

1. Sanjida Khatoon, F/o late Amarali Miyan @ Umar Ali.

... Applicant.

Resident of Vill: & PO: Narayanpur,
P.S: Bhawanipur,
Dist: Bhagalpur,
Bihar,

- 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 N.K. Verma.

Counsel for the Respondent : Shri Radhika Raman.

As per Orders of the Hon'ble Chairman, PB/RCT/Delhi, total 60 cases of RCT/Patna have been sent to this tribunal for hearing the final arguments and disposal/decide the same on "hybrid mode". It is further mentioned in the Orders of Hon'ble Bench that, it will be treated as Circuit Bench of RCT/Patna. Accordingly, Counsels for both the parties were duly informed to address their respective arguments before this Tribunal by virtual mode. Ld. Counsels of both sides joined the virtual hearing and presented their arguments.

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This Circuit Court is being specially held by virtue of orders of the Hon'ble Chairman, Principal Bench/RCT/Delhi for early disposal of the cases, which are already fixed for final arguments. There are more than 1000 cases pending in RCT/Patna at the stage of final arguments. This matter has been pending for a long time. We feel, that the very purpose of forming this Circuit Court for RCT/Patna will fail, if this matter is not decided early.

Since, the entire evidence of the parties is already on the file, we feel that "no prejudice" is going to be caused to the claimant. We shall adjudicate the case based on the evidence of both sides.

JUDGEMENT

The claimant/applicant Sanjida Khatoon, has preferred the present claim application for herself as dependant 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 her father, namely, late Shri Amarali Miyan @ Umar Ali **(the deceased)**, who was allegedly travelling by a train on 30.10.2018, met with an accident and died.

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1.1 It is alleged by the claimant that on 30.10.2018, the victim, Amarali Miyan @ Umar Ali was travelling from Naugachia Railway Station to Khagaria Jn. by 15903 Up (Chandigarh Express).

1.2 It is further alleged by the claimant that during the course of journey, the victim accidentally fell from the running train at Narayanpur Railway Station near KM No.80/13-15, sustained serious injuries and died on the spot.

1.3 It is also alleged that the victim was having a journey ticket, which was lost after the incident.

1.4 Thus, alleging that the deceased was a *bona fide* passenger and a sufferer of an untoward incident, as such, the claimant is 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.

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.

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

3. We have perused the claim application as well as the written statement filed by the Railways. Thus, based on the pleadings, and material evidence placed on record, the following issues were framed on 11.12.2020 for determination :-

- 1) Whether the deceased was a *bona fide* passenger of train no.15903 ?
- 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 claimant is the dependant of the deceased ?
- 4) Whether the claimant is entitled to get compensation, if yes, to what extent?

4. In this case, the applicant, Ranjita Khatoon, daughter of the victim, filed her affidavit and tendered her evidence. She was examined as AW/1 and was partly 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.

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

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 the victim was her father. She further stated that Amarali Miyan @ Umar Ali has left behind two children – Sanjida Khatoon and Mou Enaul and Mou Enaul is alive. (At this stage, Ld. Counsel for the respondent raised objection stating that despite being alive, son of the deceased, namely, Mou Enaul, the applicant has not included his name, as dependent in the claim petition and has suppressed this fact for which the evidence of the applicant was stopped and asked to bring the son of the deceased, who is alive. Subsequently, the applicant has failed to bring his brother, Mou Enaul and the evidence of the applicant was closed.

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Though, Mou Enaul was not impleaded even as proforma respondent).

7.2 In the instant case, Ld. Counsel for the applicant has filed and relied upon Inquest Report, Final Police Report and P.M. Report. Referring those documents, Ld. Counsel for the applicant argued that the victim died while he fell down from the train and the incident is an 'untoward incident' which falls under the provision of Section 123(c)(2) of the Railways Act for which the applicant is 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 DRM's Report argued that the victim was not a bona fide passenger, as "no journey ticket" was found from the possession of the victim. Ld. Counsel for the respondent further referring to the DRM's Report, argued that **"victim died dashed by train, while he was crossing the railway track".**

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According to him, the alleged incident is not an 'untoward incident' as defined under Section 123(c)(2) of the Railways Act and the applicant is not entitled to get compensation from the railway.

