

BEFORE THE RAILWAY CLAIMS TRIBUNAL

(BENGALURU BENCH AT BENGALURU)

CLAIM APPLICATION No.OA (II U)/SBC/0030/2020

DATED THIS FRIDAY THE 2ND DAY OF FEBRUARY, 2024

CORAM:

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

BETWEEN

1. Ramappa S/o. Bhimappa Mutagi, :: Applicants
Age 73 Years, Occu: Nil
2. Devaki W/o. Ramappa Mutagi,
Age 64 years, Occu:Housewife.

Both are residing at
Near Mosale Karanj Hukkeri,
Tq: Hukkeri,
Dis: Belgaum,
PIN Code:591 309.

A N D

The Union of India :: Respondent
Represented by its General Manager,
South Central Railway,
SECUNDERABAD.

Date of Registration: 12.10.2020

Arguments heard and reserved: 19.01.2024

Ld., Counsel appeared:

For Applicants :: Shri Arjun R. Khot
For Respondent :: Shri K.P. Mune Gowda

Application under Section 16 of Railway Claims Tribunal Act, 1987 read
with Section 123(c) (2) and 124-A of Railways Act, 1989.

J U D G M E N T

RAVI NANDKEOLYAR,
MEMBER (TECHNICAL)

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

a. **Date of accident:** 07.10.2018.

b. **Name, age and occupation of the deceased:**

Shri Parashuram S/o. Ramappa Mutagi, Aged 28 years, Coolie.

c. **Train involved & transit details:** Unknown train - while the deceased was travelling from Tirupathi to Ghataprabha.

d. **Untoward incident narrated:**

It is stated that said deceased, on 06.10.2018, while travelling as a bonafide passenger of an unknown train from Tirupathi to Ghataprabha, on the strength of a valid second class Railway Journey ticket bearing No. 19305600 has wrongly boarded the train from Tirupathi to Vijayawada. During the course of journey, due to jerk of the train, he had accidentally fell down from the running train between Kavali and Tettu at RKM No.237/6-8, sustained serious injuries and died on the spot. The Applicants have filed the Railway Journey Ticket bearing No.19305600 dated 06.10.2018 to travel between Tirupathi and Ghataprabha, on the strength of which, the deceased alleged to have boarded a wrong train going towards Vijayawada.

e. **Jurisdiction:** The place of accident is within the jurisdiction of South Central Railway,

2. Salient features of Reply:

a. **Averments in Reply:** General denial of all the averments in the claim application.

b. **Crux of DRM's Report:** "The journey ticket secured by the GRP/Kavali in inquest is meant for the journey from Tirupathi to Ghataprabha which

is not valid for the travel on main line from Tirupathi towards Vijayawada. No valid journey ticket was found in possession of the deceased during the joint observation done by GRP & RPF. Hence, the deceased is not a bonafide passenger.

Thus, from the facts, circumstances and the evidence brought on record by IO/RPF, it is concluded that there is absolutely no cogent evidence that the deceased had boarded or travelled by any train. The death seems to be suspicious and may be on account of reasons other than accidental fall from running train”

c. **Precedents cited and their import:** None.

3. **Framing of Issues:** Based on the pleadings of the parties, following issues were framed on 28.02.2022:-.

- i) Whether the deceased was a bona fide passenger?
- ii) Whether there was any untoward incident as defined under the provisions of section 123(c) of the Railways Act, 1989?
- iii) Whether the applicants are dependents of the deceased?
- iv) Whether the applicants are entitled for any relief and interest as prayed for in the application?

4. **Evidence:**

a) **Applicant's Evidence:** Applicant No.2, Smt. Devaki W/o. Ramappa Mutagi, Mother of the deceased (AW/1) filed her affidavit dated 27.05.2022 (Exh. AW 1/1) and deposed before this Tribunal on 22.06.2022.

