

BEFORE THE RAILWAY CLAIMS TRIBUNAL

(BENGALURU BENCH AT BENGALURU)

CLAIM APPLICATION No.OA (II U)/SBC/0021/2022

DATED FRIDAY THE 10th DAY OF MAY, 2024

CORAM:

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

BETWEEN

Smt. K.G. Meenakshamma,
W/o. late S.T. Thippeswamy,
Aged about 67 Years,
Residing Near Mallikarjun Swamy Temple,
VTC Kabballa,
PO Doddagatta,
Sub-District Channagiri,
DAVANAGERE-577 544.

:: Applicant

AND

Union of India through
The General Manager,
South Western Railway,
HUBLI.

:: Respondent

Date of Registration: 04.07.2022

Arguments Heard and Reserved on: 23.04.2024

VALUE OF CLAIM Rs.50,00,000/=

Ld, Counsel appeared:

Mr.Zista Hanumesh. H.N, Counsel for Applicant.

Mr. Prakash Rao. K, Counsel for Respondent.

J U D G M E N T

IVY CHARLES D'CRUZ,
Member (Judicial).

The Claim Application has been filed under Section 16 of the Railway Claims Tribunal Act 1987, in respect of Claims for compensation arising out of an alleged untoward incident involving a train.

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

- a. Name, age and occupation of the deceased. : Shri S.T. Thippeswamy
69 Years, Farmer
- b. Date of Incident : 15.10.2019
- c. Train involved & transit details : Fell down from Banapur Railway Foot Over Bridge.
- d. Untoward incident narrated : It is averred that S.T. Thippeswamy (hereinafter called and referred to as 'deceased' for brevity) was resident of Chitradurga of Sulthanpur Taluk and was a farmer. On the fateful day i.e., on 15.10.2019, the deceased went to Hubballi Railway Station, purchased a Second Class Railway Journey Ticket bearing No.13363022 for himself, for travelling from Hubballi to Gadag. However, the deceased slept and continued his journey upto Banapur Railway Station. He got down there at Banapur Railway Station and walking towards ticket counter to purchase a ticket for his return journey. However, he fell from a bridge, which was under construction, sustained head and thoracic injuries as a result of blunt force trauma, consistent with the history of fall from a height and died instantaneously.
- e. Jurisdiction: The place of incident falls under the jurisdiction of South Western Railway.

2. Salient features of Reply:

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

- 3. Crux of DRM's Report:** 1. As per point No.7 of inquest report railway journey ticket was found with the deceased dated 15.10.2019 from Hubballi to Gadag but incident occurred near Banapur Railway Station which is 30 km beyond Gadag. 2. As per the statements of deceased's wife and son-in-law, Mahendra Kumar, the deceased was aged and was not having good eye sight. 3. As per Post-mortem report of the deceased, death is due to the blunt force trauma consistent with the history of fall from height. 4. As per above enquiry, it is clear that the deceased did not fall down from any running train, but had fallen down from the Road under bridge accidentally. 5. As per the statement of Smt. K.G. Meenakshamma

(deceased's wife), they do not have children or dependents. Further, she also stated that she has not filed any claim anywhere regarding her husband's death and does not have any knowledge about this claim. 6. Spot observation, pictures and structures clearly suggest falling down from the bridge RuB (Road under Bridge). This case is not eligible for any compensation as per Section 123, 124 and 124-A of the Railway Act.

4. Framing of Issues: Based on the submission of both the parties following issues were framed on 27.09.2022:-

1. Whether the deceased was a bonafide passenger?
2. Whether there was any untoward incident as is defined under the provisions of Section 123© 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?

5. Evidence:

a) Applicant's Evidence: The sole applicant, Smt. K.G. Meenakshamma W/o. late S.T. Thippeswamy, Wife of the deceased filed her affidavit on 27.04.2023 and stepped into witness box on 20.06.2023 and deposed before this Tribunal as AW-1. Similarly, Shri Yashupal. K.G S/o. Chandra Mohan. K.G, Nephew of the deceased deposed before this Tribunal on 20.06.2023 as AW-2.

To substantiate her claim, the AW-1 along with her Affidavit has produced various certified copies of police viz., FIR, Police Inquest Report, Post-mortem Report, Police Final Report, AW-1's statement to the police, Railway Journey ticket UOD-13363022 dated 15.10.2019 from Hubli to Gadag and another ticket No. UOD-04262952 from Harihar to Hubli and dependency documents viz., Copy of Aadhaar and PAN Card of AW-1, Death Certificate of the deceased, Family Living Member Certificate, Sworn affidavit before notary and copy of first page of savings bank accounts of AW-1.

b) Respondent's Evidence: Respondent Railway have produced Shri Amarjeet Yadav S/o. Param Hansh Yadav, Station Master, Bhanapur. Evidence-in-chief by way of affidavit of Shri Amarjeet Yadav filed and examined as RW-1. Exhibit R-2 and R-3 were marked through him. RW-1 was examined and cross-examined. RW-1 was discharged.

c) Court Witness: None

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

We have gone through the pleadings of 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

5.1 The sole applicant, Smt. K.G. Meenakshamma W/o. late S.T. Thippeswamy, Wife of the deceased filed her affidavit on 27.04.2023 and stepped into witness box on 20.06.2023 and deposed before this Tribunal as AW-1. Similarly, Shri Yashupal. K.G S/o. Chandra Mohan. K.G, Nephew of the deceased deposed before this Tribunal on 20.06.2023 as AW-2.

