

BEFORE THE RAILWAY CLAIMS TRIBUNAL

(BENGALURU BENCH AT BENGALURU)

CLAIM APPLICATION No.OA (II U)/SBC/0020/2022

DATED THIS WEDNESDAY, THE 7TH DAY OF AUGUST, 2024

CORAM:

1. Mrs. IVY CHARLES D'CRUZ,
Hon'ble Member (Judicial).
2. Mr. RAVI NANDKEOLYAR,
Hon'ble Member (Technical).

BETWEEN

1. Smt. Hulugamma W/o. late Sannagadilinga, :: Applicants
Aged about 49 Years.
2. Sri Kumar S/o. late Sannagadilinga,
Aged about 34 Years.
3. Sri Durgappa S/o. late Sannagadilinga,
Aged about 29 Years.
4. Sri Gadlinga S/o. late Sannagadilinga,
Aged about 24 Years.
Applicant No.1 to 4 are residing at
R/at H.No. Ward No.1, Karekal Veerapura,
K. Veerapur,
Bellary Taluk & District.
Karnataka-583 111.
5. Smt. Durgamma W/o. Prema Kumar
D/. late Sannagadilinga,
Aged about 26 Years.
Residing at Dasara Nagenahalli, Village,
Bellary Taluk & District,
Karnataka-583 117.

A N D

Union of India, Through
The General Manager,
South Central Railway,
SECUNDERBAD.

:: Respondent

Ld., Counsels appeared:

Shri H.R. Veera Reddy & Shri D.S. Ramesh :: For the Applicants
Shri Praksh Rao. K :: For the Respondent

Value of Claim: Rs. 10,00,000/-

J U D G M E N T

RAVI NANDKEOLYAR,
Member (Technical).

The Claim Application has been filed under Section 16 of the Railway Claims Tribunal Act in respect of Claims for compensation arising out of an alleged untoward incident involving a train.

Basic details relating to the incident as contained in the claim application:

a. Date of Incident: 07.12.2018

b. Name, age and occupation of the deceased:

Shri Sannagadilinga S/o. Eranna, Aged about 45 Years, Coolie by profession.

c. Train involved & transit details: Train No.11304 – Kolhapur- Maruguru Express. Started the journey from Bellary and towards Hyderabad.

d. Untoward incident narrated:

The case of the applicant is that the deceased was a resident of Karekal Veerapura of Bellary District and Coolie by profession. On 06.12.2018, Shri Sannngadilinga S/o. Eranna (hereinafter called and referred to as deceased for brevity), the deceased to attend coolie work at Hyderabad went to Bellary Railway Station, purchased a valid journey ticket and as a bonafide passenger was travelling from Bellary towards Hyderabad by Train No.11304 – Kolhapur-Maruguru Express train. On the same day at about 11.30 AM, when the said train was in operation between Virapur-Bevinahal and Bellary Railway Station at RKM No.232/7-8, accidentally fallen down from the moving train under the bridge and succumbed to injuries.

e. Jurisdiction: The place of incident falls under the jurisdiction of South Central Railway.

2. Salient features of Reply:

a. Written Statement: General denial of all the averments in the Claim Application.

b. Crux of DRM's Report:

From the above enquiries, it is clearly evident that there is no material evidence to support the claim that the deceased has travelled by Train No.11304 – Express or any other train and the deceased was not in possession of bonafide Railway ticket. Also, the place of incident is only 2 km away from the residence of the deceased. Moreover, the details furnished in the GRP inquest, statements of wife and sons of the deceased before GRP and RPF and the claim application are not co-relating with each other and are controversial. Hence, it seems to be a fabricated narration by the applicant to claim compensation and the cause of death may be other than accidental fall.

3. Framing of Issues: Based on the submission of both the parties, following issues were framed on 24.08.2022:-

1. Whether the applicants prove that the deceased was a bonafide passenger?
2. Whether Applicants prove that death of the deceased was due to an untoward incident as is defined under the provisions of Section 123© read with Section 124(A) of Railways Act, 1989?
3. Whether the Applicants are dependents of the deceased?
4. Whether the applicants are entitled for any relief and interest as prayed for in the claim application?

