

BEFORE THE RALWAY CLAIMS TRIBUNAL

(BENGALURU BENCH AT BENGALURU)

CLAIM APPLICATION No.OA (II U)/SBC/0004/2023

DATED THIS THE 10th DAY OF NOVEMBER, 2023

CORAM:

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

BETWEEN

1. Mr. Narayanappa,
S/o. late Sonappa,
Aged about 65 Years. :: Applicants
2. Mrs. Narayanamma,
W/o. Narayanappa,
Aged about 66 Years.

Both are residents of Vadagere,
Muduvathi Post,
Kolar Taluk & District.

Versus

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

VALUE OF CLAIM Rs.8,00,000/- along with interest

Date of Registration :: 07.03.2022
Heard and Reserved for Orders :: 31.10.2023

Ld., Counsel Present:

For the Applicants :: Mr. A.S. Tanveer Pasha
For the Respondent :: Mr. Satish. B

J U D G M E N T

Mrs. IVY CHARLES D'CRUZ,
Member (Judicial).

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.

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

a. Date of Incident: 22.11.2021

b. Name, age and occupation of the deceased:

Shri Naveen Kumar. N S/o. Shri Narayanappa, Aged 21 years,
Tree cutting work (Labour).

c. Train involved & transit details: Train No.22618. While travelling from Whitefield to Bangarpet Railway Station.

d. **Untoward incident narrated:**

The case of the applicants is that Shri Naveen Kumar. N (hereinafter called and referred to as deceased for brevity) was a resident of Vadagere in the Kolar District and trees cutting by profession. On the alleged date of incident, the deceased had been to Whitefield for cutting of trees. However, due to heavy downpour, it was not possible to cut the trees. In order to return back to home, the deceased with a journey ticket bearing No.UMG-68834169 for himself, for travelling from Whitefield to Bangarpet Railway Station and boarded Train No.22618 Express train for going towards Bangarpet. When the train reached and stopped at Bangarpet Railway Station, due heavy rush and thrust of passengers, he accidentally fell down from the train, sustained multiple injuries and succumbed to the injuries while on treatment at Government Hospital, Bangarpet. Applicants have filed a copy of second class journey ticket bearing No.UMG-68834169, Ex-Whitefield to Bangarpet dated 22.11.2021, along with the Claim Application, on the strength of which the deceased had travelled on the day of incident. Jurisdiction: The place of incident is within the jurisdiction of this Tribunal.

2. Salient features of Reply:

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

b. Crux of DRM's Report: As brought out in the enquiry report, the deceased travelled in a train for which he did not have valid travelling authority. Hence, he is not a bonafide passenger for train No.22618. (2) It is also brought out during enquiry that the deceased has fallen down while he tried to deboard from a running train. This is rash, negligent action on his behalf in total disregard to his personal safety. In view of

above, I conclude that Railway administration is not responsible for the incident. Inquiry officer report and conclusion is accepted and approved.

3. Framing of Issues: Based on the submission of both the parties, following issues were framed on 24.03.2023:-

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?

4. Evidence:

a) Applicant's Evidence: Applicant No.1, Shri Narayanappa S/o. Late Sonappa filed his Affidavit and deposed before this Tribunal on 15.05.2023, as AW-1.

To substantiate their claim, the AW-1 along with his affidavit has produced copy of Family Tree issued by Deputy Tahsildar, Kasaba Hobli (Exh A-16), Family Ration Card (Exh A-17) and Aadhaar Card of both the applicants including that of the deceased placed as Exhibit A-9 to A-11. Applicants have also filed and exhibited certified photocopies of Report from General Hospital, Bangarpet to Sub-Inspector of Police dated 22.11.2021 (2) Message issued by Station Master, Bangarpet to SI,GRP/Bangarpet dated 22.11.2021 (3) FIR (4) Police Inquest Report (5) Post-mortem Report (6) Journey Ticket (7) Statement of brother and father of the deceased to the police, which are marked as Exh. A-1 to A-8 respectively. Applicants have filed a copy of second class journey ticket bearing No.UMG-68834169 dated 22.11.2021 from Whitefield to Bangarpet dated 22.11.2021, along with the Claim Application, on the strength of which the deceased had travelled on the day of incident.

It is argued by the Applicants' Counsel that the deceased was a bonafide passenger of Train No.22618 as he was having a valid journey ticket for travelling in the alleged train.

b) Respondent's Evidence: None.

