

BEFORE THE RAILWAY CLAIMS TRIBUNAL

(BENGALURU BENCH AT BENGALURU)

CLAIM APPLICATION No.OA (II U)/SBC/0044/2019

DATED THIS THE THURSDAY THE 4TH DAY OF APRIL, 2024

CORAM:

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

BETWEEN

1. Arunachalam Munisamy, :: Applicants
S/o. late Munisamy,
Aged about 50 Years,
Coolie by profession.
2. Smt. Sumathi,
W/o. Arunachalam,
Aged about 47 Years,
Homemaker.

Both are permanent R/o. #306, Sivaraj Nagar,
Chettikuppam Post,
Gudiyatham Pin-635 903
Vellore District, Tamilnadu,
Mobile 7397114395.

AND

The Union of India owning :: Respondent
Represented by its General Manager,
South Western Railway,
HUBBALLI.

Date of Registration :: 13.12.2021
Heard and Reserved on :: 18.03.2024

Ld., Counsel Present:

For the Applicants :: Shri M.A. Malvi
For the Respondent :: Shri Naveen Chandra Shetty.

Value of Claim for Rs.8,00,000/- with interest at rate of 12% p.a.,

J U D G M E N T

RAVI NANDKEOLYAR,
Member (Technical).

1. Through this claim application filed by the applicants claiming themselves to be the Father and Mother of the one Arun Kumar S/o. Arunachalam (hereinafter called and referred to as 'deceased' for brevity), a sum of Rs.8,00,000/- along with interest at the rate of 12% per annum from the date of filing of application till the date of payment has been claimed as compensation from the respondent railways on account of the death of said Arun Kumar in an untoward incident alleged to have occurred on 28.12.2017.

2. The facts of the case, as alleged in the claim application are that on 28.12.2017, deceased Arun Kumar as a bonafide passenger was travelling from Krishnarajapuram to Ambur Railway Station by Kaveri Express. As there was heavy rush in the general compartment of the train, the deceased was standing near the door of the train. When the said train was in operation between Krishnarajapuram and Hoodi Railway Stations in between Railway KM No.339/900-340/000, the deceased fell down from the running train and received serious injuries all over the body and died on the spot.

3. The respondent railway has contested the claim application by filing the written statement, wherein by way of preliminary objections, it is averred that no such incident causing death of the deceased within the meaning of the provision of Section 123© read with Section 124-A of the Railways Act has taken place and as such, the claim application is not maintainable and further that the deceased was not a bonafide passenger of any train. On merits, while denying all the averments of the applicants as made in the claim application either being wrong or for want of knowledge, it is averred that the applicants are not entitled to any compensation. With these averments, a prayer is made to dismiss the claim application with costs.

4. Based on the pleadings of the parties, the following issues are framed for determination:-

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 application?

5. The applicant No.1, Shri Arunachalam Munisamy S/o. late Munisamy filed his examination-in-chief by way of affidavit on 20.02.2022 was examined as AW-1 and documents Exhibit A-1/1 to Exh AW-1/12 were marked on behalf of the applicants. From the side of Respondent Railways, none was examined, however, Respondent Railway have placed on record DRM's Report along with number of documents as prepared during the course of the enquiry, which is taken on record and marked as Exh R-1 by consent.

6. We have heard the counsels for both sides and perused the pleadings, documents and evidence on record. The findings on the issues are as under:-

ISSUE No.1

7. The case of the applicants is that on 28.12.2017, the deceased Arun Kumar as a bonafide passenger was travelling from Krishnarajapuram to Ambur Railway Station by Kaveri Express. As there was heavy rush in the general compartment of the train, the deceased was standing near the door of the train. When the said train was in operation between Krishnarajapuram and Hoodi Railway Stations in between Railway KM No.339/900-340/000, the deceased fell down from the running train and received serious injuries all over the body and died on the spot.

8. The inquest proceedings in this case were started by the Shri Shanmukha, Police Sub-Inspector, Bangalore Cantonment Railway Police Station, on receipt of Station Masters' memo issued at 8.23 hrs., on 29.12.2017 to GRP officials, Bangalore Cantonment that "As per the information given by Honappa, Asst. Sub-Inspector, Bangalore, male dead body aged about 35 years was found lying on upline between (KJM-SGWF) at RKM No. KM No.339/900-340/000. GRP Official reached at the spot. As per the Inquest Panchanamma (Exh AW-1/3) after thoroughly checking of dead body by GRP authorities from both sides, there were several injuries, abrasion found, but no material was found from the body of the person of

the deceased. Nothing was found from the accidental spot as per inquest Panchanamma.