4. Evidence:

a) Applicant's Evidence: Applicant No.1, Smt. Hulugamma S/o. late Sannagadilinga, Wife of the deceased filed her Affidavit dated 11.04.2023 and deposed before this Tribunal as AW-I.

To substantiate their claim, the AW-1 along with her affidavit has produced copy of Legalheir Declaration Certificate (Exh A-7). Applicants have also filed and exhibited certified photocopies of FIR, Memo issued by Station Manager, Bellary to Sub-Inspector of Police, Government Railway Police, Bellary dated 07.12.2018, Report of Sub-Inspector of Police, Government Railway Police, Bellary, Police Inquest Report, Post-mortem Report, Police Final Report and Statement of Applicant No.2, Applicant No.3 and Applicant No.4, Sons of the deceased along with the Claim Application, on the strength of which the deceased had travelled on the day of incident marked as Exhibits by consent.

4. Counsel for Applicants also placed reliance on the following Judgments delivered by Hon'ble Apex Court, Various Hon'ble High Court:

- (1) Hon'ble Supreme Court of India in the case of Kamukayi & Ors., Versus Union of India in Civil Appeal No.3799 of 2023 (Arising out of SLP © No.17062/2022) dated 16.05.2023.
- (2) Hon'ble Supreme Court of India in the case of Union of India Versus Rina Devi in CA No. 4945 of 2018 arising out of SLP © No.10223 decided dt:09.05.2018.
- (3) Hon'ble High Court of Bombay in the case of Smt. Ranjana Wd./o Santosh Devtale & Ors., Versus Union of India in 2020(3) ALL MR 10 in First Appeal No.272 of 2019 decided on 5th March, 2020.
- (4) Hon'ble High Court of Bombay in the case of Megha W/o. Vijay Tahkur & Anr., Versus Union of India in 2021(1) ALL MR 143 in First Appeal No.123 of 2019 decided on 30.04.2020.
- (5) Hon'ble High Court of Jharkhand in the case of Suresh Ram and Others Versus Union of India in (2024) Acci.C.R. 330(Jhar.) in M.A. No.202 of 2020 decided on 17.10.2023.
- (6) Hon'ble High Court of Calcutta in the case of National Insurance Co., Ltd., Versus Nurbanu Bibi and Others in (2024) Acci./C.R. 334 (Cal.) in F.M.A. No.240 of 2023 and CAN 2 of 2023; decided on 16.11.2023.
- (7) Hon'ble High Court of Madras in the case of M. Santha and Others Versus Union of India in 2018 (2) T.A.C. 469 (Mad.) in C.M.A. No.242 of 2016; decided on 9th January, 2018).

b) Respondent's Evidence: Evidence by way of affidavit of Shri B. Munda S/o. Paulus Munda, Assistant Loco Pilot, Guntakal, South Central Railways was filed and examined as RW-1. Exh R-2 was marked through him. RW-1 was cross-examined by Applicant's Counsel. RW-1 evidence was closed. RW-1 was discharged. Respondent has filed Statutory DRM's Investigation Report, which was marked as Exhibit R-1 by consent.

5. Issue-wise discussion and reasoning for the Judgement:

We have gone through the case and have carefully examined the documents and evidence led by the parties and our findings on the issues are as under:

ISSUE No.1 and ISSUE No.2

As these issues being inter-connected and inter-dependent, for the sake of brevity and better appreciation, the same are being dealt together.

5.1 Referring Inquest Panchanama and Statutory DRM's Investigation Report, Ld. Counsel for Respondent submitted that immediately after the receipt of Memo from Station Manager, Bellary, the Investigation Authorities went to the spot and conducted Inquest on the body of the person of the deceased. The GRP did not find any valid Railway ticket or pass from the possession of the deceased during the personal search of the deceased at the time of Inquest proceeding. Even, the Affidavit filed by the Applicants are silent on the aspect of ticket. Hence, he was not a bonafide passenger at the time of incident.