To substantiate their case, the Applicant have also filed certified copies of photocopies of FIR, Memo issued by Station Master, Tettu, Inquest Panchanamma, Post-mortem Report, Police Final Report, Railway Journey Ticket and Photostat copies of dependency documents viz., Aadhaar Cards of both the applicants, Family Ration Card, Genealogical Tree issued by Grama Panchayat, Hukkeri and Death Certificate of the deceased along with the Claim Application and marked as Exh A-1 to 11 along with the Affidavit.

b) **Respondent Evidence** : None

5. Issue-wise reasoning for the Judgement:

We have gone through the pleadings of the case and have carefully considered the documents and evidence led by both the parties in the matter and our findings on the issues are as under:

ISSUE No.1 and ISSUE No.2

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

5.1 Applicant No.2, Smt. Devaki W/o. Ramappa Mutagi, Mother of the deceased (AW/ 1) in her affidavit dated 27.05.2022 (Exh AW 1/1). Entire text of the deposition are appended as under:-

Cross-examination of AW-I by Sri K.P. Mune Gowda, Ld., Counsel for the Respondent

I have filed this claim application, claiming compensation for the death of my son who died while returning from Tirupathi by train. I do not know the name of my advocate. I am an illiterate and hence I do not know the contents of my affidavit. I do not know the age of my deceased son at the time of his death. My deceased son was doing coolie work and he was unmarried. I have produced copy of Aadhaar card, voter's ID and Family Ration card to prove that the deceased was my son. Lalitha and Shilpa are daughters and they got married and living separately. I have five children. Out of which, 03 male (including the deceased) and 02 female viz., Lalitha (daughter), Maruthi (son), Shilpa (daughter), Parasuram (my deceased son) and Pintu (son). The other two sons are married and living separately. I am the resident of Mosalekaranjihukkeri. I do not know the date, month and year on which my deceased son went to Tirupathi. I do not know on the date on which my deceased son left the house and went to Tirupathi. My deceased son left the house in the morning and I was in the house at that point of time. I do not know whether anyone had accompanied the deceased to Tirupathi. My deceased son has not carried any luggage, except a bed sheet. My deceased son went to Tirupathi by train. Ghataprabha is the nearest Railway station from our village. Police have only informed about the death of my son, which occurred at KM.No.237/6-8. I did not go to the incident spot, but my villagers had visited the spot. Police have informed about the death of my son. Police came to our village and informed. Police have seen the deceased at Tirupathi Railway station. I do not know the name of the police. I came to know about the death of my deceased son after five days. Maruthi, my nephew along with villagers have brought the dead body but I do not know the name of the police station. I do not know as to how my son had died. I have not gone to any police station and Police have not recorded my statement. My sister's son Maruthi only knows everything. My sister's son Maruthi only brought all the police documents. I do not know whether they have filed the journey ticket or not. My husband is aged about 100 years. Police have not handed over any articles/belongings recovered from my deceased son's body to Maruthi. I do not know which Police have registered the case and investigated. I do not know where the post mortem was conducted. My son had called me over phone on the same night from Tirupathi Railway station over phone and informed me that he had darshan at Tirupathi and he is at Tirupathi Railway station and returning by train. He stated that he is at Railway station. We have a mobile phone in the house. I do not know whether there is any eye witness

to the incident. I deny the suggestion that my deceased son while returning from Tirupathi had an accidental fall from train and died but I do not know as to how the incident had occurred since I was in my native place and my son was in Tirupathi. I do not know the mobile phone of my deceased son. I deny the suggestion that my deceased son did not call me from Tirupathi Railway station. I deny the suggestion that the death of my deceased son was not on account of fall from train but due to some other reason. My sister son Maruthi knows about the original ticket. I do not know where the body of my deceased son was lying. The incident occurred while my deceased son was returning from Tirupathi. I deny the suggestion that in order to get compensation from Railway I am deposing falsely. My deceased son was carrying Rs.4,000/- to Rs.5,000/-. I deny the suggestion that the ticket which is produced before this Hon'ble Tribunal does not belong to my deceased son, colluding with the police secured some others ticket and planted and filed. I have filed my savings bank account details before this Tribunal. I have filed the relevant documents to prove my relationship with my deceased son. My deceased son while going to Tirupathi he had carried his Aadhaar card. I deny the suggestion that the deceased was not my son.

(emphasis supplied)

5.2 The Applicants have filed certified copy of Second Class Railway Journey Ticket bearing No. 19305600 valid issued at 16.19 hrs., on 06.10.2018 to travel between Tirupathi to Ghataprabha via Renigunta, Guntakal and Hubli, on the strength of which the deceased had travelled on the day of incidence and Applicants have also filed an Affidavit for the same. During the course of arguments, Ld., Counsel for the applicants submitted that on 06.10.2018, the deceased as a bonafide passenger with a valid journey ticket bearing No.19305600 for his travel between Tirupathi and Ghataprabha, however, boarded a wrong Tirupathi to Vijayawada train. During the course of journey, due to jerk of the train, he had accidentally fallen down from the running train between Kavali and Tettu at RKM No.237/6-8, sustained serious injuries and died on the spot.

