

GAHC010018622018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MFA/108/2018

REHENA BEGUM
W/O LATE TOIOBUR RAHMAN
R/O UTTAR DIMRUPAR
PO MURAJHAR
DIST NAGAON, ASSAM 782445

VERSUS

THE UNION OF INDIA
REPRESENTED BY THE GENERAL MANAGER N F RAILWAY MALIGAON
GUWAHATI 11
ASSAM

Advocate for the Petitioner : MR. S B RAHMAN
Advocate for the Respondent : SC, RAILWAY

B E F O R E

Hon'ble MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Ms. N. Ahmed, Advocate.

Advocate for the respondent : Dr. B. N. Gogoi, SC,
Railway.

Date of hearing : **20.07.2023**

Date of judgment : **01.09.2023**

JUDGMENT & ORDER

The present appeal has been preferred under Section 23 of the Railway Claims Tribunal Act, 1987 in connection with a judgment and order dated 22.11.2017 passed by the Railway Claims Tribunal, Guwahati in Claim Application No.OAIIu/25/2013 (Old) and Claim Application No.OAIIu/GHY/2013/0058 (New). By the said judgment and order, the claim for compensation made by the appellant as applicant has been dismissed.

2. The facts pertaining to this case may be put in a nutshell in the following manner.

3. The appellant/applicant is the widow of one Toiobur Rahman (hereinafter the deceased). The deceased was travelling by a train, namely, DN Nagaland Express on 20.01.2013 and had expired in an accident as he fell down at the Lanka Railway Station on the next morning. The deceased was travelling from Badarpur to Hojai and it is claimed that the deceased had a valid railway journey ticket No. 92167376. The deceased had received serious injuries and though he was brought to the Lanka PHC and thereafter referred to the FRU Hospital, Hojai, he was declared dead and in connection thereto, U/D Case No. 02/2013 was registered.

4. In support of the claim, the appellant/applicant had submitted her evidence by way of an affidavit and had also exhibited the following documents:-

- (i) Certified copy of Police Report and Memo (Exbt. A series)
- (ii) Certificate copy of Inquest Report (Exbt. B)
- (iii) Certificate copy of Post Mortem Report (Exbt. C)
- (iv) Certificate copy of Journey Ticket (Exbt. D)

5. On the other hand, the claim was disputed by the respondents by filing written

statement. It was pleaded that the deceased had fallen down from the running train due to his own negligence and therefore the railway was not liable to pay any compensation. It has further been stated that though the journey ticket was found from the deceased, it was not conclusively proved that the deceased was in fact holding the said ticket at the time of the accident. The respondent Railways had filed the Senior DSC Report/Lumding and certain other documents and had also produced two numbers of witnesses.

6. The learned Tribunal, on the basis of the pleadings had framed the following issues:-

- (i) Whether the victim was a bona fide passenger?
- (ii) Whether the victim died in an untoward incident?
- (iii) Whether the applicant is entitled to compensation? If so, to what extent?
- (iv) Relief & costs?

7. So far as the issue no. 1 pertaining to whether the deceased was a "*bona fide* passenger", the learned Tribunal had come to a finding against the applicant. The findings were mainly based upon the Senior DSC Report/Lumding which had stated that in the enquiry, it could not be established whether the deceased was a "*bona fide* passenger" or not. The report of the GRP had also not mentioned recovery of any railway journey ticket from the deceased. The issue no. 2 regarding the death in an untoward incident has been held in favour of the applicant. As regard the issue nos. 3 & 4 regarding the entitlement to compensation, the learned Tribunal has held that since the issue no. 1 regarding "*bona fide* passenger" was held against the applicant, the said two issues were also decided against the applicant. Accordingly, the claim was rejected.

8. I have heard Ms. N. Ahmed, learned counsel for the appellant/applicant whereas

the Railways are represented by Dr. B. N. Gogoi, the learned Standing Counsel. I have also perused the LCRs which have been transmitted to this Court pursuant to the earlier orders passed by this Court.

