

MISCELLANEOUS APPEAL No. 430 of 2015
[Arising from the Order dated 07.11.2014 passed
by the Member (Technical), Railway Claims
Tribunal, Ranchi Bench in Case No. OA(IIU)
RNC/2011/0008 (Checklist No.290110003)]

Smt Madhu devi wife of Late Rajendra Dom, Resident of Village/Mohalla Gajhandi, P.O., P.S. and District Koderma (Jharkhand).

... **Appellant**

-versus-

Union of India Through General Manager, East Central Railway, P.O and P.S. Hajipur, Dist Vaishali (Bihar).

... **Respondent**

For the Appellant : Ms. Chaitali Chatterjee Sinha, Advocate
For the Respondent: Ms. Bakshi Vibha, Sr. Panel Counsel
 Mr. Bharat Bhushan Prasad, C.G.C.

PRESENT
HON'BLE MR. JUSTICE ANANDA SEN

J U D G M E N T

RESERVED ON 12.07.2022

PRONOUNCED ON 22.07.2022

This appeal is directed against the order dated 07.11.2014 passed by the Member (Technical), Railway Claims Tribunal, Ranchi Bench in Case No. OA(IIU) RNC/2011/0008 (Checklist No.290110003), whereby the claim application of the appellant seeking compensation on account of death of her husband has been dismissed.

2. The appellant herein filed an application before the Railway Claims Tribunal, claiming compensation for the death of her husband Rajendra Dom in a railway untoward incident. Deceased was travelling from Gaya to Koderma, after purchasing a valid ticket from Gaya on 13.08.2009. It has been mentioned in the pleadings that as there was huge crowd in the general compartment, he was compelled to stand near the gate. Due to jostling amongst the passengers, deceased accidentally fell down from the running train near the West Home Signal of Gurpa Station as a result of which he sustained injuries and died. On the basis of the statement of the brother of the deceased before the Gaya Railway Police, U.D. Case No.56 of 2009 dated 13.08.2009 was registered. Final report was submitted mentioning therein that case is of accidental death.

3. Claim application was filed seeking compensation for the death of the deceased, which arose due to an untoward incident. The claimant adduced evidence in support of her claim. Railways also adduced evidence.

4. The Tribunal, after considering the evidence of the parties, held that the applicant has failed to establish that the deceased had died due to an accident on fall from a passenger train. The Tribunal held that the applicant has failed to prove that the deceased died due to an untoward incident. Since, as per the Tribunal, the deceased did not die due to untoward incident, it is also not established that the deceased was a bonafide passenger. Thus, the application was dismissed.

5. Counsel appearing on behalf of the appellant submits that the ground on which the application was dismissed cannot withstand the test of law. She submits that, admittedly, the dead body was found besides the railway track and there are evidence to suggest that deceased fell from a running train. The gateman noticing that a male person was found lying injured at KM 426/20, reported the fact. The deceased was alive at that point of time, but, when he was brought to the station at 12.35 hours, he was dead. When, immediately the deceased did not die, the gateman should have attended him and should have inquired about the fact as to how he had sustained injury. She submitted that postmortem report also suggests that the death was caused due to antemortem injuries, consistent with the rail traffic injuries. The onus that the deceased was bonafide passenger was discharged by the claimant, inspite of that the finding of the Tribunal is against the applicant without any basis. Counsel for the applicant submits that this appeal needs to be allowed.

6. Counsel appearing on behalf of the Railways, submitted that the witnesses examined on behalf of the Railways clearly suggests that the deceased did not die because of any untoward incident. The Train Signal Register will suggest that a Goods Train arrived at Gurpa Station at 11.46 and departed at 11.47 towards Gaya in the DN track. Before the goods train passed, a passenger train 3152 DN arrived at Gurpa Station at 7.46 Hrs. and departed at 7.47 Hrs. After the goods train passed the next passenger train 2802 DN had passed at 15.06 Hrs., which clearly suggests that the deceased if at all fell from a train, fell from the goods train as the gateman had seen the body at 11.55, i.e., after the goods train had passed and before 2802 DN passenger train. In that case, he cannot be said to be a bonafide passenger of a goods train.

On the aforesaid ground, counsel for the Railways pray to dismiss this appeal also.