5.3 Per contra, Respondent Railway had conducted a detailed enquiry in this case and produced Statutory DRM's Investigation Report, which mentions that during Joint Observation the journey ticket secured by the GRP/Kavali in inquest is meant for the journey from Tirupathi to Ghataprabha via Renigunta, Guntakal and Hubli, which is not valid for the travel on main line from Tirupathi towards Vijayawada. No valid journey ticket was found in possession of the deceased. Though, the Police has mentioned in the Inquest Panchanamma about the recovery of Railway journey ticket bearing No. 19305600, but the said ticket is valid only for travelling from Tirupathi to Ghataprabha via Renigunta, Guntakal and Hubli.

5.4 Heard arguments from both sides. Perused the records. The applicants being the parents of the deceased Parashuram S/o. Ramappa Mutagi have filed the present OA claiming compensation of Rs.20,00,000/- along with interest. The case of the applicants in nutshell is that the deceased had been to Tirupathi to have darshan of Lord Venkateshwara and after having visited Tirupathi and having darshan, he came back to Tirupathi Railway Station, purchased a second class journey ticket for his travel between Tirupathi and Ghataprabha. Applicants further contended that the deceased had wrongly boarded the train from Tirupathi to Vijayawada instead of Tirupathi to Ghataprabha. During the course of journey, due to jerk of the train, he had accidentally fallen down from the running train between Kavali and Tettu at RKM No.237/6-8, sustained serious injuries and died on the spot. In support of their case, Applicant No.2, Smt. Devaki W/o. Ramappa Mutagi, Mother of the deceased got herself examined as AW-I and produced 11 documents marked as Exhibit A-1 to A-11 and cross-examined by Respondent's Counsel on 22.06.2022.

5.5 Per contra, Respondent Railways have filed Statutory Investigation Report, with the acceptance of the Divisional Railway Manager, as envisaged in Rule 13 of The Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003 as amended in 2007 along with the written statement/reply as per Rules framed pursuant to Section 129 of the Railways Act, 1989. In the written statement, Respondent Railway have contended that the distance between alleged boarding station i.e., Tirupathi place of incident i.e., Kavali and Tettu is about 182 kms. If the deceased really boarded different route train, he should have deboarded the train at the earliest, but he did not do so, which clearly established that the deceased did not travel in the train, therefore, the incident has not occurred due to fall from train. In the Statutory DRM's Investigation Report, Respondent Railways have concluded that the journey ticket secured by the GRP/Kavali in inquest is meant for the journey from Tirupathi to Ghataprabha which is not valid for the travel on main line from Tirupathi towards Vijayawada. No valid journey ticket was found in possession of the deceased during the joint observation done by GRP & RPF. Hence, the deceased is not a bonafide passenger.

5.6 From the perusal of Respondent Statutory DRM's Investigation Report, it is seen that during the course of enquiry, Post-Commander, RPF, Ongole Post, have conducted a detailed enquiry, in this case and produced various records annexed to the said Statutory DRM's Investigation Report. In the instant case, law was set into motion, based on the message issued by Station Master, Tettu to Sub-Inspector of Police, Government Railway Police and Railway Protection Force Kavali dated 07.10.2018. Based on the same, FIR was registered on 07.10.2018 at 10.35 in the morning and investigation was conducted by Shri Syam Kumar Yarramaneni, Head Constable. On close scrutiny of the documents annexed to the DRM's Investigation Report, it is seen that the Investigation Authorities have conducted a spot panchanamma i.e., (Crime Scheme Observation Report), which was conducted in the presence of two witnesses on the very same day i.e., 07.10.2018 between 11.00 AM to 12.00 PM. During the course of spot panchanamma, the body was not identified by any blood relatives and it was mentioned as 'unknown'. In the said report, the Investigation Officer has clearly mentioned that (1) the deceased was wearing white strips full sleeves shirt (2) Blue colour pant (3) Blue colour underwear. However, nothing has been mentioned with regard to recovery of journey ticket, money, articles etc., The said report annexed with photographs. From the above, it is very clear that other than wearing clothes, nothing has been recovered from the body of the person of the deceased. On perusal of records, it is seen that the inquest proceedings were conducted on the body of the person of the deceased on 08.10.2018 between 13.00 PM to 15.00 i.e., almost 25 hours of completion of Spot Panchanamma, the Inquest Mahazar was conducted on the body of the person of the deceased at Government Area Hospital, Kavali Mortuary. At this juncture, it is relevant to cite here that on perusal of Para-7(2), of Inquest Panchanamma, except Railway Ticket, nothing was recovered from the body of the person of the deceased. But, at the time of drawing the Spot Panchanamma, other than wearing clothes, nothing was recovered from the body of the person of the deceased. When a person was found in an injured and dead condition. The ticket would be naturally found on the body of the person. If the Railway Police arrived and they always will know the importance of ticket to qualify a person to a status of passenger. In this case, at the time of inquest mahazar, the police have recovered the ticket from the pocket of the deceased, it appears that the said ticket has been manipulated, procured and planted at the time of conducting inquest mahazar at the hospital to give authenticity to the case. When there was no

