

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK**

**FMAT 1162 of 2018
CAN 1 of 2022
Union of India
versus
Kashinath Chowhan @ Chouhan
With
COT 76 of 2022
Kashinath Chowhan @ Chouhan
versus
The Union of India**

For the Appellant	: Mr. Avinash Kankani, Advocate
For the Respondent- Claimant	: Mr. Jayanta Banerjee, Advocate Ms. Ruxmini Basu Roy, Advocate
Heard on	: 05.12.2022
Judgment on	: 19.05.2023

Bivas Pattanayak, J. :-

1. The present appeal is directed against the judgment and award dated 25th July 2018 passed by Railway Claims Tribunal, Kolkata Bench in Claim Application No. OA (IIu)/KOL/0087/2010 granting compensation of Rs.8,00,000/- in favour of respondent-claimant and his wife Reshmi Chowhan under Section 16 of Railway Claims Tribunal Act, 1989.

2. The brief fact of the case is that on 25th December 2009 at about 2.30 p.m. while the victim was travelling from Howrah to Uttarpara Railway Station by local train with valid second-class railway ticket, accidentally he fell down

from the running train due to overcrowding pressure and sudden jerk between Belur and Bally Railway station, as a result of which he received serious head injury on his person. Immediately thereafter he was taken to Belur S.G. Hospital, wherefrom he was referred to Medical College and Hospital where he succumbed to his injuries and died on 29th December 2009. The Police authority of Bowbazar Police Station in order to investigate the incident registered one General Diary being GD Entry No. 2999 date 29th December 2009. The claimants being the parents of the victim filed application under Section 16 of the Act claiming compensation of Rs.4,00,000/- together with interest.

3. The claimants in order to establish their case examined father of the victim and also filed documents which has been marked as **Exhibits A/1 to A/7**.

4. The appellant-Union of India did not adduce any evidence before the tribunal.

5. Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned tribunal granted compensation of Rs.8,00,000/- in favour of the applicants being the parents of the deceased.

6. Being aggrieved by and dissatisfied with the impugned judgment and award of the learned tribunal the Union of India has preferred the present appeal. The respondent-applicant has also filed a cross-objection being COT 76 of 2022.

7. Mr Avinash Kankani, learned advocate for appellant-Union of India submitted that the learned tribunal erred in opining that the burden to prove

that the person was not in possession of a valid ticket for journey was on the Railway Authority and failure to discharge such burden the victim will be a considered as a *bonafide* passenger. He further submitted that the initial burden to establish that the victim was a *bonafide* passenger is on the applicant and after such initial burden is discharged, the applicant can claim compensation. However, in the case at hand the applicant has miserably failed to discharge such initial burden. Therefore, the applicants are not entitled to get compensation under the Act since the primary burden of proof that the victim was a *bonafide* passenger on the date of accident has not been discharged in accordance with law. In support of his contentions he relied on the decision of Hon'ble Supreme Court passed in ***Union of India versus Rina Devi*** reported in **(2019) 3 SCC 572**. In the aforesaid backdrop he submitted the appeal be allowed by setting aside the impugned judgment and award of the learned tribunal.

8. In reply to the contentions raised on behalf of the appellant, Mr Jayanta Banerjee, learned advocate for respondent-claimant submitted that neither any specific case has been made out by the Railway Authority that the victim was not a *bonafide* passenger nor any evidence has been led to establish that the victim had no ticket to travel as a *bonafide* passenger on the date of accident. On the other hand the claim of the applicants that the victim was a *bonafide* passenger has not been rebutted by the appellant-Railway Authority through any cogent evidence. Thus, where there is no proof that the victim had no railway ticket with him the claimant is entitled to get compensation

and in support of his contentions he relied on the decision of this court passed in ***Bandana Mondal versus Union of India, Through the General Manager, Eastern Railway*** reported in ***(2010)1 WBLR (Cal) 106***.

He further submitted that the learned tribunal has directed that 90% of the awarded sum be kept in fixed deposit scheme for the period of five years. Since there is no disabling factors such as unsoundness of mind or illiteracy of the applicant such direction for keeping the awarded sum in fixed deposit scheme is uncalled for and accordingly appropriate order to that effect be passed for disbursement of the awarded amount in full to the applicant. To buttress his submission, he relied on the decision of Hon'ble Supreme Court passed in ***H.S. Ahammed Hussain & Anr. versus Irfan Ahammed & Anr.*** reported in ***(2002) 2 WBLR (SC) 305*** and another decision of Hon'ble Orissa High Court in ***Kabi Pradhan versus Union of India*** reported in ***2021 (4) TAC 562 (Ori)***. In light of his aforesaid submission, he prayed that the award passed by the learned tribunal be affirmed with the modification as indicated above.

He informed the court that after passing of the award the mother of the victim namely Reshmi Chouhan expired on 5.4.2019 and on consideration of such fact the learned tribunal by order dated 21.4.2021 modified the award in favour of the respondent-claimant, father of the victim. The respondent-claimant has filed an application being CAN 1 of 2022 for noting the death of claimant no.2, mother of the victim.

9. Both the appeal and the cross objection are taken up together for consideration and disposal.

10. Having heard the learned advocates for the respected parties it is found that the appellant–Union of India in the present appeal has challenged the claim on sole ground that the deceased-victim on the relevant date was not a *bonafide* passenger.