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 my 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.1, Shri Narayanappa (AW/1) in his affidavit dated 20.04.2023 (Exh. AW 1/1) has submitted that the deceased was a tree cutting labourer by occupation and used to carry out the said work along with his elder brother Venkatesh Murthy wherever they get work, stay there and used to return home after completion of the work. The deceased had tree cutting work at Kadagudi, Bangalore and while they were cutting the trees there was heavy downpour due to which they stopped the work and planning to return to native. Accordingly, on 22.11.2021, the deceased purchased a Railway Ticket for himself, for his travelling from Whitefield to Bangarpet and boarded Train No.22618 Express train for going towards Bangarpet. When the train reached Bangarpet Railway Station, due to thrust of passenger, the deceased stumbled and fell down from a moving train and the wheels of the train moved on his right hand and right leg, sustained injuries to head and fell unconscious. Immediately, he was taken to Government Hospital, Bangarpet by 108 ambulance and admitted there for treatment in emergency ward and while was under treatment, he died without recovery on the same day. In this case, if the documentary evidence produced by the Applicants are appreciated, it is clear that the deceased has purchased the ticket on 22.11.2021 to travel from Whitefield to Bangarpet, and the ticket was purchased at 7.59 hrs., which is said to have been recovered by the police during the course of inquest. As per the message issued by Station Master, Bangarpet, says that as per message received from Guard of Train No.22618 Express, a male person aged about 35 years found in a injured condition at PF No.4 at KM No.285/900 under coach No.D-12; wherein the Sub-Inspector of Police, Railway Police Station, Bangarpet has endorsed 'Received on 22.11.2021 at 9.10 hrs. The FIR was registered on 22.11.2021 at 10.30 AM.

It is pertinent to mention here that Respondent Railway have conducted a detailed enquiry in this case and produced Statutory DRM's Investigation Report and contended that the deceased travelled in a train for which he did not have valid travelling authority. Hence, he is not a

bonafide passenger for train No.22618 and the deceased has fallen down while he tried to deboard from a running train.

5.2 In the instant case, from the perusal of **Exhibit A-6** i.e., certified copy of computerised ticket bearing UMG-68834169 dated 22.11.2021 to travel between Whitefield to Bangarpet issued at 7.59 hrs., it is seen that the ticket issued was for an adult to travel only by II ORDINARY by passenger train; whereas as per the contention of the applicants, the deceased was travelling by Train No.22681, which is a mail/express train. Actually, the ticket produced by the applicants was meant for travel only by an ordinary passenger train and was not entitled to travel by mail/express train. Thus, it is clearly established that the deceased was not a bonafide passenger at the time and place of the incidence. Further, during the course of enquiry, Enquiry Officer has recorded the statement Shri Narayannappa S/o. late Sonappa, Father of the deceased, wherein he has stated the deceased was his youngest son studying in 4th semester B.A., in Government College, Kolar and also working as Tree cutting as a part time job. From the above, it is very clear that the deceased was an educated person, therefore, it is clear that the deceased was well aware regarding the eligibility of travelling by passenger or express trains and its schedule stoppage at various Railway Stations especially the originating and destination stations.

5.3 In this case, it is established that the ticket alleged to have recovered from the possession of the body of the person of the deceased, is entitled to travel only by a passenger train and not by mail/express train. Furthermore, in recent past, for the convenience of passengers in almost all the Railway Station, public announcement system are being made without regard to arrival and departure of trains with train number and also whether it is a passenger or express train. In this case, the deceased was an undergraduate and well within the knowledge that the train in which he had boarded is a mail/express train. The law is very clear that, it is only in the case of **bonafide passenger having a valid pass or ticket** for his travel that the Railways would be liable to pay compensation in the event of such passenger becoming a victim of an untoward incident.

5.4 As per the definition of the expression untoward incident in Section 123© of the Railways Act, accidental fall would certainly amount to an untoward incident from passenger train. However, such compensation is payable only when the victim happens to be a 'Passenger'. Section 2(29) of the Railways Act defines the expression 'Passenger' as meaning a person travelling with a valid pass or ticket". When once it is shown that the

person is having a valid ticket, he becomes a passenger within the meaning of Section 2(29). In fact, in the context of Section 124-A of Railways Act, 1989, the expression passenger is further defined to give 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.”

5.5 It is relevant to examine Section 55 of Railway Act, 1989 –

Prohibition against travelling without pass or ticket –

- (1) No person shall enter or remain in any carriage on a railway for the purpose of travelling therein as a passenger unless he has with him a proper pass or ticket or obtained permission of a railway servant authorised in this behalf for such travel.
- (2) A person obtaining permission under sub-section (1) shall ordinarily get a certificate from the railway servant referred to in that sub-section that he has been permitted to travel in such carriage on condition that he subsequently pays the fare payable for the distance to be travelled.