During the course of inquest proceedings, personal search of deceased was conducted by GRP Officials. The applicants have placed on record copy of document Inquest Panchanamma (AW-1/3), a perusal whereof shows that during the personal search of deceased nothing has been mentioned except black shirt and green T Shirt and brown colour Pant and red colour underwear on the body of deceased.

9. Learned counsel for the respondent railway, while drawing attention of this Tribunal to the documents Inquest Panchanamma (AW-1/3) contended that nothing has been seized in the personal search of the deceased and the railway journey ticket also not found. Counsel for the Respondent also contended that even in the cross-examination of AW-1, AW-1 has completely expressed his ignorance about purchasing of ticket or the train by which his deceased son was travelling with proper ticket or led any cogent oral or documentary evidence to prove that whether the ticket was purchased or lost. The factum of non-recovery of the railway ticket, in itself, goes to prove that the deceased was not having any journey ticket in his possession otherwise the same would have been recovered from the deceased.

10. Per contra, Ld., Counsel for the applicants contended that the deceased was having a valid journey ticket which was purchased by him and the same was lost. Further, Shri Arunachalam Munisamy S/o. Munisamy, Father of the deceased filed evidence-in-chief by way of affidavit on 20.02.2022 and stepped into witness box as AW-1. During cross-examination, he deposed that –

“Deceased was my son. We have four children viz., Naveen Kumar, Arun Kumar, AjithKumar and Nandhini. Deceased was unmarried. Ajith Kumar and Nandhini are the youngers to my deceased son. All are married except my deceased son. At the time of death of my deceased son his age was 20 years. Deceased sister married at the time of 20 years. Younger brother Ajith was major at the time of incident hence they were not made a parties. I do not know how the incident occurred. I have not seen my son purchasing the ticket. Police have not handed over me any of my son belongings. However, they have recorded my statement. I came to know about the incident from one Mr.Kumar. Kumar is my cousin who informed me about the incident through phone at 04.00.A.M. I do not know by which train my son was travelling. I did not visit the spot but I had visited the hospital. I do not know by which train or from which station he was travelling. Before boarding the train my deceased son informed to me through phone that he will board from Krishnarajapuram to Ambur. My deceased son was working as Mason. After completion of his work my deceased son used to come weekly to my native place. I am the resident of

Gudiyattam near Vellore. I am not aware of filing this case. My cousin Kumar insisted to file the case in Bangalore. If my son was alive he would have taken care of us but I am not aware of filing this case since I am illiterate. I deny the suggestion that my son have not travelled by any train. I deny the suggestion that while crossing the track he sustained injuries. I deny the suggestion that my son was not travelling on that date. I deny the suggestion that I have filed a false case. I deny the suggestion that Railway is not liable to pay compensation. I am not the eye witness to the incident and not seen him purchasing the ticket. The last rites was done at Chettikuppam village in my native place. It is not true to suggest that I have deposed falsely.

(emphasis supplied)

11. Admittedly, Shri Arunachalam Munisamy S/o. Munisamy, Father of the deceased (AW-1), in his evidence by way of affidavit dated 20.02.2023, has only testified that the deceased was a bonafide passenger.

12. While concluding the arguments, Ld., Counsel for the Applicants contended that even otherwise, burden lies heavily on the respondent railway that the deceased was not a bonafide passenger and as such the burden has not been discharged by the respondent railway by adducing any evidence in this regard, therefore, the finding of deceased being a bonafide passenger may be recorded in favour of the applicants and the claim application deserves to be allowed and the applicants are entitled to compensation.

13. We have considered the rival contents. 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 has 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 Arun Kumar 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 is on account of an "untoward incident" within the meaning of Section 123(c) of the Act. Therefore, the initial 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

14. Hon'ble Apex Court in the case of Union of India versus Rina Devi 2018 SCC online SC 507 had concluded following in regard to Burden of proof when body found on the Railway Tracks and Ticket was not recovered. The relevant Para of the judgement is reproduced below:

“17.4 We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide 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 shown or the 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”.

15. Thus, the applicants in the present case have failed to discharge even the initial burden casts on them with a relevant affidavit to establish that the deceased had purchased a valid journey ticket for his travel between Krishnarajapuram and Ambur Railway Stations. Furthermore, in this case, Applicant No.1, Shri Arunachalam Munisamy, Father of the deceased (AW-1) filed his evidence-in-chief by way of affidavit on 20.02.2022, wherein at Para-2, AW-1 he has only mentioned the deceased was a bonafide passenger by holding valid journey ticket for his travel from Krishnarajapuram to Ambur by Kaveri Express. However, on 28.04.2023, AW-1 has stepped into witness box as AW-1. During cross-examination, he deposed that he has not seen his son purchasing the ticket and police have not handed over any belongings to him. The applicants in the present case has failed to discharge the initial burden casts on them to show that the deceased was travelling with a valid journey ticket. No affidavit has been filed that the ticket was lost. The question of the burden shifting on to the respondent to show that the deceased was not a bonafide passenger does not therefore, arise.