5.2 From perusal of records, it is seen that in this case, no journey ticket was recovered during Inquest Panchanama. Though the Applicants at Para-7 of their Claim Application has stated that the journey ticket was lost, the affidavit of AW-1, Smt. Hulugamma W/o. late Sannagadilinga, Wife of the deceased filed before this Tribunal on 11.04.2023 is silent even about the destination of alleged journey of her husband and also. In the cross-examination, AW-1 has stated that she is not aware whether the deceased had purchased the ticket or not and not seen him purchasing the ticket. She is also not aware the of destination station of alleged journey.

5.3 Hon'ble Apex court in the case of Union of Indian Versus Rina Devi 2018 SCC online SC 507 has concluded followings in regards to Burden of proof when body found on the Railway Tracks and Ticket was not recovered.

'17.4 We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that the injured or deceased was a bonafide passenger for which claim could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bonafide 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 and 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 will stand explained accordingly.

5.4 In this case, Applicant No.1, Smt. Hulugamma W/o. late Sannagadilinga, Wife of the deceased (AW-1) filed evidence-in-chief by way of affidavit dated 11.04.2023 and averred that on 06.12.2018, her husband (deceased) after purchasing the valid train ticket was travelling from Bellary towards Hyderabad by Train 11304 – Kolhapur-Maruguru Express train. On the same day at about 11.30 in the morning, when the said train in operation between Veerapur and Bevinahal Railway Stations at Railway KM No.232/7-8, he accidentally fell down from the moving train and succumbed to injuries. She stepped into witness box on 02.11.2023 as AW-1. During cross-examination, she deposed that on the alleged date of incident, her husband left the house at 7.30 in the evening and informed that he was proceeding towards Hyderabad for searching of coolie work. At that point of time, her elder son was in the house. She also deposed that she does not know whether the deceased had purchased the ticket or not and she has not seen him purchasing the ticket. More importantly, the applicants in their claim application at Para-6 have stated that the deceased (Sannagadilinga) after purchasing the valid train ticket was travelling by Train No.11304 - Kolhapur-Maruguru Express train and on the same day at about 11.30 AM when the said train was in operation between Virapur and Bevinahalli, Bellary Railway Station Railway KM No.232/7-8, accidentally fell down. However, during the course of investigation, the Investigation Officer i.e., Police Sub-Inspector, Railway Police Station, Bellary have recorded the statement of wife of the deceased (AW-1), Smt. Hulugamma on 15.12.2018, wherein she stated that on 06.12.2018 when she was in the house, her husband Sannagadilinga after having meals, left the house and went to Guntur, searching for the job. He left the house at 8.00 in the night and went to Virapur Railway Station and from there, he went to Guntur. On the next day i.e., on 07.12.2018 afternoon at 12.00 hrs., the villagers have noticed the dead body of the deceased and informed to them. The son of the deceased, Shri Kumar, Applicant No.2, in his statement before the Investigation Officer has reiterated the same facts. The Police Sub-Inspector, Railway Police Station, Bellary have conducted a detailed enquiry in this case and submitted a Final Report (Exh A-4) before Taluka Executive Magistrate Court, Bellary. The Investigation Officer after conducting a detailed enquiry have come to the conclusion that the deceased left the house on 06.12.2018 at 8.00 hrs., in search of job and went to Virapur Railway Station and was travelling towards Guntur. The deceased while travelling lost balance, fell down from the moving train below Railway bridge No.304, sustained injuries