9. Ms. Ahmed, the learned counsel for the appellant has submitted that the entire objective of the enactment being for the benefit of the bereaved families who have lost their near and dear ones in a train accident, the procedure to be followed has to be in sync with such objective. In other words, the procedure followed should not be hyper-technical and the strict rigours of the Evidence Act are not required to be adhered to. She further submits that the fact of there being a train journey ticket not being disputed which was also exhibited as Ext. "D" coupled with the fact that there is no dispute that the death of the deceased was in a train accident, the learned Tribunal has committed error in the aspect of holding that the train journey ticket was not properly proved. By drawing the attention of the Court to the order-sheets which are available in the LCRs, the learned counsel has submitted that numerous attempts were made to call the relevant police officer as a witness and in this regard, this Court has noticed that on 19.01.2017, an order was passed calling for the IO-one Shri Dharani Gayan. Thereafter, another order was passed for calling for the SI- Shri Satyander Shom as it was found that Shri Dharani Gayan had not investigated the case. As the Tribunal was informed that the aforesaid SI- Shri Satyandra Shom was transferred to Moriani GRP, on 08.06.2017, fresh summons were issued to the said IO Shri Satyander Shom. When the matter was listed on 13.07.2017, the learned Tribunal had observed that despite issuance of summons, the concerned SI was not present, and accordingly, the matter was directed to be listed for final hearing as photocopy of the case diary was placed on record.

10. By assailing the findings of the learned Tribunal pertaining to the issue no. 1 of being a "*bona fide* passenger", it is submitted that the railway journey ticket bearing no. 92167376 dated 20.01.2013 was exhibited and therefore the said issue could not

have been decided against the appellant/applicant.

11. In support of the aforesaid submission, the learned counsel for the appellant has relied upon the following case laws:-

1. Judgment dated 16.05.2023 passed by the Hon'ble Supreme Court in Civil Appeal No. 3799 of 2023 (**Kamukayi & Ors Vs Union of India**).
2. Judgment dated 10.12.2020 by the Hon'ble Madras High Court in CMA No. 267/2020 [**V Eswari Vs Union of India** reported in **(2021) 1 MLJ 195**].

12. In the case of **Kamukayi** (supra) the Hon'ble Supreme Court has gone to the extent that it would be the burden of the railway administration to place on record the fact of not having a valid railway ticket with the deceased passenger except to say that during recovery, ticket was not found. The aforesaid observations have been made in connection with the issue of the deceased being a "*bona fide* passenger".

13. In the case of **V. Eswari** (supra) the Hon'ble Madras High Court by following the decision of the Hon'ble Supreme Court in the case of **Union of India Vs Rina Devi** reported in **(2019) 3 SCC 392** has laid down that though it may not be conclusive to hold that an injured or deceased was a "*bona fide* passenger" by the mere presence of a body on the railway premises, at the same time, mere absence of ticket with such injured or deceased will not negative the claim that he was not a "*bona fide* passenger" and that the initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and the burden will then shift to the Railways.

14. *Per contra*, Dr. Gogoi, the learned counsel representing the Railways has submitted that the judgment of the learned Tribunal does not suffer from any infirmity as the rejection has been made on cogent reasons. He submits that the issue no. 1

regarding the "*bona fide* passenger" has been correctly decided wherein the learned Tribunal had relied upon the report of the enquiry officer and had also observed that while the date of the accident is mentioned as 20.01.2013 in the letter of the CCM, the records shows that the incident had occurred on 21.01.2013. It is also submitted that the genuineness of the ticket is also doubtful inasmuch as below Ext-D it was written by the In-charge, Lanka GRP that the same was handed over to Md. Fariz Ali, relative of the deceased. It is also submitted that the said Fariz Ali did not hand over the said ticket on the date of the death. Dr. Gogoi accordingly submits that when the aspect of being a "*bona fide* passenger" is itself doubtful and the date of the accident being inconsistent, the claim has been rightly rejected.

15. The rival contentions made by the learned counsel for the respective parties have been duly considered and the materials placed before this Court have been carefully perused. The LCRs have also been carefully examined.