evidence to the fact that the deceased while travelling has fallen down from the train; then as to how the police have come to the conclusion that the deceased fell down from train when the body was not identified is difficult to fathom. Furthermore, when nothing was recovered from the body of the person of the deceased, then as to how the police have identified the body and informed the family members raised serious doubt.

5.7 The distance between Tirupathi to Ghataprabha is 777 kms. Ld., Counsel for the respondent argued that as per Railway Rules, the validity of ticket is for two days i.e., 06.10.2018 and 07.10.2018 till the impugned train reaches the destination station of the passenger. The timing of issue of ticket is 16.15 hrs., in the evening of dated 06.10.2018. It is pertinent to mention here that AW-1, Mother of the deceased has stepped into witness box and during cross-examination, she deposed that her son, the deceased had called her over phone on the same night from Tirupathi Railway station over phone and informed her that he had darshan at Tirupathi and he is at Tirupathi Railway station and returning by train. He stated that he is at Railway station. We have a mobile phone in the house. As per the ticket placed on the record shows the time of issue of alleged ticket 16.15 hrs., of 06.10.2018 to travel from Tirupathi to Ghataprabha via Renigunta, Guntakal and Hubli. The body was found lying between Tettu and Kavali, which is falls under Vijayawada Division. Therefore, the ticket which is recovered from the person of the body of the deceased is not relevant for journey from Tirupathi to Ghataprabha. We have also noticed that the body of the deceased was found on 07.10.2018. Therefore, we find force and logic on the arguments putforth by the respondent that the ticket found on the person of the deceased at the time of inquest mahazar does not suggest that the deceased was a bonafide passenger and died due to an untoward incident on the relevant date i.e., 06/07.10.2018

5.8. After perusal of record and arguments advanced by both the parties, it is clear that AW-1 is not an eyewitnesses to the incident and have no personal knowledge about it. Applicants have neither examined any eyewitness, which could establish the circumstances under which the death of the deceased had occurred, nor have they stated that there was any eyewitness to the incident. The fact that Parashuram S/o. Ramappa Mutagi died on account of an untoward incident, ought to have been proved by the applicants in order to claim compensation under Section 124-A of the

Railways Act. It cannot just be presumed that the death of a person had occurred on account of an untoward incident, merely because the body was found lying next to the track. In every case of death of a passenger, which occurs during the course of journey by train, no amount of compensation is given, unless death occurred on account of an "untoward incident" within the meaning of Section 123(c) of the Act. Therefore, the burden of proof rests on the applicants to prove that death of the passenger had occurred on account of an "untoward incident". However, this does not mean that the applicants, come before the Tribunal for relief, must necessarily prove it by direct evidence, they may even prove it by circumstantial evidence

5.9 In the case of Jetti Nagalaxmi Vs. Union of India (2013 ACJ 1061), the Hon'ble High Court of Andhra Pradesh held that the initial onus lies on the applicants to show that the deceased was a bonafide passenger and only on the discharge of the said initial burden, the onus shifts on the respondent railway to establish that the deceased was not a bonafide passenger.