and died on the spot. From the above, it is very clear from the version of Wife and Son of the deceased and Final Report produced by the Investigation Officer that the incident alleged to have occurred while the deceased was travelling from Virapur to Guntur. However, in the claim application, the applicants have stated that the deceased while travelling by Train No.11304 – Kolhapur-Maruguru Express Train from Bellary towards Hyderabad, accidentally fell down from the moving train, sustained injuries and died on the spot. When it is a consistent case of the applicants that the deceased boarded Train No.11304- Kolhapur-Maruguru Express Train and fell down from the train between Virapur and Bevinahal Railway Stations at RKM No.232/7-8, however, the Applicants have failed to prove by way of any documentary evidence or witnesses examined this contention. Documentary evidence runs contrary to evidence of AW-1 and also statements of wife and son of the deceased. Further, in the present case, the boarding station of the deceased is determining factor for consideration. It is pertinent to cite here that, during the investigation, the Assistant Sub-Inspector/RPF, South Central Railway, Guntakal has recorded the statement of Shri A.M. Shiva Shankar, Senior Guard/Senior Train Manager of Mail /Express train. In the said statement, he has stated that on the day of incident i.e., on 06.12.2018, he was working as Guard of Train No.11304 from Hubballi to Guntakal by Train No.11304. The said train reached Hubballi at 16.35 hrs., and left Bellary at 20.50 hrs., of 06.12.2018 and reached Guntakal at 22.15 hrs., of 06.12.2018. The said train did not stop till Guntakal West. From the above, it is very clear that the train in which the deceased alleged to have travelled has not stopped at Virapura Railway Station as contended by wife and son of the deceased in their statements. The applicants to suit their convenience and to match the timing have come with a story projected and built up in the present case is not free from grave suspicion that the deceased had boarded Train No.11304 – Kolhapur-Maruguru Express train at Bellary. Furthermore, as per the statements of Wife and son of the deceased, the villagers after returning from farm work, noticed the dead body of the deceased and informed the same to the applicants. This clearly shows that the incident spot is in proximity to the village of the deceased and he might be hit by some unknown train and died. Based on the oral and documentary evidence produced by the applicants themselves disprove their case. In the instant case, applicants have failed to produce any concrete evidence to support their claim that the deceased had purchased the ticket or not. Though the applicants filed the affidavit about the bonafide of the deceased

about purchasing of the Railway Journey Ticket, however, during cross-examination, she has not supported her statement made on her affidavit. AW-1 has stepped into witness box and deposed that “I do not know whether he purchased the ticket or not I have not seen him purchase of ticket”. She could not throw any light on this aspect about the issue of purchase of journey ticket. This amounts to negating her own affidavit. Hence, the question of shifting of the burden on to the respondent does not arise. Hence, in the instant case, applicants have miserably failed to prove that the deceased was travelling with a valid journey ticket. Hence, Issue No.1 is answered in negative.

5.5 Section 124-A of The Railways Act, 1989 (for short, ‘the Act’) entitles a passenger to claim compensation, who has been injured or the dependents of the deceased, who has been killed in an untoward incident as defined under Section 123 (c) of the Act *ibid*. The word ‘passenger’ has been defined under Section 2(29) of the Act as a person travelling with a valid pass or ticket. It is only when the fact of the injured or the deceased being a bonafide passenger of the train is established, the question of payment of compensation arises in case the incident is held to be an untoward incident. Therefore, the first requirement for the applicants is to prove that the deceased was a bonafide passenger of the train.

5.6 The initial burden lies on the applicants to show that the deceased was a bonafide passenger. It is held by various Hon’ble High Courts viz. Andhra Pradesh High Court in **Jetty Naga Lakshmi Parvathi and others v. Union of India (2013 ACJ 1061)** and Delhi High Court in **Gurcharan Singh and another v. Union of India (FAO No. 507 of 2011 decided on 8.1.2014)** that the initial burden lies on the applicants to show that the deceased was a passenger and thereupon, the burden shifts on to the respondents to establish that he is not a bonafide passenger with a journey ticket.

5.7 In a recent judgment, the Hon’ble Supreme Court of India in the case of Union of India versus Rina Devi and Others has held that the Tribunal has to consider the facts and circumstances of the case while drawing a conclusion in regard to the incident being an untoward incident and the bonafideness of the deceased. Only based on this record, has the Court to

decide or determine the claim application. As observed supra, in the instant case, the onus was on the applicants to prove that the deceased was travelling in a train with a valid journey ticket and died in an Untoward Incident.