16. The rejection of the claim is mainly on the aspect of "*bona fide* passenger" and in this regard, the entire emphasis has been given on the train ticket. Whether such rigid approach wherein the entire discussion revolves around the genuineness of a train ticket is a proper procedure is itself debatable. A Tribunal adjudicating a claim of the present nature which involves the death of a person in a train accident cannot lose sight of the fact that availability of the ticket may not always be there inasmuch as, a person whose death is or grievous injuries are caused by an untoward incident may not always be in a position to preserve the ticket with him. What is required to be the outlook of the Tribunal is to see as to whether there are *prima facie* materials to show that the deceased was "*bona fide* passenger". Such satisfaction can be derived from the evidence on record including the versions of the witnesses. In the case of **Rina Devi** (supra), it has been laid down that mere absence of ticket with the injured or deceased will not negative the claim that he was not a "*bona fide* passenger" and that

the initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and the burden will then shift to the Railways. In the instant case, not only evidence was adduced, even the ticket was exhibited.

17. While discussing the issue no. 1, this Court has also noticed that the learned Tribunal was also swayed by the fact that there was discrepancy in the date of the accident as the letter of the CCM has stated the date to be 20.01.2013 and on the other hand, the other records state that the date is 21.01.2013. The learned Tribunal however lost sight of the fact that it was the case of the appellant/applicant that the deceased was travelling from Badarpur to Hojai and the date of starting at Badarpur was 20.01.2013 and the accident had occurred at Lanka Railway Station on the next date i.e. 21.01.2013.

18. It is also not disputed that in the instant case, a train journey ticket of the deceased was actually available which was also proved as Ext "D". The said ticket bearing no. 92167376 was proved in the proceedings with necessary endorsement by the concerned police officer. There is no rebuttal evidence that the ticket was not of the concerned train or the date by the railway authorities and therefore, there was no reason to disbelieve that the deceased was travelling on the strength with the said ticket and accordingly the claim could not have been rejected.

19. The procedure which is required to be adopted by a Tribunal adjudicating a claim for compensation for death or injuries in a railway accident is not required to have the standard of proof as beyond all reasonable doubt and the same is required to be on the basis of preponderance of probabilities. The decision is to be on the touchstone of preponderance of probabilities and unless the Tribunal is convinced that the claim is not genuine, such claims are not liable to be rejected by taking a hyper-technical approach requiring establishment of the case beyond all reasonable doubt.

20. This Court has also taken the assistance of the law laid down by the Hon'ble Supreme Court in amongst others, the case of ***Kamukayi*** (supra) wherein it has been laid down that once the initial burden is discharged by the claimant that the deceased passenger was having a valid ticket, the onus would shift on the railway administration to disprove the same. Further in the case of ***Rina Devi*** (supra), it has been laid down that mere absence of ticket will not negative the claim that he was not a *bona fide* passenger and that the initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and the burden will then shift to the Railways. The said burden having been successfully discharged by the applicant, there was no occasion for the learned Tribunal to disbelieve the said version, which was duly proved and accordingly the findings against issue no. 1 are interfered with and decided in favour of the appellant/applicant. This Court has seen that the issue no. 3 regarding the entitlement for compensation has been decided against the applicant only because the issue no. 1 regarding "*bona fide* passenger" has been decided against the applicant. Since the findings on the first issue on the aspect of "*bona fide* passenger" have already been interfered with, the issue no. 3 regarding compensation would also have to be decided in favour of the appellant/applicant.

21. In view of the aforesaid discussion, the instant appeal stands allowed and the impugned judgment dated 22.11.2017 passed by the Railway Claims Tribunal in Guwahati in Claim Application No. OAIU/25/2013 (Old) and Claim Application No. OAIU/GHY/2013/0058 (New) is set aside.

22. The applicant is accordingly held to be entitled to compensation of Rs.4,00,000/- (Rupees Four Lakhs) as quantified by the Scheme. The aforesaid amount would also carry interest @ 9% from the date of filing of the application before the learned Tribunal till date of payment.

23. Appeal accordingly stands allowed. No order as to cost.

JUDGE

Comparing Assistant