



रेल दावा अधिकरण, इलाहाबाद न्यायपीठ

RAILWAY CLAIMS TRIBUNAL, ALLAHABAD BENCH

Corum:

SHRI MUKESH NIGAM, VICE CHAIRMAN (TECHNICAL)

Case No: TAU/ALD/81/2020 (OA/IIu/LKO/1106/2015)

Date of filing:12/10/2015

Date of order:13/05/2024

1. Naresh Gupta age about 46 years son of Munni Gupta

Resident of 3/771 Avas Vikas Colony Jhunsi, Police Station- Jhunsi, District-Allahabad (U.P.).

-Applicant

Versus

Union of India represented through

General Manager, North Central Railway, Allahabad

-Respondent

Application under Section 16 of Railway Claims Tribunal Act,1987 in respect of claim for compensation for the death in an untoward incident

Value of claim: 8,00,000/- with interest

Present:

For the applicant: Shri D.K.Tripathi, Learned Counsel

For the respondent: Shri D.Tripathi, Learned Counsel

J U D G E M E N T

By Shri Mukesh Nigam, Vice-Chairman (Technical)

1. The basic details relating to the accident as contained in the application are listed as under:

a.	Date of accident	31/07/2015
b	Person Died (hereinafter referred to as “deceased”)	Late Ankit Gupta
c	Relationship of the claimant with the deceased	Son
d	Train involved	Train name and number not mentioned
e	Place of occurrence of untoward incident	Between Jhunsi and Daraganj
f	Untoward incident narrated :(in verbatim): <i>Para 6 (B): “The person deceased was travelling from Gyanpur road to Allahabad by any carrying passenger train he accidentally fell down between Jhunsi and Daraganj, in district- Allahabad on 31-07-2015.”</i> <i>Para 7: “Second class journey Ticket purchased from Gyanpur road to Allahabad in Presence of his Cousin brother Ravi Gupta. Who was lost somewhere at the time of accident.”</i>	

g	Written Statement and DRM's Report	W.S. filed on 05/07/2016 & DRM's Report filed on 30/07/2021
h	Averments in reply in Written Statement: (Para 3, 4, 14, 15 & 17 in verbatim) <i>Para 3: "That the contents of para 6A need no reply & para 6B of the claim application are denied, the deceased did not fell down accidentally from the Passenger Train on dt. 31.07.2015 between Jhunsi & Daragunj Railway Station in district Allahabad. That the applicants have not been disclosed train no. & name with this claim application."</i> <i>Para 4: "That the contents of para 7 of the claim application are denied and it is submitted that the deceased was not a bonafide passenger of Train in question. That the journey ticket was not recovered at the time of Panchayatnama."</i> <i>Para 14: "That the deceased was neither a passenger of the Passenger Train nor he accidentally fell down from the alleged train on dated 31.07.15 between Jhunsi & Daragunj Railway Station in district Allahabad. As per Panchayatnama the deceased died due to cut down by any train & was run over."</i> <i>Para 15: "That particulars furnished by the claimants in the para 6 of the claim application are not sufficient to attract the provision of 123(C)(2) of Railways Act, 1989 read with Section 124A of the Railways Act, 1989."</i> <i>Para 17: "That if it is proved that the deceased was a bonafide passenger then the respondent/Railway Administration is fully protected under exemption clause of B & C of Section 124A of Railways Act, 1989, it is self inflicted attempt caused by his own criminal Act. Therefore the</i>	

	<i>case of the applicants are not covered in the definition of “Untoward incident” as provided in the law.”</i>
i	Averments in reply in DRM’s Report: (in verbatim) “जांच रिपोर्ट में एकत्रित साक्ष्यों/दस्तावेजी साक्ष्यों एवं बयानातों के आधार पर यह तथ्य प्रकाश में आया है कि दिनांक 31-07-15 को मृतक अंकित गुप्ता s/o नरेश गुप्ता निवासी मकान नं. 3/771 ईडब्लूएस. आ.वि.मोहल्ला थाना- झूंसी जिला- इलाहाबाद उ.प्र. की झूंसी-दारागंज रेलवे स्टेशन के मध्य दारागंज अप आउटर से 100 मीटर की दूरी पर किसी अज्ञात ट्रेन के चपेट में आ जाने के कारण गम्भीर चोट लगने से मृत्यु होना जांच क्रम में पाया गया है मौके पर पुलिस कार्यवाही में यात्रा सम्बन्धी कोई वैध प्रमाण पत्र नहीं मिला है रेल परिसर में अनाधिकार प्रवेश रेल अधि. की धारा 147 के अन्तर्गत अपराध भी है घटित घटना मृतक के लापरवाही का परिणाम है जिसके लिए मृतक स्वयं जिम्मेदार है घटित घटना के लिए रेल प्रशासन जिम्मेदार नहीं है। अतः उक्त के सम्बन्ध में घटित दुर्घटना क्षतिपूर्ति दावा उक्त के पक्ष में देय नहीं है।”

2. Upon pleadings of the parties, four issues were framed on 05/07/2016: -

- 1) Whether the Deceased was a bonafide passenger of the train in question?
- 2) Whether incident of death of the deceased falls under the ambit of an untoward incident as defined u/s 123 (c) (2) read with Section 124-A of the Railways Act, 1989?
- 3) Who are the dependents of the deceased?
- 4) To what relief?

