

RAILWAY CLAIMS TRIBUNAL
RANCHI BENCH, RANCHI

CORAM:

DHRUV SINGH - Member Technical.

Claim Application No.: OA(IIU)/RNC/54/2019
Check List No. : 2907190002
Date of Incident : 04.11.2013
Date of filing : 01.07.2019
Date of decision : 09.02.2024

Smt. Putul Saha, aged about 45 years, W/o. Late Sapan Kumar Saha

R/o. Vill – Kali Tala Bara Durgapur, Post & PS- Barharwa, District –
Sahebganj, Pin-816101(Jharkhand).

Presently residing at- Chaldhawanipara, Ward No.11, PO & PS- Rampurhat,
Dist- Birbhum (W.B.) ... Applicant.

Versus

Union of India represented by
The General Manager,
Eastern Railway,
Kolkata. ... Respondent.

Claim for Rs.4,00,000/- (With interest)

Ld. Counsel for Applicant - Shri Bharat Kumar Gupta.
Ld. Counsel for Respondent - Shri Sudhir Kumar Srivastava.

J U D G E M E N T

01. This claim application is filed by the Applicant under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 124-A of the Railways Act, 1989 seeking compensation of Rs.4,00,000/- (Rupees Four Lakhs only) with interest from the Respondent Railway for the death of Shri Sapan Kumar Saha (hereinafter referred to as “*the deceased*”) in an alleged untoward incident that occurred on 04.11.2013.

02. It has been pleaded in the claim application that on 04.11.2013 the deceased Sapan Kumar Saha was travelling by Azimganj-Barharwa train from Nimtita Railway station to Barharwa Railway station with a valid 2nd class journey ticket. During the course of journey, the deceased accidentally fell down near Barharwa Railway Station from the said running train and died on the spot. In this connection a U/D case no.15/13 dated 04.11.2013 was registered by GRPS Thana, Barharwa. The Applicant (wife of the deceased), being dependent, has filed this claim application for compensation from the Respondent Railway.

03. The case was restored to its original number by setting aside the earlier order passed by RCT/Kolkata and Registry was directed to transfer the entire case record to RCT/Ranchi for further proceedings and the claim application was deleted from the cause list of RCT/Kolkata accordingly.

04. Respondents have filed the Written Statement, denied their liability and submitted that as per Inquest report no journey ticket has been recovered from the possession of the deceased. Thus, the deceased was not a bonafide passenger at the time of the alleged incident. On perusal of Fardbayan, statement of applicant does not match regarding purchasing of ticket at Nimtita station. That the deceased was coming from Nimtita station to Barharwa is false and concocted. During enquiry it could be learnt that the distance between the house of the deceased and the house of Altaf Sheik is approx. 500 meter and distance between place of incident and the house of deceased is 700 meters. He was a habitual trespasser and was run over by a Goods train. It is further submitted that there is absolutely no cogent evidence

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of the alleged accidental fall from a train. Therefore, the Respondent prayed that the claim application be dismissed on the above ground with cost.

05. From the pleadings, following issues were framed on 29.06.2015:

1. Is the claim application maintainable in its present form?
2. Was the deceased a bonafide passenger having a valid Railway ticket for his journey, as claimed?
3. Whether the victim died in an untoward incident while making journey by a train as defined under Section 124-A of the Railway Act, 1989?
4. Whether the applicant is entitled to get compensation for the death of the victim as per the provisions of "Untoward incident" as prayed for ?
5. To what other relief, if any, is the Applicant entitled?

06. In support of their claim, Applicant No.1, wife of the deceased, filed her affidavit for examination in chief as AW.1, was cross-examined by the Respondent and proved the documents, which are filed and marked Exhibits as under. Sri Ascharya Kumar Saha has filed affidavit as AW.2 and he was also cross-examined by the Respondent.

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|---|---|----------|
| 1. Certified copy of Inquest Report | - | Ext.A.1. |
| 2. Certified copy of Final report | - | Ext.A.2. |
| 3. Certified copy of Fardbayan | - | Ext.A.3. |
| 4. Certified copy of PM report | - | Ext.A.4. |
| 5. Copy of Aadhar card of the deceased | | |
| 6. Copy of Aadhar card of the Applicant | | |
| 7. Copy of Bank passbook of the Applicant | | |
| 8. Copy of death certificate | | |
| 9. Copy of family member certificate | | |

07. Respondents have examined two witnesses viz Sri Altaf Sheikh (Local public) and Sri Anil Kumar Hembrom, ASI/RPF Post/Barharwa as RW-1 and RW-2 respectively and submitted Statutory Enquiry Report (DRM's Report), which is marked as Ext.R1.

