maurya Vs. UOI, FAO no.1023 of 2010** is relevant.

7.12 It is mentioned in the above judgement that in case a ticket is not found from the body of the deceased or from its vicinity the presumption could be that such a person was not a bona fide passenger. Of course evidence can be led to prove otherwise.

7.13 Finally, it is pertinent to mention here that in the present case, it is not proved that the deceased had boarded any train. This is coupled with the fact that no journey ticket has been filed on record. Accordingly, the Tribunal cannot conclude that the victim was a *bona fide* railway passenger at the time of occurrence of the alleged incident which resulted in his death.

7.14 In view of our above discussions, we are of the view that the claimants have 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.

Contd.../12

17/11

Sg

7.15 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.

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

7.17. 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 at Patna.


(Sanjay Singh Gehlot)
Vice-Chairman
RCT/Kolkata at Patna.