3. The applicant no. 1 Shri Naresh Gupta tendered an affidavit as AW/1 and presented Shri Ravishankar as AW/2. Both were cross examined and discharged. The Applicant had furnished certain documents which are marked Exhibits as under:

1	Copy of Aadhar Card of Naresh Gupta	Exhibit A/1
2	Copy of Nakal Rapat Rojnamcha	Exhibit A/2
3	Copy of Panchnama	Exhibit A/3
4	Copy of Post-Mortem Report	Exhibit A/4
5	Copy of Aadhar Card of AW/2 Raviprakash	Exhibit A/6

4. The Respondent had not adduced any oral evidence and had filed its certified CMI Report and DRM's Report Exh. R/01 along with annexure. The Respondent Railway had filed along with its DRM's Report, the Investigation Report of Shri Satish Tiwari, ASI/RPF/Post- Allahabad City, North Eastern Railway along with Annexure.
5. Considered the pleadings of both sides, perused all the documents and evidence available on record and heard the submissions made by Ld. Counsels on both sides. The decisions on the issues are as under: -

Decision with Reasons

Issues No 1&2

6. Issue no 1&2 are being taken up together as they are interconnected. It is seen from the records that in Station Diary of Station Superintendent/Jhusi for 31/07/2015, it was mentioned that at 1748 hrs

,passengers informed that one person had been cut between Jhusi and Daraganj railway stations and the location was about 100 meters away from the up outer signal/Daraganj. It is mentioned in Station Diary that this information was immediately shared with GRP, RPF/Allahabad City and the Section Controller. Further, it was mentioned that Daraganj Station informed that at 1830 hrs the body was removed from the track. Thereafter, train no. 55130 Down was started from Daraganj railway station. It was further mentioned that at 1930 hrs, a Constable from Jhusi Police station delivered a memo in which it was noted that as per the matter pertains to the Thana GRP/Allahabad City, the memo should be sent to Thana GRP/Allahabad City for taking necessary action. Accordingly, Thana GRP/Allahabad City was informed by Station Master/Allahabad City.

7. The Panchnama proceedings of the deceased started at 1820 hrs of 31/07/2015 and were completed at 1920 hrs on the same day. It was mentioned in the Panchnama that Shri Jai Prakash from Jhusi railway station was the first informer about the death of the deceased and as per him, the cause of the death of the deceased was due to his body being cut by a train. It was also mentioned that upon enquiry of Constable Shri Subhash Chandra of GRP, it was found that the cause of death of the deceased was due to his body being cut by the train. It was also

mentioned in the Panchnama that at the time of the Panchnama the body of the deceased was not identified. It was further noted in the Panchnama that the deceased had no clothes on his body except for his underwear. It was also mentioned that the head of the deceased was separated from rest of the body and his hands were cut from the right shoulder and there were scratch marks all over his body from his face to his feet. In opinion of the Panchas, cause of death of the deceased was due to the body of the deceased being cut by a train.

8. The Post-Mortem of the body of the deceased was done from 1300 hrs to 1330 hrs of 02/08/2015. It was noted in the Post-Mortem report that the deceased was wearing only underwear. Further, it was mentioned that the deceased had suffered amputation on the right shoulder and had crushed bone injury involving the whole of skull with all brain matter absent all bones crushed. The immediate cause of death given in the Post-Mortem Report was due to shock and hemorrhage due to ante-mortem injuries.
9. The applicant no. 1 had presented himself as AW/1. In the affidavit filed by him, he had stated that the deceased had gone to his aunt's house and was returning to his home at Allahabad and that his cousin Shri Ravi Shankar had dropped him at Gyanpur Road railway station and the deceased had purchased second class rail journey ticket from Gyanpur Road to Allahabad. During the cross examination, AW/1 had stated that

the deceased used to stay at Jhusi and used to trade from there. He had stated that on 30/07/2015, the deceased had left home and gone to his aunt's place at Gopiganj and on 31/07/2015, he was returning from Gopiganj to Allahabad. There was contradiction in the statement of AW/1 during the cross-examination. At first, he had stated that the deceased was a supplier to various shops and worked from Jhusi and used to get the material to Jhusi. Later in the cross-examination, AW/1 had stated that on the day of the incident the deceased was travelling to Allahabad for work and not to Jhusi.