16. 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.”

17. 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 forth 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”

18. 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.

19. 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”.

20. Furthermore, the very recent judgement in the case of Madhu Devi and Others versus Union of India in MA No.335 OF 2017 decided on 03.03.2023, wherein the Hon'ble High Court of Jharkhand at Ranchi has upheld that the award of the learned Tribunal which had dismissed the claim application of the claimants stating in the concluding para that-

“18. Since case of the claimant falls under Section 124-A(b) of the Railways Act and as such the claimants are not entitled for any compensation which has rightly been inferred by the Tribunal. In the instant case, it has categorically been held that the deceased was not the bonafide passenger as nowhere it has come that he had purchased a ticket or the same was lost. Even affidavit to that effect has not been filed therefore, this Court is in full agreement with the finding of the Tribunal holding therein that the claimants are not entitled for any compensation”

(emphasis supplied)

21. In this case, the Applicants have failed to produce any concrete evidence to support their claim that the deceased was travelling by a train and met with an untoward incident, as defined in Sec. 124-A of the Railway Act, 1989. Though, AW-1 filed affidavit without relevant facts has only mentioned the deceased was a 'bonafide passenger'. And also, during cross-examination, he deposed that he has not seen his son purchasing the ticket. In view of the above discussion, we are of the considered view and opinion that the deceased was not having valid journey ticket and the applicants have

miserably failed to prove the status of bonafide passenger of the deceased. Hence, Issue No.1 is answered in negative.

ISSUE No.2

22. So far as the factum of occurrence of untoward incident is concerned, in the instant case, law as set into motion based on the memo issued by Station Master, Krishnarajapuram to GRP, Bangalore Cantonment, wherein it is stated that “as per the information given by Honappa, Asst. Sub-Inspector, Bangalore, a male dead body aged about 35 years was found lying on upline between (KJM-SGWF) at RKM No. KM No.339/900-340/000. Based on the same, FIR No.0140 OF 2017 was registered by Shri M.S. Shankukha, Police Sub-Inspector, Cantonment Railway Police Station under Section 174 of Cr.PC (Exh A-1), Inquest Mahazar/Jama Tahlashi (Exh A-3) was commenced at 10.00 AM on 29.12.2017 and concluded at 12.00 PM. Post-mortem Examination (Exh A-7) was also held on 29.12.2017 and cause of death was opined as “multiple injuries”. Based on the documents filed, applicants have prayed that the claim application be allowed as the police documents and the statements recorded by police during the course of investigation established that the deceased had died in an untoward incident.

23. Respondent Railway in support of their contention have denied in toto any alleged incident and filed DRM’s Investigation Report and the same is marked as Exh R-1 by consent. The conclusion drawn in the DRM’s Report is that there was no eye witness to say that the deceased person had travelled by train or fallen down from the train. Moreover, Loco Pilot/Guard or Co-passengers of any train neither reported nor aware of the incident. Therefore, respondent Railways sought for dismissal of the claim application.

24. We have carefully considered that contentions made by both the parties and perused the records. Applicants in their claim application have stated that on 28.12.2017, the deceased (Arun Kumar) while travelling from Krishnarajapuram to Ambur by Kaveri Express, due to heavy rush of passengers, accidentally fell down from a moving train between Krishnarajapuram and Hoodi Railway Stations in between RKM No. KM No.339/900-340/000, sustained severe injuries all over the body and died in an untoward incident. Therefore, the claimants being Father and Mother