08. Heard both counsels and perused the case file. On consideration of the material available on record and the contentions of the learned Counsels appearing for both the parties, issue wise findings are recorded as follows:

FINDINGS

09. **Issue Nos.1, 2 and 3:- Maintainable, Bonafide status and Untoward incident**

The above three issues are discussed together being inter-linked.

It has been pleaded in the WS that the application filed by the applicant is not maintainable either in law or on facts and there is absolutely no cause of action, on the part of the applicant for filing the application in the present case.

From perusal of case file, it is observed that the applicant is residents of Village/Mohalla : Kali Tala Bara Durgapur, Post & PS- Barharwa, District – Sahebganj, (Jharkhand) and the place of incident is near Barharwa Railway Station which also falls within the territorial jurisdiction of this Tribunal. Moreover, respondents have not raised any objection, regarding territorial jurisdiction of this claim. As such, this Tribunal has the territorial jurisdiction to try, entertain and determine this present OA.

As per the claimant, the deceased Sapan Kumar Saha was travelling on 04.11.2013 by Azimganj-Barharwa Passenger train from Nimtita Railway station to Barharwa Railway station after purchasing a 2nd class journey ticket,

which was lost during alleged incident. As per the Applicant, the incident happened during journey hours and at that time he was holding a valid journey ticket. Hence, he was a bonafide passenger at the time of the incident. Respondent Railway has denied and refuted the bonafide status. As per Inquest Report, no journey ticket has been found from the possession of the deceased. Therefore, the deceased was not a bonafide passenger at the time of the incident and his death is not covered under the definition of an untoward incident as defined under Section 123(c)(2) and Section 124-A of the Railways Act, 1989.

The enquiry report reveals that on 04.11.2013 at about 05.20 hrs. a memo was received by RPF and GRP/Barharwa from on duty SM/Barharwa mentioning that one unknown male person, aged about 40 years, was run over by an unknown train at Barharwa Railway station near East Panel, Barharwa between Line no.4 and 3. Due to this, line nos.3 and 4 were blocked. No journey ticket was found from the possession of the deceased and the deceased was identified as Swapan Saha, son of Lt. Pramathur Saha. The applicants have not been able to discharge their initial burden of proving bonafide passenger status.

During enquiry, E.O. recorded the statement of one local resident namely Sri Altaf Shekh, s/o Lt. Nanu Shekh, who stated that on 04.11.2013 he reached Barharwa Railway station for his own work. At about 04.00 hrs. in the early morning, he heard that one unknown person was run over by a goods train during shunting. He saw a gathering of some people around the dead body and he identified the dead body of Swapan Saha. He further stated that the deceased used to come every day early in morning to line no.4 of

Barharwa Railway Station for latrine and thereafter the deceased usually went to his hotel near Sabji Mandi. This was his routine every day. On 04.11.2013, after latrine, while he tried to cross the railway line at Barharwa during shunting of a goods train, his chadar was torn by the under gear fittings of the said goods train resulting in his being run over by the goods train. He further stated that the deceased used to live in his village Kalitala besides him. Altaf Sheikh appeared as RW-1 and reiterated the events as under:-

1. प्रश्न—आपका नाम क्या है? जिस केस में आज आप गवाही के लिए आये हैं, ये घटना कब की है?

उत्तर—अलताफ शेख। हमें घटना की तारीख याद नहीं है लेकिन इस घटना को 10—12 साल हो चुका है।

2. प्रश्न—क्या आप बता सकते हैं कि उस घटना का समय क्या था?

उत्तर—हम सुबह में अपना ठेला लेकर सब्जी मंडी की ओर जा रहे थे तो देखे कि हल्ला हो गया तो हल्ला सुनकर हम भी वहाँ देखने के लिए गये तो देखे कि तपन साह कटा हुआ है।

कोर्टप्रश्न—और फिर क्या आप ने तपन साह को पहचाना? कैसे?

उत्तर—जी हाँ। तपन साह और मेरा मकान अगल बगल में ही है।

3. प्रश्न—तो वो घटना कैसे हुआ था? शव आपने देखा था क्या स्थिति था शव का ?