7.4 At the outset it appears from the evidence of AW/1, that she was not an eye-witness to the incident. No other witness has been produced by the applicant to prove that the deceased even boarded any train.

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 Inquest Report, Final Police Report and Post Mortem Report. The Inquest Report as well as Final Police Report available on record were prepared on the basis of version of witnesses, but neither the statement of the witnesses were recorded as prescribed under Section 161 and 174 of Cr.P.C., nor were they produced by the applicant before the Tribunal for adducing their witness. The conclusion as to the cause of the death as reported in the Inquest Report and Final Police Report is based on assumption and presumption and on guesswork. It is a settled principle of law that

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no judicial order can be passed on the basis of document, which was prepared simply on assumption and presumption. In the Post Mortem Report, it is further mentioned that death was caused by **"haemorrhage and shock due to the injuries as noted in the P.M. Report by heavy hard and blunt substance."** Thus, the Post Mortem Report does not support the case of the applicant. Further, the railway memo which was issued just after occurrence of the incident specifically mentioned that the **victim died 'run over' by train.** On the other hand, in the DRM's Report, it is specifically mentioned that **"victim died dashed by train while he was crossing the railway track"**. The DRM's Report cannot be brushed aside without any reliable and cogent evidence on the part of the applicant's side. There was no rebuttal from the side of the applicant against the DRM's Report by way of any specific affidavit. That apart, the applicant has not produced any witness to prove her case, as claimed. Moreover, the place of occurrence is at Narayanpur, which is very close to the residence of the victim. Thus, from the circumstantial evidence and preponderance of probability, it points more in the direction of being run over by any train, while crossing the railway track. Considering all the documents and evidences on

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the circumstantial evidence, the Tribunal holds that the applicant has failed to prove beyond any reasonable doubt that the victim fell down from a train.

7.6 With regard to the *bona fide* of the victim as a passenger, in the claim application the applicant has 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**

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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 applicant. 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 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 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 applicant has failed to establish that the victim was travelling by a train and that the proximate cause of her death was a fall from any train. Even in Rathi Menon's case, the Hon'ble Supreme Court has held that every person,

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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 claimant.**

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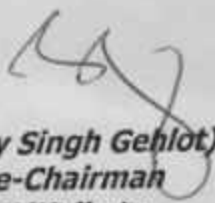
7.10. Since the Issue nos. 1 & 2 are decided against the applicant and in favour of the Railways, as such, it will be a redundant exercise to adjudicate qua the remaining issues.

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

7.12. 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.

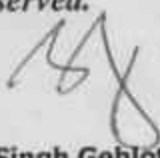
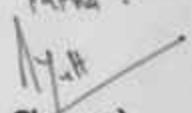
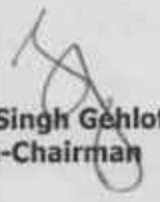

(S.D. Sharma)
Member (Judicial)
RCT/Kolkata.
(On hybrid mode.)




(Sanjay Singh Gehlot)
Vice-Chairman
RCT/Kolkata.
(On hybrid mode)

ORDER SHEET

Nature of application _____ Number O.A.No.(IIu)PNBE/0386 Year 2019Sanjida Khatoon. -Versus-UOI/G.M./E.C. Railway

Date	Proceeding of the Bench	Notes of the Registrar
----- 07.08.25	As per Order of Hon'ble Chairman, the case is taken up for final arguments on Hybrid Mode. Ld. Counsels of both sides were present on Hybrid Mode. Heard the arguments of Ld. Counsels of both sides on hybrid mode. <i>Order is kept reserved.</i>  (S.D.Sharma) Member (Judicial)  (Sanjay Singh Gehlot) Vice-Chairman	
11.08.25	Record is put up for delivering judgment. Vide the Judgment delivered in separate sheets, the O.A. is dismissed on its merits. No costs. Let the case file be consigned to the record room, <i>be sent to Patna.</i>  (S.D. Sharma) Member (Judicial)  (Sanjay Singh Gehlot) Vice-Chairman	

