

GAHC010223062021



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

Case No. : MFA/197/2021

MADHUMITA PHUKAN
W/O- LATE DAMBORO PHUKAN @ DAMBARU PHUKAN, R/O- VILL.-
TANGANAPARA, P.O. JAMUGURI PANCHALI, P.S. AND DIST. DHEMAJI,
ASSAM

VERSUS

THE UNION OF INDIA
REP. BY THE GENERAL MANAGER, N.F. RAILWAY, MALIGAON,
GUWAHATI, ASSAM, PIN- 781011.

Advocate for the Petitioner : MR D S DEKA

Advocate for the Respondent : SC, NF RLY

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 14-11-2023

JUDGMENT & ORDER (ORAL)

Heard Mr. DS Deka, learned counsel for the appellant. Also heard Mr. B

Sarma, learned counsel for the Union of India being the authorities under the NF Railways.

2. The appellant Madhumita Phukan instituted a proceeding under Section 16 of the Railway Claims Tribunal Act 1987 read with Section 124-A of the Indian Railways Act 1989 claiming compensation amounting to Rs.10lakhs along with interest and costs for the death caused to her husband Damboro Phukan @ Dambaru Phukan who was traveling in the Train No.55813 UP from Dhemaji Railway Station to Murkong Selek when he fell down from a moving train near Sri Pani Railway Station.

3. The deceased husband of the appellant suffered grievance injuries during the fall from the running train resulting injuries to both his legs, but he could not survive and died on the way to the hospital. Without going into the details of the claims of the appellant and the denials of respondent railways, what we take note is that in course of the proceeding, a photocopy of a railway ticket was brought in evidence and the appellant in her deposition stated that the photocopy was handed over to her by the police officials. The Tribunal in the impugned judgment dated 27.01.2020 in paragraph 11 arrived at its conclusion that the AW-1 who appeared on the witness box had not filed the original journey ticket and she says that only a photocopy was handed over to her by the police officials. But in paragraph 12 of the judgment, the learned Tribunal took note of a report of the Divisional Railway Manager (for short, DRM) dated 09.09.2019 wherein as extracted by the learned Tribunal in paragraphs 5 and 6, it was provided as extracted:

12. (5). One UTS Ticket No. 65164369 has been showed to be found from the possession of the deceased person which has been seized on 21.02.2018 whereas the incident happened on 21.08.2018. On the spot when inquest was conducted by GRPS/NLP no journey ticket was found from the possession of the deceased body.

(6) As per ticket verification report the UTS Ticket No. 65164369 was issued on 21.01.2019 at 10.15 hrs. As per the record train no. 55813 UP departed from DMC Station at 11.20hrs on 21-01-2018.

4. Paragraph 5 of the report of the DRM provides that one UTS Ticket No.65164369 was found from the possession of the deceased person which was seized on 21.02.2018, whereas the incident took place on 21.01.2018 and in the spot inquest that was conducted by the GRPS/NLP, no journey ticket was found from the possession of the deceased. Paragraph 6 of the report of the DRM provides that as per the ticket verification report, the UTS ticket No.65164369 was issued on 21.01.2019 at 10.15 hrs at Dhemaji Railway station and as per record the train No.55813 UP departed from Dhemaji station at 11.20.hrs on 21.01.2018. From the information provided in the report of the DRM that the ticket was purchased at 10.15 hrs on 21.01.2019 and the train departed at 11.20 hrs on 21.01.2018, we can *prima facie* accept that the issuance of ticket was at a close proximity of the time and date of the journey. But, however, by relying on the provisions of paragraph 5 of the report of the DRM, the learned Tribunal arrived at its conclusion that as the seized ticket was in the seizure list which is dated one month after the date of the incident, therefore, there was a probability of it being highly suspicious and further the enquiry officer who prepared the seizure list, had not come forward to the Court along with the case diary, inspite of the summons. From the above, it is discernible that firstly, the photocopy of the ticket produced by the appellant was rejected for it being a photocopy, inspite of there being an explanation that the photocopy of the ticket

was provided to her by police officials who had conducted the seizure. Secondly, the Tribunal took note of the fact that the seizure is dated 21.02.2018, whereas the death occurred on 21.01.2018, and that during the inquest conducted by the GRPS/NLP no ticket was found in the possession of the deceased and, therefore, arrived at its conclusion that it is highly suspect that the journey ticket relied upon by the appellant would be acceptable. The other reason for not accepting the photocopy of the journey ticket relied upon by the appellant is that inspite of summons having been issued to the enquiry officer of the GRPS/NLP who had investigated the death of the husband of the appellant, the enquiry officer did not respond to the summons and the case diary produced did not contain any original ticket.