Section 55 clearly prohibits a person/s travelling without pass or ticket. Sub-Section (1) of Section 55 leaves no scope for any ambiguity. To put it differently, for a person to enter or remain in any carriage on a railway for the purpose of travelling therein as a passenger, he must have with him a proper pass or ticket. It is implicit that if such person enters or remains in the carriage for the purpose of travelling therein as a passenger, it is not enough for such person to have any pass or ticket but must have a **‘proper and valid pass or ticket.’**

13. If the explanation to Section 124-A is analysed as it is, for the purpose of Section 124-A, the ingredients necessary to be fulfilled for being a passenger within the ambit of clause (ii) of the Explanation are : (a) a person must have purchased a valid ticket for travelling; (b) by a train carrying passengers on any date; (c) or a valid platform ticket; (d) and becomes a victim of an untoward incident.

From the above, it is clear that if a person intends to travel, he has to get a certificate/ticket from the competent authority for taking such travel.

5.6. Law on onus to prove a fact is well settled. In **Geeta vs. Union of India (2014 ACJ 1505) Hon’ble Delhi High Court** observed that: “*prima*

facie the burden was on the **appellants to have established in the first instance that the deceased was a bona fide passenger of a particular train** and then only the question of factum of his death in an untoward incident would have arisen”.

5.7 Similarly in **Union of India v. Lakshmi & others reported in 2014 ACJ 2505, Hon’ble Karnataka High Court** observed as follows:

“..the premise that as if a person enters the train, his presence there should be presumed as bona fide passenger with valid ticket, even if ticket is not found on his body for the reason that nobody substantiated that he did not purchase the ticket before he got into the train. This line of reasoning is catastrophic. If the same is accepted and applied in any case, then it would be bad precedent to open floodgate of false and frivolous claim.”

*“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 Section 123(c)(2) of the Railways Act, 1989, he/his family members are entitled to seek compensation provided, he is a bona fide 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.**”*

(emphasis supplied)

5.8 It is also useful to refer to a decision of Hon’ble High Court of Delhi in **F.A.O. No.507/2011 dated 08.01.2014** in Gurcharan Singh & others v. Union of India. While dismissing the appeal preferred by the claimants, the Hon’ble High Court observed that -

*“..I cannot agree to this proposition of law that the Railways have the onus to prove that a deceased was not a bona fide passenger because **no such negative onus is placed upon the Railways either under the Railways Act or the Railway Claims Tribunal Act & Rules or as per any judgment of the Supreme Court...**”*

Ratio in afore noted judgments is squarely applicable in the given facts of present case. Following the above law we are of the considered view that burden to prove the facts, as asserted in the OA rested with the applicants, and they have failed to discharge such burden.

5.9 Primarily, the deceased was not a bonafide passenger, because, he was not in possession of a **valid** journey ticket for an express train. Definition of passenger as per Act, is very clear and specific, holding a valid journey ticket. In this case, the deceased’s person alleged to have performed his journey from Whitefield to Bangarpet by Train No.22618,

which is a mail/express train in which the deceased was not entitled to travel with the said ticket.

Assuming, but not admitting for a moment, that allowing the said claim application of boarding with a wrong ticket in a wrong train, would open the flood gates granting compensation to an array of litigation who are not entitled under the Act. If a person sustained injuries and died in an untoward incident, he has to fulfil the following three criteria:

- (1) He has to be a 'Bonafide Passenger' of a train from which he has accidentally fallen down sustained injury and died.
- (2) Respondent is not exempt to pay compensation under Section 124-A of Railways Act, 1989.

In view of discussion made hereinabove, we hold that deceased was not a bonafide passenger, and accordingly Issue No.1 is decided in negative, and against the applicants.

ISSUE No.3

6. Once issues No.1, which is the basic issue is decided in negative and against the applicants, question of consideration of grant of compensation would not arise, as it becomes only of academic interest. Also, discussing Issue No.2 does not arise because the Issue No.1 which is the basic and mandatory requirement under law has failed.

ISSUE No.4

7. In view of the above findings, the deceased, Naveen Kumar. N, cannot be termed as a bona fide passenger within the meaning of Section 123(C)(2) of the Railways Act. As such, the Applicants are not entitled to any relief at the hands of this Tribunal. Accordingly, the claim application deserves to be dismissed and is hereby dismissed. Hence ordered:

O R D E R

1. In the result the Claim petition is '**Dismissed**' on contest.
2. In the facts and circumstances of the case, there is 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. File be consigned to Record Room after compliance.

(IVY CHARLES D’CRUZ)
MEMBER (JUDICIAL)

(RAVI NANDKEOLYAR)
MEMBER (TECHNICAL)

Judgment pronounced on 10th November, 2023.

(IVY CHARLES D’CRUZ)
MEMBER (JUDICIAL)

(RAVI NANDKEOLYAR)
MEMBER (TECHNICAL)

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