उत्तर—उसका बॉडी चादर से ढँका हुआ था। वहाँ मौजूद लोगों ने बताया कि मालगाड़ी के शंटिंग के दौरान वो कट गया।

कोर्टप्रश्न— वो मृतक क्या कपड़े पहने हुआ था?

उत्तर—उसने हाफ पैन्ट और टीशर्ट पहने हुए था।

कोर्टप्रश्न— घटनास्थल और मृतक के दुकान की दूरी कितनी होगी बता सकते हैं?

उत्तर—जी हाँ करीब 5—7 मिनट की दूरी थी।

कोर्टप्रश्न—जहाँ घटना हुआ और मृतक का घर कितना दूरी पर है?

उत्तर— यही करीब एक किलोमीटर।

कोर्टप्रश्न—मृतक वहाँ पर शौच करने के लिए क्या रोज जाता था?

उत्तर—जी हाँ वहाँ के लोगों ने बताया था।

कोर्टप्रश्न— ये कौन लोग थे जिन्होंने आपको ये बात बताया था? क्या आपने भी उसे शौच करते हुए रेलवे लाईन में देखा था? कितने दिन?

उत्तर—जी हाँ मैंने देखा था। दो दिन देखा था।

कोर्टप्रश्न— उस घटना के समय कोई यात्री ट्रेन उस जगह से पार हुई थी क्या?

उत्तर—जी नहीं।

4. प्रश्न— ये घटना कहाँ पर हुआ था? ये रेलफाटक बरहरवा स्टेशन से कितना दूर है?

उत्तर—बरहरवा स्टेशन रेल फाटक के पास। स्टेशन से करीब 5 मिनट की दूरी पर है।

5. प्रश्न—आपका और मृतक का घर कहाँ पर है?

उत्तर—हम दोनों का घर एक ही मोहल्ला में है इसलिए मैं उसे पहले से पहचानता था।

6. प्रश्न—देखिये ये आपका बयान है इस पर आपका हस्ताक्षर है इसे आप पहचानते हैं इसे आर-1 प्रदर्श किया जाता है। उन्हें दिखाकर पूछा गया।

उत्तर—जी हाँ ये मेरा बयान है इसे मैं पहचानता हूँ और इस पर मेरा हस्ताक्षर है।

7. प्रश्न—आपको ये जानकारी है क्या कि मृतक पहले शौच के लिए जाता था फिर दुकान जाता था?

उत्तर— वो पहले शौच करने जाता था फिर दुकान जाता था जो उसी रास्ते में पड़ता था।

8. प्रश्न—मृतक का क्या दुकान था?

उत्तर— वो होटल चलाता था।

9. प्रश्न—आप ये बता सकते हैं कि यह घटना यात्री गाड़ी से हुआ है कि नहीं?

उत्तर—जिस समय मैं वहाँ गया कोई यात्री गाड़ी वहाँ से नहीं गुजरी थी।

10. प्रश्न—मृतक का बाँड़ी देखे थे आप?

उत्तर—जी हाँ मैंने उसे दूर से ही देखा बर्दाश्त नहीं हुआ।

11. प्रश्न—उसके शरीर में कहाँ क्या कटा था ये देखे थे कि नहीं?

उत्तर—जी नहीं।

12. प्रश्न—उसका बाड़ी कहाँ पर पड़ा हुआ था?

उत्तर—रेल फाटक से 10 कदम आगे में और रेलपटरी के बीचों बीच में पड़ा हुआ था।

In the fardbayan of Sri Ascharya Saha, brother of the deceased, stated that his brother was coming from Nimtita station. He reached Nimtita station at about 10.00 PM, purchased a ticket and called him on phone. In the statement of Smt. Putul Saha, recorded before RPF, she has neither mentioned the date of the incident nor the train no. She stated that her husband was coming from Nimtita station to Barharwa station and had taken the train early in the morning which does not match the statement of her brother-in-law. She has been cross-examined as AW-1. She admitted that she has no first-hand knowledge of the incident and whatever she knew was as her brother-in-law had told her. The brother-in-law was examined as AW-2 and he has admitted during cross-examination that he had reached the place of the incident and that no ticket or money was recovered from the possession of the deceased.

