



रेल दावा न्यायाधिकरण, पटना

RAILWAY CLAIMS TRIBUNAL, PATNA

No. OA(Ilu)/PNBE/47/2021

CORAM: Dr. Madhukar Sinha, Hon'ble Member (Technical)

Date of Registration: 19.02.2021

Date of decision: 12.07.2024

Vinod Paswan & Others

All R/o Village/Mohalla: Mor Paschmi,

Ward no. 12, Mor (Part in Mokameh),

District: Patna,

Bihar.

... Applicant

Versus

Union of India,

Through the General Manager,

East Central Railway, Hajipur

... Respondent

Appearances:

Shri Brajesh Kumar

Ld. counsel for the applicant

Shri Radhika Raman

Ld. counsel for the Respondent

JUDGMENT

By Dr. Madhukar Sinha, Member (Technical):

1. A claim application was filed by Vinod Paswan and Others before this Tribunal, under Section 16 of the Railways Act, 1987, for payment of compensation on account of death of Satlok Kumar @ Chottu, allegedly in an untoward incident.
2. The brief facts of the case as stated in the application were as follows:
 - a. On 23.01.2020, Satlok Kumar @ Chottu (deceased) having a valid travelling ticket from Mor Railway station to Biharsharif via Bakhtiarpur boarded train no. 63209 UP, Jhajha- Patna Passenger train.
 - b. The deceased intended to change the train in Bakhtiarpur for Biharsharif.
 - c. There was heavy rush in the train. He was standing near the gate inside the compartment of the aforesaid train.
 - d. Due to heavy rush and jostling amongst the passengers, he suddenly fell down from the running train near Athamalgola Railway station, between Pole no. 489/9 to 489/11.
 - e. As a result, he sustained injury and died on the spot.
 - f. On 23.01.2020, Asst. Station manager, Athmalgola reported the incident to GRP, Barh.
 - g. The Railway police informed the parents of the deceased on the mobile.
 - h. On receiving the information family members reached the place of occurrence and identified the dead body as that of the deceased.
 - i. Inquest report was prepared in presence of the witnesses and the dead body was sent to Sub-Divisional Hospital, Barh for post- mortem examination.



- j. U.D. case no. 01/20 was registered at Rail P.S., Barh.
 - k. After post- mortem the dead body was handed over to the family members for cremation.
 - l. The journey ticket was lost in course of the untoward incident.
3. The learned counsel for the Respondent contested the OA and filed a written statement wherein it was stated as follows:
- a. The applicant had no claim of action and right to sue in view of the facts and circumstances of the events.
 - b. Neither in FIR nor in inquest report availability of any ticket was mentioned.
 - c. U.D. case was registered on the basis of the application given by Binod Paswan (father of the deceased). Inquest report was also made on his application.
 - d. No ticket was found from the pocket of the victim.
 - e. Under no circumstance Respondent Railway could be saddled with any liability and the applicant was not entitled to get any compensation in the instant case.
 - f. The alleged incident took place due to negligence and criminal act of the victim knowingly.
 - g. Dismissal of the case was prayed for.
4. Based on rival pleadings the Tribunal framed following issues on 22.06.2021 for adjudication:
- a. *Whether deceased was a bona fide passenger of train no. 63209?*
 - b. *Whether death of the deceased is covered under section 123 (c) (2) of the Railway Act, 1989?*
 - c. *Whether the applicant/ dependent(s) are the dependents of the deceased?*
 - d. *Whether the applicant/ dependent(s) are entitled to receive compensation, if yes, to what extent?*

YH 12/7

5. In support of his claim application, Vinod Paswan, the applicant filed the following documents:

S.No.	Documents	Page No.
1.	Certified copy of FIR	17
2.	Certified copy of application	18
3.	Certified copy of Inquest report	19
4.	Certified copy of dead body challan	20
5.	Certified copy of post mortem report	21-22
6.	Certified copy of final report	23
7.	Photo copy of Family Member list	24
8.	Photo copy of Death certificate of the deceased	25
9.	Photo copy of Aadhar card of deceased	26
10.	Photo copy of Aadhar card of applicants	27-29
11.	Photo copy of bank passbook of applicant	30-32

6. The applicant, Vinod Paswan, AW-1 was cross-examined by Shri Radhika Raman, Railway advocate on 02.09.2022.
7. The respondents filed the DRM's Report, along with annexed documents which were collectively marked as Exhibit R-1. Respondent did not adduce any oral evidence.