10.AW/1 had also stated that on 31st, when the deceased did not reach home, the next day he went to Jhusi Police Station and filed a missing person report. The Respondent counsel had argued that this statement given by AW/1 brought out a contradiction in the assertion of the applicant that the deceased was travelling to Allahabad. The Respondent Counsel had argued that AW/1 had given a report to Jhusi Police Station about a missing person as he was expecting the deceased to reach Jhusi and not at Allahabad as stated during the cross examination earlier.

11.AW/1 had stated that he does not remember anything about the Panchnama and Police enquiry. When AW/1 was shown his statement given in the annexure of RPF enquiry report and he had accepted that the signature given on the statement was his. Later, he had stated that the

RPF had taken his signature on a blank paper and he only signed once on blank paper which is not correct as the statement taken by RPF had two signatures given by AW/1. In the statement given by AW/1 to the RPF enquiry, he had stated that on 31/07/2015 the deceased was coming from Gyanpur Road to Jhusi by the morning passenger train. The testimony of AW/1 was, therefore, not forthcoming and convincing that the destination of the deceased on the day of the incident was Allahabad and not Jhusi.

12. AW/2 Shri Ravi Shankar had filed an affidavit and had stated that on 31/07/2015 he had gone to Gyanpur to drop the deceased and the deceased had purchased a rail journey ticket for travel to Allahabad. During the cross examination, he stated that on 31/07/2015, the deceased had gone with him to Gyanpur railway station around 1400 hrs to 1500 hrs. He had stated that as the deceased was carrying quilts, mattresses and other items, he had gone to drop the deceased at the railway station. It was noted in the Panchnama and the Post Mortem report that the deceased had no clothes on his body except for his underwear whereas AW/2 had stated that the reason for accompanying the deceased to the railway station was because he had too many items with him.

13. AW/2 had further stated that after the deceased purchased the rail journey ticket, he had left the station because of work commitments and he did not make the deceased sit on the train. When he was confronted

with the statement given in the DRM's report and he did not deny his signature but had stated that he had signed on a blank paper. In the statement given in the RPF enquiry, AW/2 had stated that he had made the deceased board morning passenger train from Gyanpur to Jhusi and that he had purchased a rail journey ticket at 0800 hrs which was contrary to his statements before the Bench that the deceased was travelling from Gyanpur Road to Allahabad (not Jhusi) and had boarded the train between 1400 hrs to 1500 hrs and not in the morning around 0800 hrs. Further, AW/2 was not a witness to the deceased board a train or fall from it. Further, he did not submit the train name or number in which the deceased was travelling.

14. The respondent railway had stated that on the basis of available records and evidences, it was apparent that the deceased was not a bonafide passenger as no rail journey ticket of any kind was found from the deceased. The respondent had stated that the site of the incident was 1-1.5 kilometer beyond the Jhunsu railway station where the deceased was supposed to get down and there was no reason to travel beyond Jhunsu railway station.

15. Admittedly in this case, there is no eye-witness and this Tribunal has to bank upon circumstantial evidence. The initial burden to prove bonafide passenger status and occurrence of untoward incident is upon the

Applicants. There was ambivalence from the witnesses presented by the applicants whether the deceased was travelling to Allahabad or Jhusi, whether he was travelling by train in the morning or the afternoon. No details of the train name or number in which the deceased was travelling when he fell were provided by the applicant. The applicants have failed to discharge their initial burden about purchase of ticket ,travel and occurrence of incident.

16. In opinion of the Panchas, the cause of death of the deceased was due to the body of the deceased being cut by a train. It was noted in the Panchnama and the Post Mortem report that the deceased had no clothes on his body except for his underwear which stands out as exceptional and not a normal travel attire. The narrative put forward by the applicant that the event of falling of the deceased from train was in continuation of his rail journey from Gyanpur Road to Allahabad becomes more difficult to believe when the attire of the deceased is considered.

17. In view of the facts and attending circumstances of the present case, it is proved on record that at the time of the accident, the deceased was neither a bonafide passenger nor had died in the incident by falling from a passenger carrying train which is an untoward incident as defined in Section 123(C)(2) read with Section 124-A of the Railway Act 1989.

Hence, the issues no. (1) and (2) are decided in favor of the respondent and against the applicants.

Issues No 3&4

18. Having decided the issues of bonafide and untoward incident against the applicants they are not eligible to receive any compensation. Secondly, the issue of dependency loses its relevance and is not adjudicated.

O R D E R

19. The present claim application being devoid of merits is dismissed with no order as to cost.

20. The Registry is directed to send a free certified copy of this judgment directly to the applicant at his address mentioned in the claim application by Speed Post in compliance of Rule 34 (3) of the Railway Claims Tribunal (Procedure) Rules, 1989.

Date: 13/05/2024

(Mukesh Nigam)
Vice-Chairman (Technical)