5.10 Hon'ble High Court of Delhi in a decision rendered on 9.1.2014 in FAO 476 of 2013 Shahjad and others Vs Union of India held that the initial onus lies on the applicants to show that the deceased was a bonafide passenger. It was held by Hon'ble High Court *"I do not agree that there is no onus of proof at all on the applicants to show that deceased was a bonafide passenger and that every person, who dies in a train accident must be shown as bonafide passenger. No doubt as per the facts of a particular case, onus may be lightly discharged, however, initial onus in every civil case including a claim petition filed before the Railway Claims Tribunal has to be on the applicants. There is no provision in the Railways Act or the Railway Claims Tribunal Act or ratio of any judgment of the Supreme court that initial onus in a claim petition is not on the applicants but on the railways."*

5.11 In recent judgment in the case of Mrs. Sulochanamma and another versus Union of India, Hon'ble High Court of Karnataka in MFA No.426/2016 (RCT) decided on 06.07.2018 has held that -

"6. Though this Court has sympathy for the applicants – appellants herein for having lost their dear one Thippareddy, it is difficult to accept that the Railway Department has got anything to do with his death and last of all,

that he was a passenger in the said train and due to overcrowding of passengers, he had fallen down from the train, sustained injuries and succumbed to the same. In fact, this Court, time and again, has observed that in most of the cases, the applicants in order to claim compensation from the Railway Department put forth the theory of passenger falling down from the train in which he was travelling for the reasons that it was heavily crowded and he was not able to hang on to the train near the door and due to such fall, he suffered death. In such cases, what is required to be seen is if there is anything on record to demonstrate that at least one of the passengers travelling in the train along with deceased had given testimony to substantiate or support such theory put for by the family members of deceased. In many of the cases, if the passengers traveling in a train along with deceased had given testimony to substantiate or support such theory put forth by the family members of deceased. In many of the cases, if the passengers travelling in a train see that one of their co-passengers had fallen from the train, they would be either informing Railway Authorities or taking immediate step of pulling the chain of the train to stop it and ensure that the person, who had fallen down, gets immediate medical attention. Most of these claim petitions are from person, who are trying to make use of an unfortunate incident into a situation, where they could get some compensation from the Railway department to the family. Though attempt of everyone involved in trying to get some compensation to the family in this method could be viewed sympathetically, the manipulation of records which they resort to, cannot be accepted by this court and compensation cannot be distributed as if it is a largesse”

5.12 In the recent judgment, 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 the conclusion as to untoward incident and bonafideness of the deceased. It is only based on the said record, the court has 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 valid journey ticket and died in an untoward incident.

5.13 The provisions of Railways Act in this regard have been elaborately discussed by the Hon’ble High court of Karnataka in *Union of India Vs Lakshmi II*(2014) ACC Kar), wherein while allowing the appeal preferred by the Railways, the Hon’ble High Court held that -

“The relevant provisions of Railways Act is very clear, in that, if a person suffers injury or death in an untoward incident as contemplated under S.123 (c)(2) of the Railways Act, 1989, he/his family members 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 accident, 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 travelling without valid ticket. Assuming for a moment, he has travelled with other passengers and if a valid ticket is produced from the possession

of another person travelling along with him also would suffice to show that he was a bonafide passenger with valid ticket”.

5.14 Mere finding of a dead body or a person in dead condition on or by the side of the track does not, ipso facto prove that the said person/deceased fell down from the train. The applicants have not been able to prove that the deceased was a bonafide passenger of the said route and that he had fallen down from any train carrying passengers. Therefore, it can safely be concluded that the deceased was not involved in an untoward incident as defined in Section 123(c)(2) of the Railways Act. Both these issues, as such, stand decided accordingly 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. 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.

7.1 In view of the findings on issue Nos. 1 and 2 that the deceased Parashuram S/o. Ramappa Mutagi, can neither be termed a bona fide passenger, nor his death was on account of an untoward incident within the meaning of Section 123(c) (2) of the Railways Act, the applicants are not entitled to any relief by this Tribunal. Accordingly the claim application deserves to be dismissed and is hereby dismissed. Hence ordered:

O R D E R

1. The Claim Application is **“DISMISSED”**. In the facts and circumstances of the case, there is no order as to costs.

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 Friday, the 2nd Day of February, 2024.

(RAVI NANDKEOLYAR)
MEMBER (TECHNICAL)

(IVY CHARLES D’CRUZ)
(MEMBER (JUDICIAL)

L. SURESH, PS GR-II, RCT/BNC