MS 12/7

DECISION WITH REASONS

8. I have heard the arguments of the parties and perused the evidence and material available on record. My findings on the aforesaid issues are as under:

Issue Nos. 1& 2:

Since both issues are linked, they are taken up together.

9. The learned counsel for the applicant had submitted the following:
- On 23.01.2020, Satlok Kumar @ Chottu (deceased) having a valid travelling ticket from Mor Railway station to Biharsharif via Bakhtiarpur boarded train no. 63209 UP, Jhajha- Patna Passenger train.
 - The deceased intended to change the train in Bakhtiarpur for Biharsharif.
 - There was heavy rush in the train. He was standing near the gate inside the compartment of the aforesaid train.
 - Due to heavy rush and jostling amongst the passengers, he suddenly fell down from the running train near Athamalgola Railway station, between Pole no. 489/9 to 489/11.
 - As a result, he sustained injury and died on the spot.
 - On 23.01.2020, Asst. Station manager, Athmalgola reported the incident to GRP, Barh.
 - The Railway police informed the parents of the deceased on the mobile.
 - On receiving the information family members reached the place of occurrence and identified the dead body as that of the deceased.
 - Inquest report was prepared in presence of the witnesses and the dead body was sent to Sub-Divisional Hospital, Barh for post- mortem examination.



- j. U.D. case no. 01/20 was registered at Rail P.S., Barh.
- k. After post- mortem the dead body was handed over to the family members for cremation.
- l. The journey ticket was lost in course of the untoward incident.
10. The learned counsel for the respondent submitted the following:
- a. The applicant had no claim of action and right to sue in view of the facts and circumstances of the events.
 - b. Neither in FIR nor in inquest report availability of any ticket was mentioned.
 - c. U.D. case was registered on the basis of the application given by Binod Paswan (father of the deceased). Inquest report was also made on his application.
 - d. No ticket was found from the pocket of the victim.
 - e. Under no circumstance Respondent Railway could be saddled with any liability and the applicant was not entitled to get any compensation in the instant case.
 - f. The alleged incident took place due to negligence and criminal act of the victim knowingly.
11. We shall now see if the applicant could establish that the deceased was travelling by a train and an untoward incident happened.
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 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. We shall be guided by the decision of the Hon'ble Supreme Court in the case of Union of India vs. Rina Devi, where it had 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.

15. Vinod Paswan in para 1 of his affidavit stated:

यह कि मेरे पुत्र दिनांक- 23.01.2020 को करीब 1:10 बजे वैध टिकट लेकर अपनी बहन के घर मोर से बिहार शरीफ भाया बख्तियारपुर गाडी संख्या- 63209 झाड़ा पटना पैसेजर से बिहार शरीफ भाया बख्तियारपुर जं० के लिए चला था।