5. On the aspect that inspite of summons having been issued, the enquiry officer of the GRPS/NLP did not appear, we take note of the provisions of Rule 7(1)(i) of the *Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003 (for short, the Rules of 2003)* which provides that in the event, the Station Superintendent receives an information of an occurrence of an untoward incident, an officer of the Force, which is to be read to be the Railway Protection Force (RPF for short), not below the rank of an Inspector, shall carry out the investigation and shall, obtain copies of the inquest report, post mortem report and Jama Talashi report from the police investigating the incident. The provisions of Rule 7(1)(i) of the Rules of 2003 makes it explicit that it is incumbent upon the appropriate officer of the RPF, who shall carry out the investigation of the untoward incident to obtain the copies of the inquest report, post mortem report and Jama Talashi report from the police, investigating the incident, meaning thereby, that in the instant case, the

GRPS/NLP in whose case diary, the seizure list dated 21.02.2018 is available was required to have been obtained by the appropriate officer of the RPF. When the provision is that the investigating officer of the RPF shall obtain the copies of the inquest report, post mortem report and Jama Talashi report from the police, it has to be understood that such materials are also to be a part of the investigation by the RPF and it is not that only when a claim is lodged before the Railway Claims Tribunal the Court would be required to issue summons to the enquiry officer of the police to produce the case diary and remain present for his evidence. In the absence of the aforesaid procedure being followed, it has to be understood that the investigation done by the investigating officer of the RPF was done in a truncated manner without following the complete procedure and it is for this reason that the investigating officer of the RPF could not investigate the aspect as to whether the deceased person was travelling with a valid ticket or the ticket seized as per the seizure list by the police would be a ticket which was not issued to the deceased person. Further the investigation by the RPF as to whether the ticket that may be available in the seizure list was a genuinely issued ticket or whether it was issued to the deceased or to somebody else would be a matter for investigation depending upon how many tickets were issued from Dhemaji Railway Station to Murkong Selek in respect of Train No. 55813 on the given date. As the ticket in original which was seized vide seizure list dated 21.02.2018 was in the records of the GRPS/NLP who had investigated the death of the husband of the appellant, the claim of the appellant for having produced a photocopy of the ticket which was given to him, cannot be a reason to dismiss the claim without making any further enquiry.

6. We further take note of the report of the DRM dated 09.09.2019 on his conclusion at paragraph 5 thereof that a ticket being issued to the deceased husband of the appellant has to be disbelieved because the same was not found, when the inquest was not conducted on the dead body after the occurrence. In this respect, we take note of the provisions of Section 174(1) of the Cr.P.C., which provides for the requirement of an inquest to be held either by an Executive Magistrate or by an authorised official. Inquest on a dead body as per the Black's Law Dictionary means an enquiry by a coroner or medical examiner, sometimes with the aid of a jury into the manner of death of a person who has died under suspicious circumstances or who has died in the prison. The definition of inquest as provided in the Black's Law Dictionary is as quoted below:

“An inquiry by a coroner or medical examiner, sometimes with the aid of a jury, into the manner of death of a person who has died under suspicious circumstances, or who has died in prison”

7. The meaning of the word 'inquest' makes it discernible that it is merely an examination on the dead body on the reasons of the death and it does not include a thorough search of the contents which may be found inside the clothes found on the person of the dead body. From the point of view of the concept of an enquiry, as because the tickets could not be located at the time of inquest, it cannot be a reason to disbelieve a ticket, if it was otherwise subsequently seized in course of the investigation. The availability of a ticket which is claimed to be a valid journey ticket may be rejected for other reasons based upon materials as may be laid by the respective parties in course of the proceeding, but merely because of a reason of it not having been found at the

time of inquest may not be a sufficient reason to discard a ticket which otherwise is available on record.

8. In view of the above, the rejection of the claim of the appellant by the judgment dated 27.01.2020 is set aside and the matter stands remanded back to the Tribunal for an appropriate conclusion as to whether the ticket as available in the seizure list dated 21.02.2018 was actually from the possession of the deceased husband of the appellant and if yes, whether the said ticket was a genuine and valid ticket that was issued to the deceased prior to his journey. For the purpose, either of the parties may lead any further evidence as may be advised and the investigating officer of the RPF may also do the needful as provided under Rule 7(1)(i) of the Rules of 2003 for ensuring that the appropriate records are made available before the Tribunal for an appropriate adjudication.

9. On the submission of Mr. B Sarma, learned counsel appearing for the NF Railways regarding cooperation of the officials of the police who had done investigation on the death of the husband of the appellant, we provide that we have taken note of the observations of the Tribunal that inspite of summons, the enquiry officer or any other appropriate person is not appearing and observe that in the event, a Court of law has issued summons and someone is not responding to it, there is appropriate provision of law, which may be invoked by the Tribunal to ensure the presence of any such person and such procedure may also be adopted by the Tribunal.

10. In terms of the above, the appeal stands disposed of.

JUDGE

Comparing Assistant