7. As stated above, claimant is the wife of the deceased. She was examined before the Tribunal, wherein she stated that as there was heavy rush in the train, her husband was compelled to stand near the gate in Train No.302 DN, Varanasi Asansol Passenger, but he fell down because of jostling. On receipt of information, family members rushed to the place of occurrence and identified the dead body and after postmortem, body was cremated. She stated that her husband was travelling with a valid ticket. She has not stated that she was an eye witness.

8. On behalf of the Railways, one Dinesh Kumar Bhadani was examined. He stated that on the fateful day, gateman Jageshwar Yadav reported that a person is lying on the track and is badly injured, just after the goods train from Gaya to Gurpa passed. He immediately sent a porter and a cleaning staff to carry the injured person. When the person was brought to the Railway Station, he was found dead. Statement of Jagdeeshwar Yadav was also recorded, who stated that he saw the deceased lying on the railway track in an injured condition, but, when he was brought to the Railway Station, he died. The porter stated that he and cleaning staff went to bring the deceased, his leg was severed and smeared with blood and when he was brought to the railway station, he died.

9. The Station Manager's report also suspected that the deceased died on falling from the DN BOX E which is a Goods Carrying Train. Section 124A of the Railways Act, 1989 provides for grant of compensation to the claimants, if injury is sustained or death is caused due to untoward incident. Section 124A of the Railways Act, 1989 reads as under: -

124-A. Compensation on account of untoward incidents.- When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to-

- (a) Suicide or attempted suicide by him;**
- (b) Self-inflicted injury;**
- (c) His own criminal act;**
- (d) Any act committed by him in a state of intoxication or insanity;**
- (e) Any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.**

10. Untoward incident has been defined in Section 123(c) of the Railways Act, 1989, which reads as under:-

123. Definitions – In this Chapter, unless the context otherwise requires, -

(a)

(b)

(c) “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.

12. As per Section 123(c)(2), if a passenger falls accidentally from the train and injury is caused to him or he dies, claimant is entitled for grant of compensation. In this case, the claimants have claimed that the deceased was travelling in a passenger train, who fell down near Gurpa Station. The gateman saw a person lying on the railway track in an injured condition, who immediately informed the Station Manager at 11.55 Hrs. on 13.08.2009. The witnesses have stated the condition of that person. He was alive and his one leg was severed and he was smeared with blood. When he was brought to the station, he was already dead. The evidence clearly suggests that just before this deceased was found lying in an injured condition, a goods train BOX E passed on that line towards DN direction. The train arrived at Gurpa station at 11.46 Hrs. and departed at 11.47 Hrs. Before the goods train had passed, the passenger train which had passed through the said line had arrived at Gurpa Station at 7.46 Hrs. and departed at 7.47 Hrs. and the next passenger train had arrived at Gurpa Station at 15.06 Hrs. Thus, the deceased, if he would have been travelling in the passenger train, would have fallen at 07.46 - 7.47

Hrs. in the morning and seeing the injury of the deceased that his leg was severed and he was smeared in blood and was alive at 11.55 Hrs., when the gateman had saw him, it cannot be believed that he was travelling in the train 3152 DN, which passed the area at 7.46 – 7.47 Hrs. Station Manager's report suggests that he fell down from the goods train BOX E, as just after the goods train had passed, the gateman saw the person lying on the track in the injured state. The probability is much that he fell from the goods train.

13. Now the question is, the Railway also admits that he fell down from the train, sustained injury and later on died, but, the parties submit that BOX E is a goods train. Admittedly, the deceased was not a railway servant, then the question is, can he be said to be a passenger? A goods train is not for carrying passengers. Passenger trains are meant to carry passengers and no one is allowed to travel as passenger in a goods train. Railway tickets to the passengers are not issued to travel in a goods train. If the person, not being a railway servant, for the reasons best known, travels in a goods train, he cannot be treated as a passenger in terms of Section 123(C)(2) of the Indian Railways Act. A passenger with a valid tick also is not authorized to travel in a goods train. Thus, as held earlier, there is high probability that he was travelling in a goods train without authority, as such he cannot be said to be a passenger to get coverage under Section 123(C)(2) of the Indian Railways Act. Thus, this Court is of the opinion that the deceased did not fall from a train carrying passengers, and, accordingly, the claimant is not entitled to receive any compensation. The Tribunal was justified in rejecting the claim application of the appellant.

14. In view of what has been held above, this appeal is dismissed.

(Ananda Sen, J.)

Dated, the 22nd July, 2022
High Court of Jharkhand, Ranchi
NAFR/AFR