5.8 Further, we find serious inconsistencies in regard to alleged journey of the deceased as mentioned in Affidavit of Smt. Hulugamma W/o. late Sannagadilinga, Wife of the deceased (AW-1), her deposition and Claim Application.

As per deposition of Smt. Hulugamma W/o. late Sannagadilinga, Wife of the deceased (AW-1), before this Tribunal on 02.11.2023, she has stated that –

“.....The neighbors have informed her regarding the incident, but she do not know the timings. At about 8.30 P.M., she has seen her husband’s dead body at platform. The body was brought to her house at 12.00 noon on the next, but she cannot say who has brought the dead body, even she cannot say from where the dead body was brought to her residence.”

However, in her Affidavit dated 11.04.2023, in Para-5, she has mentioned as under:-

“.....that the police have conducted enquiry about the incident and after three days, the police have informed to me and my family members about the incident stating that the accident was an untoward incident within the limits of Railways premises....”

5.9 To examine the issue in regard to ‘this Incident’, it will be relevant to refer following Sections of Railway Act, 1989

A. Section 123(C) of Railways Act, 1989

“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.*

B. Section 2 (29) of Railways Act, 1989 defines the expression “Passenger” as meaning a person travelling with a valid pass or ticket.

C. Passenger as per Section 124(A) - under Section 124(A) in order to cover incidents in different scenario as per Section 123(C), the expression passenger has been given a wider scope and ambit and it includes;

(i) *a railway servant on duty; and*

(ii) *a person who has purchased a valid ticket for travelling, by a train carrying passenger, on any date or a valid platform ticket and becomes a victim of an untoward incident.”*

From Section 123(C)(2) reproduced above, it is clear that an incident to qualify as untoward incident, the victim should be a passenger travelling in a train carrying passengers and there is an accidental fall of the victim from the train. To qualify as a passenger, the victim must possess a ticket.

From Section 2(29) and Section 124(A), it is clear that to qualify as passenger, the victim must possess a ticket.

5.10 With due respect to the reported judgments rendered by Hon’ble Apex Court and strings of Judgments rendered by various Hon’ble High Courts, which are relied upon by Applicant’s Counsel, these judgments are considered in different aspects and not applicable to the facts and circumstances of the case on hand. Hence, this judgment is not applicable to the present case.

5.11 Based on the facts, circumstances of this case and preponderance of evidence on record, we have come to conclusion that the Applicants have failed to prove that on 06/07.12.2018, the deceased (Sannagadilinga) while travelling as a bonafide passenger of Train No.11304 – Kolhapur-Maruguru Express Train, accidentally fell down from the running train at RKM No.232/7-8 between Virapur-Bevinahal and Bellary Railway Stations, sustained serious injuries and on the spot. There is no force and substance in various contentions raised by the applicants and as such the same are totally un-trustworthy. Thus, we, hold that this is not a fit case for granting compensation under Section 123©(2), and Issues 1 and 2 are answered in negative, against the applicants.

ISSUE No.3

6. Issue of dependency is not examined in detail as the Respondent Railways is not liable to pay any compensation being covered under exception in Section 1234-A(c) of the Railways Act, 1989.

ISSUE No.4

7. There is no order for payment of compensation by the Respondent Railways as the application is “devoid of merit” and not allowed.

ORDER

1. In the result, the Claim Application is **‘DISMISSED’** as per findings and speaking order in the foregoing paras.

2. Registry is directed to send a free certified copy of this Judgment to the parties in view of Rule 34 (3) of the Railway Claims Tribunal (Procedure) Rules, 1989.

3. With these observation, the application is ‘DISMISSED’ and disposed off accordingly. File be consigned to Record Room after compliance.

(RAVI NANDKEOLYAR)
MEMBER (TECHNICAL)

(IVY CHARLES D’CRUZ)
MEMBER (JUDICIAL)

Judgment pronounced on Wednesday, the 7th Day of August, 2024.

(RAVI NANDKEOLYAR)
MEMBER (TECHNICAL)

(IVY CHARLES D’CRUZ)
MEMBER (JUDICIAL)