5.2 The sole applicant, Smt. K.G. Meenakshamma W/o. late S.T. Thippeswamy, Wife of the deceased (AW-1) in her affidavit on 27.04.2023 (Exh. AW 1/1) has stated that the deceased was her husband. On 15.10.2019, the deceased with a valid journey ticket was travelling from Hubballi to Gadag, during the course of journey, he slept and could not get down at his destination station i.e., Gadag and continued his journey upto Bhanapur Railway Station. When the train reached Bhanapur Railway Station, he alighted from the train and walking towards the ticket counter to purchase a ticket for his return journey to Gadag. While he was walking Over the bridge, which was under construction, there was a gap between the platform and the bridge and there was no sign board or proper light to identify the gap in darkness. Due to which, the deceased accidentally fell down from the bridge, sustained injuries to vital organs and died on the spot.

5.3 Ld. Counsel for the Applicants submitted that the Applicant has filed the certified copy of computerised journey ticket No. UOD-13363022 to travel between Hubballi to Gadag dated 15.10.2019 on the strength of which the deceased was travelling and filed affidavit in support of the same. Applicant also produced another ticket bearing No. UOD-04262952 for travel from Harihar to Hubballi. However, Ld. Counsel for Respondent contested that the ticket, which were recovered from the possession of the body of the person of the deceased during his personal search, its recovery is not mentioned in the Police Report does not have relevance to the present case in hand for the reason best known that the body of the person of the deceased was found near Bhanapur Railway Station.

5.4 It is an admitted case brought out in the police report that two journey tickets were recovered from the body after it was noticed by Shri Satyappa Shivappa, Gangmate, Gang No.7 at Bhanapur Railway Station at 8.30 hrs., at RKM No.102/900 to 103/000. The argument of the applicant was that even at the time of inquest, it was stated by the Investigation Officer that the deceased had purchased a journey ticket to travel between Hubballi and Gadag, however, instead of alighting the train at his destination station i.e., Gadag, he slept, he continued his journey beyond and finally got down at Bhanapur. The applicants' contention, therefore, is that he was a bona fide passenger, no matter he had extended his journey and accident has taken place at the next destination.

5.5 No doubt, the applicants have produced certified copy of journey ticket. On close scrutiny of the journey ticket bearing produced by the applicants, it is seen that the journey ticket No. UOD-13363022 dated 15.10.2019, which was issued at 22.56 hrs., for an adult to travel between Hubballi and Gadag on the strength of which the deceased was travelling. However, the body of the person of the deceased was found lying only on the next day i.e., 16.10.2019 at 8.30 in the morning by the Gangman near Bhanapur Railway Station, which was almost 47 kms., away from the destination station of the deceased. More importantly, AW-1 in her statement before the police had stated that her husband was hale and healthy and due to his influence in politics, he used to carry out the work of getting transfer of Government Officials and hence used to travel from Hubli to other places very often. From the above, it is very clear that it is well within the knowledge of the deceased that he was travelling from Hubli to Gadag. For argument sake, if the deceased had overshoot the journey and when it comes to his notice, he had every opportunity to deboard from the en route stations i.e., Kanhial, Harlapur, Sompur, Bannikoppa, Talkal and Bhanapur covering almost 60 minutes (one hours) by a passenger train. The victim should have got down at the next immediate station and not to keep on travelling for five more stations and finally realizing that he had overshoot his journey and alighted at Bhanapur Railway Station. Mere recovery of the ticket, which is not relevant to this travel does not qualify him as a bona fide passenger of the train in question.

5.6 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 applicant is to prove that the deceased was a **bonafide passenger** of the train.

5.7 On the point of deceased being a bonafide passenger, the observations made by the Hon'ble High Court of Karnataka at Bangalore in para 6 of its judgment rendered in the case of *Union of India v. Lakshmi and others, 2014 ACJ 2505* may be quoted as follows :-

“6. The relevant provisions of Railways Act are very clear, in that, if a person suffers injury or death in an untoward incident as contemplated under section 123(c)(2) of the Railways Act, 1989, he/his family members is/are entitled to seek compensation provided he is a bonafide passenger with valid ticket. That means, either on his body or in his possession, such ticket should be found at the time of incident, which is valid for journey in that particular train for that particular day. If that is not found, then the reasonable presumption is that he was traveling without ticket.”

Accordingly, Issue No.1 is answered in negative.