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That the body was lying on the tracks and that he had reached the place of the incident before the police which shows that the place of residence of the deceased was close by. He has also stated that the deceased had caught the train at night. In this regard it is observed that the distance between Nimtita and Barharwa is only 40-45 KM as per cross-examination of RW-2 which can be covered within 1 hr. 15 min. Therefore the deceased would have reached his destination at night. Moreover, the I.O. of the case stated during cross-examination, that the deceased was run over and no recovery of ticket was made from his body.

As per affidavit of Smt. Putul Saha as well as Sri Ascharya Saha, the deceased had brought the ticket for travel on 03.11.2013. During the cross-examination of Sri Ascharya Saha he has admitted that the deceased boarded the train at night. If this was the case, the deceased would have reached Barharwa within 1 hr. 15 minutes. However, the body of the deceased was discovered in the morning of 04.11.2013, when the local public spotted the dead body on the tracks. The applicant has not been able to explain the time gap between the time of arrival of the said train at the destination and discovery of body on the next day in the morning. The applicant has not been able to prove travel either.

The death of the deceased was caused when Swapan Saha tried to cross the railway line no.3 on south side of Barharwa station crossing point during shunting of a goods train and was run over. As per fardbayan of Sri Ascharya Saha, the body was found cut from the waist, right hand was

separated from the shoulder as well as the left hand. Injuries mentioned in the Inquest "बरहरवा स्टेशन के दक्षिणी रेल पवाइंट पर पुरब करवट अवस्था में कमर से कटकर चिथड़, दाया हाथ बाँह से बाया हाथ.....से कटा हुआ । मृत पड़, लाल आँख अधखुला मुँह खुला कमर से कटकर चिथड़ एवं दाया हाथ बाँह से बाँया होना पूरा से कटा हुआ" The counsel for the respondent has argued that the nature of injuries appears to be due to run over and not accidental fall. In an accidental fall body is thrown along the track and it is not possible for the body to be cut in half from the waist unless the accident happens alongside a platform and the body falls from platform onto the tracks.

From the above facts and circumstances and relevant records collected during enquiry, it is concluded that the above incident is not covered under the definition of an "Untoward incident" as per Section 123(c) of the Railways Act, 1989. Further, the investigation has revealed that the deceased had no journey ticket or any other valid authority. The investigation has also indicated that the deceased was a trespasser as per statement of Altaf Shekh (Local person) and was run over by a goods train.

Here, I would like to quote the provisions of Section 29 of the Railways Act, 1989 wherein "Passenger" means a person travelling with a valid pass or ticket and Section 123(c) (2) of the Railways Act, 1989, "Untoward incident" means the accidental falling of any passenger from a train carrying passengers. From the provisions, it is clear that all three ingredients are necessary to prove "Untoward incident" i.e., (1) The deceased must be a passenger (2) there must be accidental falling of passenger from train (3) The

train, from which such accidental falling occurred, must be passenger carrying train.

Thus the above facts and material available on record, it is held that no bonafide status has been established and neither the falling down incident from Train No.635898 Asansol-Ranchi Passenger has been proven by the applicants. The deceased might have died due to the reasons other than accidental fall from a train.

The contradictions in the claim application, facts available on file and evidence have proved fatal for the claim put forth by the Applicants. As such this bench is of the view that the deceased was neither a bonafide passenger nor his death is covered under the purview of an untoward incident as defined under Section 123 (c) (2) and Section 124-A of the Railways Act, 1989. Thus, issue nos.1, 2 and 3 are decided against the Applicant and in favour of the Respondent.

10. **Issue Nos. 4 and 5: Dependency and Relief**

In the light of the findings on the issue Nos. 1, 2 and 3 above, wherein it is held that the claim application is not maintainable either in law or in fact, the deceased was not a bonafide passenger of the train nor met with the alleged untoward incident, the issue of dependency and relief to any compensation does not arise, hence not taken up for discussion. Therefore, the issues are decided against the Applicant.

11. As a result, it is, therefore,

Ordered

that the claim application filed by the Applicant is devoid of merits and hence dismissed, on contest. There is no order as to costs.

12. **The Registry** shall supply a copy of this Order to the Applicant and the Respondent separately by Speed Post in compliance of Rule 34(3) of the Railway Claim Tribunal (Procedure) Rules, 1989.

(DHRUV SINGH)
Member (Technical)
RCT/Ranchi
09.02.2024.