16. Applicant Vinod Paswan, AW- 1 in his cross- examination stated:

दिनांक 23.01.20 को मैं घर पर था। दिनांक 23.01.20 को 1 बजकर 30 मिनट पर मेरा पुत्र शतलोक कुमार छोड़ कहां था मुझे इस बात की जानकारी नहीं है, क्योंकि उस वक्त मैं अपने घर पर सोया हुआ था। आज मेरे द्वारा दिया गया शपथ- पत्र मैंने टाइप करवाया है। दुर्घटना के दिन अपने पुत्र का रेल टिकट कटाकर दिया था। मैंने ट्रेन सं० 63209 झांझा पटना ट्रेन में सुबह 09:30 बजे के टिकट कटाकर चढ़ा दिया था। मेरा घर मोर स्टेशन से लगभग 200-300 मीटर की दूरी पर है। घटना के दिन मेरा पुत्र मोर स्टेशन से बख्तियारपुर स्टेशन के लिए रवाना हुआ था। मोर के बाद पंडारक, बाढ़त्र, अथमलगोला एवं बख्तियारपुर स्टेशन आता है। घटना की सूचना मुझे स्टेशन के सफाई वाला सुधीर कुमार जो मेरा पड़ोसी है के द्वारा दिया गया था कि आपका पुत्र 01 बजकर 10 मिनट में अथमलगोला स्टेशन पर दुर्घटनाग्रस्त हो गया है। मैं घटनास्थल पर नहीं गया था इसलिए नहीं बता सकता कि दुर्घटनाग्रस्त कहां हुआ था। मैंने अपने पुत्र का मृत शरीर जीआरपी बाढ़ में देखा था बेटा का शरीर कमर से दो भागों में कटा हुआ था। यह तथ्य सही है कि मैंने अपने पुत्र को मोर स्टेशन पर 09:30 बजे गाड़ी सं० 63209 में बैठाया था। शपथ- पत्र के पैरा 1 सही प्रतीत नहीं होता है। शपथ- पत्र मैंने पढ़कर दस्तखत किया था। ऐसी बात नहीं है मैं मुआवजा के लिए झुठा गवाही देने के लिए आया हूं। ऐसी बात नहीं है कि शपथ- पत्र में दिये गये तथ्य में अपने बयानों को तोड़मरोड़कर पेश किया हूं। मेरे पुत्र की उम्र घटना के वक्त 14-15 साल था एवं अविवाहित था। मेरे पुत्र के आश्रितों में मेरे अलावा मेरी पत्नी सावत्री देवी, पुत्री छोटी कुमारी एवं पुत्र प्रभाकर कुमार है। ऐसी बात नहीं है कि मेरा पुत्र घटना के दिन वेद्य यात्री न हो। ऐसी बात नहीं है कि मेरे पुत्र की मृत्यु अनपेक्षित घटना में न हुआ हो। मैं प्रस्तुत केस के अलावा मुआवजा के वास्ते किसी अन्य न्यायालय में मुकदमा नहीं किया हूं। ऐसी बात नहीं है कि मैं मुआवजा के लिए न्यायालय में झुठी गवाही देने के लिए आया हूं।

17. There was no recovery of journey ticket during preparation of the inquest report. As per the evidence of Vinod Paswan as AW-1, he got the information of the incident from Sudhir Kumar (sweeper at station) who is neighbor of Vinod Paswan. He had supposedly purchased the ticket and put the deceased in train no. 63209 Jhajha- Patna train at 09:30 in the morning. However,



the applicant had in his affidavit, stated that his son boarded train no. 63209, Jhajha- Patna passenger at around 1:10 after purchasing a ticket which contradict his own statements.

18. The rules of appreciation of evidence are implicitly clear that the witness if he is reliable, his evidence is to be read without corroboration and in case the witness is partly reliable and partly unreliable, then the Court has to seek corroboration and if the witness is wholly unreliable, no corroboration is required.
19. There was neither any eyewitness of the purchase of the said journey ticket nor of the alleged incident. The evidence of the applicant was not found reliable. Since there was no corroborative evidence of the purchase of a valid journey ticket, the applicant was not able to discharge his initial burden of establishing that the deceased was a *bona fide* passenger with a valid ticket. Thus, the onus could not be passed on to the Respondents. Therefore, we do not find that the deceased was a *bona fide* passenger travelling with a valid ticket.
20. We take up the documents accompanying the O.A. for examination:

- a. The Inquest report prepared on 23.01.2020 and mentioned the following in the body of the report:

Column 5

शरीर दो भाग में कमर के पास से सिर पर जख्म [illegible] में खरोच पैर में खरोच

Column 7

There is no recovery of journey ticket.