ISSUE No.2

6. So far as the factum of occurrence of untoward incident is concerned, there is no eye-witness of the incident. Therefore, the documentary evidence available on record and the circumstances that led to the incident have to be scrutinized before arriving at any conclusion. We have carefully perused Station Master, Bhanapur's memo, dated 16.01.2019, where it is recorded "Shri Satyappa Shivappa, Gangmate (Gang No.7), Bhanapur informed at 8.30 hrs., one male dead body, aged about 60 years is found lying under bridge at RKM No.102/900 to 103/000". This memo clearly depicts, the date, time and place where the body was found lying. We have also carefully perused the inquest panchnama, where it is recorded "deceased had fallen from the end of the Platform No.1 of Bhanapur Railways Station, below the under bridge and died". Further, the police and panchas together have

opined in the inquest panchnama that, as per the boundary below: East: end of Platform No.1 Bhanapur Railway Station building West: Under Bridge column, North: Pit of Banura and South: Bhanapura Village land and then vacant space. These reports were prepared by the concerned officials, in the regular course of their duties and their genuineness and veracity cannot be doubted. Moreover, these officials were not to gain or lose by recording false facts of the death of the deceased in their reports. We have also carefully perused the statement of Smt. K.G. Meenakshamma, (wife of the deceased), where she has stated that due to darkness and drowsy mood, he went to the edge of the footpath and while entering the under bridge, accidentally fallen down, sustained injury to his head and chest and died on the spot and that she has no complaints or doubts against anybody regarding his husband's death. We have also carefully perused the post-mortem report, where the Doctor opined cause of death was due to "head and thoracic injuries sustained as a result of blunt force trauma consistent with the history of fall from height"

6.1 Perusal of the entire records clearly reveal that the deceased, on 15.10.2019, had fell down from Foot Bridge at Bhanapur, sustained serious injuries and other multiple injuries and died. Furthermore, in this case, Applicant, Smt. K.G. Meenakshamma (AW-1) in her Claim Application, Affidavit dated 27.04.2023 and also in her deposition herself has admitted that when the train reached Bhanapur Railway Station, he alighted from the train and walking towards the ticket counter to purchase a ticket for his return journey to Gadag. While he was walking over the bridge, which was under construction, there was a gap between the platform and the bridge and there was no sign board or proper light to identify the gap in darkness. Due to which, the deceased accidentally fell down from the bridge, sustained injuries to vital organs and died on the spot. Based on the submission from both sides, the core issue which needs examination is whether this incident comes under purview of Section 123© of Railway Act, 1989, which defined the 'Untoward Incident'. Relevant Section 123© of the Railways Act defining Untoward Incident is reproduced as below:

Section 123© of the Railways Act defining Untoward Incident

"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.]

6.2 From the above provision, it is clear that the incident clearly does not fall under the Provision of Section 123©(1). Further, contents of Claim Application, Affidavit and Deposition of the Applicant clearly establishes that the injured had fallen from the Bridge of Bhanapur Railway Station. Further, this incident has taken place when the deceased had overshot his journey. Therefore, the incident leading to injuries on the deceased is not an 'Untoward Incident' as same is not covered under proviso of Section 123© of Railway Act, 1989.

6.3 In view of all the above discussion, it is concluded that deceased S.T. Thippeswamy, on 15.10.2019 had already completed his journey and hence he was not a bonafide passenger and that he died due to fall from the Bridge at Bhanapur Railway Station, sustained serious crush injuries and other multiple injuries and died. It was not a case of fall from train. As such the alleged incident, dated 15.10.2019, cannot be termed as an untoward incident, as defined under Sec. 123 (c) (2) of the Railway Act, 1989 and the applicants cannot be compensated under Sec. 124 A of the Railway Act, 1989. Hence, Issue No.2 is answered in in negative.

ISSUE No.3

7. 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

8. Under Section 124 A of the Railway Act, the dependents of a deceased person would be entitled to claim compensation only when it is established that the death of the deceased was due to an untoward incident. The expression “untoward incident’ is defined in Section 123 of the Railway Act as including the case of accidental fall from a train carrying passenger. The applicants are, therefore, required to establish that the deceased was a passenger and he had an accidental fall from the passenger train amounting to an untoward incident.

O R D E R

1. In the result the claim petition is **‘dismissed’** on contest.
2. In facts and circumstances of the case, there is however, no order as to costs.
3. Registry is directed to send a free certified copy of this Order to the parties in view of Rule 34(3) of the Railway Claims Tribunal (Procedure) Rules, 1989.
4. With these observation, the application is **‘Dismissed’** and disposed off accordingly. File be consigned to Record Room after compliance.

(IVY CHARLES D’CRUZ)
MEMBER (JUDICIAL)

(RAVI NANDKEOLYAR)
MEMBER (TECHNICAL)

Judgment pronounced on 10th May, 2024.

(IVY CHARLES D’CRUZ)
MEMBER (JUDICIAL)

(RAVI NANDKEOLYAR)
MEMBER (TECHNICAL)