11. With regard to the aforesaid issue raised in the appeal, at the outset on going through the impugned judgment and award of the learned tribunal it is found that the learned tribunal considering the history of injury report **(Exhibit A/4)**, medical certificate of cause of death **(Exhibit A/5)**, inquest report **(Exhibit A/6)** and postmortem report **(Exhibit A/7)** came to a definite finding that the deceased met with a railway accident between Belur and Bally railway stations on 25.12.2009 and suffered head injury. The fact that the deceased died in the said railway accident has not been disputed by appellant-Union of India. Mr. Kankani, learned advocate for the appellant relying on *Rina Devi (supra)* had tried to impress upon the court that since no valid railway journey ticket was recovered from the dead body of the deceased or any eyewitness was examined to substantiate that the deceased boarded the train with a railway ticket, hence initial burden was not discharged and as such the deceased was not a *bonafide* passenger.

In *Rina Devi (supra)* the Hon'ble Supreme Court held as follows.

“29. We thus hold that mere presence of the 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 affidavit by 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.”

Bearing in mind the aforesaid observation of the Hon'ble Court, it is found that claimant no. 1, father of the deceased, namely Kashinath Chauhan (PW1) filed his affidavit-in-chief wherein he stated that on 25th December 2009 his son Biswanath Chauhan was travelling from Howrah junction to Uttarpara by Tarakeswar local train. He further stated that at about 2.30pm his son fell down from the running train due to overcrowding pressure and sudden jerk in between Belur railway station and Bally railway station as a result of which his son sustained head injuries and was shifted to hospital. Furthermore he stated that his son was travelling on 2nd class valid railway ticket on the relevant day but due to the accident the ticket could not be recovered. Thus by filing affidavit disclosing relevant facts the claimants discharged their initial burden and the burden shifted upon the railways. One

cannot be oblivious to the fact that a ticket can easily be lost in an accident resulting in death of a victim. The railways have not discharged its burden as per law. It is placed on record that no attending circumstances has been established by the railways that the deceased did not die out of a railway accident. Accordingly the ground that the no ticket was recovered from the dead body of the deceased cannot sustain to establish that the victim was not a *bonafide* passenger and negative the claim of claimant. In view of the above discussion the ground taken by the appellant-Union of India fails.

11.1. So far as the decision of *Bandana Mondal (supra)* is concerned in the said case there was evidence of mother of a victim who deposed that she purchased the ticket for her son, handed over the same to him and saw him off at the railway station. Thus the facts of the case stands distinguished from the case at hand.

12. Now cross objection is taken up for consideration. Mr. Jayanta Kumar Banerjee, learned advocate for the respondent claimant has only pressed into service the ground that full of amount compensation be released to the respondent since there is no disabling factor relying on *H. S. Ahammed Hussain (supra)* and *Kabi Pradhan (supra)*. It is found from the impugned judgment and award that the learned tribunal has directed that the out of the total awarded amount 90% will remain in a fixed deposit scheme for a 5 years and only 10% of decreed money shall be released through ECS with liberty of premature breaking of the fixed deposits in case of urgent need by order of the tribunal. It is relevant to note that there is no such reason for making

such arrangement. There is no material on record of any disabling factors which may impair judicious use of amount under the award. That being the position I find the substance in the submissions of Mr. Banerjee, learned advocate for respondent-claimant relying on the decision of Hon'ble Supreme Court in *H.S. Ahammed Hussain (supra)* which has been followed in *Kabi Pradhan (supra)* of Orissa High Court. It is found that the awarded sum has not been deposited by the appellant as yet. Accordingly, the entire compensation amount and the interest, on failure to satisfy the decree, awarded by the learned tribunal is to be released in favour of the respondent-claimant.

13. In the present appeal respondent has filed one application being CAN 1 of 2022 for appropriate order for recording the death of claimant no. 2 *Reshmi Chouhan @ Chowhan* mother of the deceased. It is contended in the application that the wife of respondent no.1 namely *Reshmi Chouhan @ Chowhan*, mother of the deceased, expired on 5.04.2019 after passing of the award. By order dated 21st April 2021 the learned tribunal considered the fact of death of claimant no. 2 *Reshmi Chouhan*, mother of the deceased, and treated the father of the victim (respondent herein) as the sole claimant and the modified the award in favour of respondent only. The death certificate annexed to the application shows that the mother of the deceased *Reshmi Chouhan* died on 5th April 2019. The fact of death of *Reshmi Chouhan* mother of the deceased is taken note of. The application CAN 1 of 2022 in FMAT 1162 of 2018 stands disposed of.

14. In view of the above discussion the appeal being no. FMAT 1162 of 2018 stands dismissed. The cross objection being no. COT 76 of 2022 is allowed to extent that the entire amount of compensation and the interest, on failure to satisfy the decree, awarded by the learned tribunal be released in favour of the respondent-claimant. The impugned judgment and award is modified to the above extent.

15. Appellant-Union of India is directed to deposit the awarded amount together with interest as directed by the learned tribunal, by way of cheque before the learned Registrar General, High Court, Calcutta within six weeks from date.

16. Upon deposit of the aforesaid amount and interest, learned Registrar General, High Court, Calcutta shall release the entire amount in favour of the respondent-claimant upon satisfaction of his identity.

17. All connected applications, if any, stand disposed of

18. Interim order, if any, stands vacated.

19. Urgent photostat certified copy of the order if applied for be given parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)