Column 9

ग्वाहों के बताए अनुसार मृतक की मृत्यु गाड़ी सं० 63209 अप झाझा पटना पैसेन्जर ट्रेन से गिरकर कटने के कारण घटनस्थल पर मृत्यु होना बताया [illegible]

b. The F.I.R. was registered at Rail P.P., Barh on 23.01.2020 at 15:00, on the basis of application given by Vinod Paswan. It is noteworthy to mention here that the F.I.R. was registered after preparation of the Inquest report, which does not conform to prescribed procedures.

c. The Final report submitted by Rail P.P., Barh concluded the following:

... मृतक सलतोक कुमार उर्फ छोदू उम्र 14 वर्ष पे0 विनोद पासवान सा0 मोर पोखरपर थाना मोकामा जिला- पटना की मृत्यु गाडी सं0- 63209 अप चलती ट्रेन से मोर से बख्तियारपुर जाने के क्रम में अथमलगोला स्टेशन के पास गिरने एवं जख्मी होने के कारण मृत्यु होना...।

d. The Post Mortem examination, was conducted on 23.01.2020 at 04:30 PM. The contents of the PM report as follows:

External:

1. Body separated into two parts at the [illegible] of Umblicus. The margin of wound is lacerated and crushed.
2. Multiple Abrasion on the body.
3. Lacerated wound 2" x [illegible] deep on occipital area of skull.

Dissection:

Skull- # of occipital bone. [illegible] and Brain matter Pale.

Chest- Ribs intact. Both lungs pale.

Heart chamber empty

Abdomen: Stomach liver kidney and spleen intestine crushed injuries.

[illegible]- intact

Cause of death: Hemorrhage and shock lead to cardio- Respiratory failure due to above injuries caused by heavy hard blunt substance.

[Signature] 12/1

Time Elapsed Since Death: 6 to 12 hours.

21. Now the DRM's Report and the documents contained therein are being taken up for discussion and drawing conclusions:

a. The entry made in Station Diary of Athmalgola on 23.01.2020 at 12:43 mentions:

12:43 में 13133 UP से एक लड़का जिसका उम्र करीब 17-18... साल है **Run Over** हो गया तुरंत ही इसकी सूचना S.M RH द्वारा G.R.P. BARH को तथा Sec Controller को दी। Body track के बीच में पड़ी थी जिसके कारण UP ML 12:43 से 12:58 तक बाधित रहा। (Track को सफाई कर्मियों की मदद से साफ कराया गया।)

b. The DRM's report conclude:

... मृतक सतलोक कुमार उर्फ छोटू उम्र 14 वर्ष पे0 बिनोद पासवान, सा0- मोर पश्चिम, था0- मोकामा, जिला- पटना के पास कोई रेल यात्रा टिकट नहीं पाया गया। घटित घटना का कोई प्रत्यक्षदर्शी गवाह नहीं है। अतः इससे प्रमाणित होता है की मृतक की मृत्यु ट्रेन से गिरने से नहीं बल्कि अवैध रूप से ट्रैक पार करने के दौरान किसी ट्रेन से झटका लगाने के कारण हुई है। अतः उपरोक्त परिस्थिति में रेल प्रशासन की कोई जिम्मेवारी नहीं बनती है।...

DRM's report categorically stated that no ticket was recovered from the possession of the deceased. There was no eye witness of the incident. The deceased was hit by train while crossing the track illegally and died.

22. On the basis of the above discussion we find that there is more than reasonable doubt that an incident of the type mentioned in the O.A. occurred.

23. We note that in the absence of the *bona fide* of the deceased as a passenger being established, the untoward incident did not occur in the meaning of section 123 (c) (2) of the Railways Act, 1989.



24. In view of the above discussion, we are 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.

Issue Nos. 3 & 4

25. 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 of dependency and compensation will be a redundant exercise.

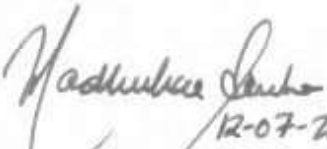
A handwritten signature in black ink, appearing to be 'H. K. 27', is located to the right of the text in paragraph 25.

26. Hence, it is:

आदेश

ORDERED

27. 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.
28. 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.


12-07-2024

(Dr. Madhukar Sinha)

Member (Technical)

RCT Patna @ Delhi

12.07.2024