of the deceased filed this present OA, claiming compensation of Rs.8,00,000/- from the respondent Railways. In the instant case, based on the message given by Station Master, Krishnarajapuram, FIR was registered on 29.12.2017. The said message was given to SI/GRP at about 8.23 AM on 29.12.2017. Therefore, fard Jamatahlashi/inquest panchanamma was conducted on 29.12.2017 between 9.00 AM to 12.00 PM. During the time of inquest, the body was identified by father and elder brother of the deceased. During the course of investigation, police have recorded the statement of both father and brother of the deceased and the same were placed on record as Exh A-5 and A-6 respectively. In the absence of these two statements, there are no other evidence to establish that the incident had occurred on account of fall from the train. It is no doubt true that in inquest report, the police while drawing have come to the conclusion that the deceased while travelling in a train, having lost balance and has fallen down from the train. But, at the time of drawing the inquest report, police had no evidence, to ascertain the cause of death. When there was no evidence to the fact the deceased while travelling has fallen down from the train, then how the police have come to the conclusion that the deceased fell down from the train is difficult to fathom. Therefore, the only evidence, this Tribunal has to look into, is the statement and the cross-examination. During the course of investigation, police have recorded the statement of Shri Umar Sheriff, on duty Station Master, Krishnarajapuram Railway Station on 21.01.2018. In the said statement, he has stated that while he was on duty from 21.00 hrs., of 28.12.2017 to 7.00 hrs., of 29.12.2017 at about 2.00 am, two persons came to his office and informed that they have received telephonic message from one of the relative that one of the passenger travelling by Kaveri Express fell down from the train. Immediately, he had called Shri Ravishankar, Station Master, WSPF and Station Master, Whitefield to ascertain, if they have received any information about any untoward incident. In turn they have informed that they have not receive any such information. However, the body was found only at 8.00 in the morning on 29.12.2017. Under the circumstances, the theory put forth by the applicants do not inspire any confidence. Moreover, the circumstances reveal that it is a not case of fall from train. To accentuate this fact, it is necessary to peruse the records in details apart from the oral evidence of AW-1. AW-1 has also stated in his cross-examination that he came to know about the incident through his cousin Kumar. However, applicants have not examined the said Kumar.

25. Furthermore, the distance between Krishnarajapuram and SGWF is just 5 to 6 kms., the duration of journey between these two stations takes about 6 to 7 minutes by any train. Therefore, when the applicant was aware that the deceased was travelling from Krishnarajapuram to Ambur by Kaveri Express, there was no reason for the relatives of the deceased to approach Bangalore Cantonment Railway Police. The Section Bangalore City and Chennai is very busy section, wherein more than 25 to 30 passenger and Express trains will pass this section. If according to applicant, the deceased had travelled, fell down and died on 28.12.2017; certainly, the dead body would have not gone unnoticed for more than six to seven hours. If not the loco pilot, guard, passenger, the keymen who were patrolling the track would have noticed the dead body. In the message to the Station Master, Krishnarajapuram, the keyman has stated that the body was found lying on the upline between Krishnarajapuram and SGWF and not in the bushes due to which the body would have gone unnoticed. Therefore, the police documents produced by the applicants only shows that the documents are prepared for the convenience of the applicants and not for the purpose of investigation. The police ought to have investigated the case in detail in order to find out whether the deceased had fallen down from the train or died due to some other reasons. Therefore, considering the evidence placed on the report and the conduct of the investigation authorities in conducting the investigation raises doubt and hence it is not safe to rely upon the documents placed by the applicants. On the contrary, going by the documents produced by the applicants and from the finding recorded above, the only conclusion that could be drawn that the deceased while travelling as alleged by the applicants did not fall from the train nor died due to an untoward incident.

26. The burden of proof rests entirely upon the applicants to prove the untoward incident, within the meaning of Section 123 (c) read with Section 124-A of the Railways Act. Admittedly, there are no eyewitness to the incident. In this connection, a reference may be made to a decision of Hon'ble Delhi High Court titled as Jamirul Nisha and another Vs Union of India, 2009 ACJ 1393, wherein it is held vide para No.34 & 35 as under:

“34. From the perusal of section 123(c) (2) & 124 A, it is clear that “sine qua non” for claiming compensation, on account of death or injury sustained in a train accident is that the victim of a train accident, or his dependents as the case may be, must first establish that the victim or the deceased had accidentally fallen from the train.”

35. In the instant case, applicants have failed to establish that the deceased had accidentally fallen from the train, therefore, the question of the proof by the Railways that the death of the deceased was not the result of untoward incident does not arise.”

27. 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. We do not find any substance and justification in the applicants contention rather we are convinced that there are weighty reasons and justifications in the respondents projection and accordingly, we hold that it was not an untoward incident, and therefore in view of discussion made hereinabove, we are of the view that respondent railway is protected by Clauses ‘b’ as well as ‘c’ of Proviso to Section 124-A of the Railways Act, for which railway is not liable to pay any compensation, and accordingly, we hold that Issue No. 2 has not been proved by the applicants.

ISSUE No.3

28. 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 124-A(C) of the Railways Act, 1989.

ISSUE No.4

29. 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. Accordingly, the claim application deserves to be dismissed and it 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 Tuesday, the 4th April, 2024.

(RAVI NANDKEOLYAR)
MEMBER (TECHNICAL)

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