

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

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

**FMA 323 of 2018
Azad Sk @ Ajad Seikh
versus
Union of India**

For the Appellant	: Mr. Supratim Dhar, Advocate Mr. Kazi M. Rahaman, Advocate
For the Respondent	: Mr. Sanajit Kumar Ghosh, Advocate
Heard on	: 20.07.2023, 26.07.2023, 14.08.2023
Judgment on	: 16.02.2024

Bivas Pattanayak, J. :-

1. This appeal is preferred against the judgment dated 10th April, 2017 passed by the Railway Claims Tribunal, Kolkata Bench in Claim Application No. OA (IIU)/KOL/2013/0472 dismissing the claim application of the appellant-applicant filed under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 124-A of the Railways Act, 1989.

2. The brief fact of the case is that on 20th October, 2013 the deceased-victim purchased one railway ticket from Jiaganj in order to proceed to Berhampur railway station. The deceased-victim on the said date boarded Down Hazarduari Express at Jiaganj railway station when the train was stationary. Further when the train started to move, the deceased-victim could not control himself and due to overcrowding pressure of the passengers, he accidentally fell down from the running train and sustained

grievous injuries. Soon after the accident, the deceased-victim was taken to Murshidabad Medical College where the admission of the victim was refused and thereafter, he was taken to N.R.S Medical College & Hospital, Kolkata on 21st October, 2013. Ultimately, the victim succumbed to his injuries on 29th October, 2013 at about 4:50 P.M. Furthermore, a police case was also registered under Entally P.S. vide No. 1034 dated 30.10.2013. On account of the sudden demise of the victim, due to such untoward incident, the father of the victim filed application for compensation of Rs.4,00,000/- together with cost and interest as sole dependent under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 124-A of the Railways Act, 1989.

3. In order to establish his case, the applicant examined himself as A.W.1 and produced documents which have been marked as **Exhibits A/1** to **A/3** respectively.

4. The respondent-railway authorities keenly contested the claim application by filing its written statement denying *inter alia* the averments made by the applicant and precisely contended that the victim did not fall down from the running train on the alleged date and place. Further no untoward incident took place as made in the claim application. Moreover, the victim was not a *bonafide* passenger of the train.

5. The respondent-railways authorities did not adduce any evidence in support of its pleadings.

6. Upon considering the materials on record and the evidence adduced on behalf of the appellant-applicant, the learned Tribunal dismissed the claim application of the appellant-applicant.

7. Being aggrieved by and dissatisfied with the impugned judgment of dismissal of the learned Tribunal, the applicant has preferred the present appeal.

8. Mr. Supratim Dhar, learned advocate for the appellant-applicant submitted that as per the evidence of the applicant, father of the deceased, it is quite evident that on the relevant date the victim purchased a railway ticket from Jiaganj to travel to Berhampur by Hazarduari Express. He also deposed that his deceased-son boarded the said train but accidentally fell down from the running train and sustained injuries. Such evidence of the father of the victim has remained unchallenged in cross-examination. The victim was shifted to N.R.S Medical College & Hospital and the report of the said hospital (**Exhibit A/3**) clearly shows that the patient stated of history of injury out of train accident. Such statement of the deceased just prior to his accident disclosing the circumstances, which has resulted in his death, is a dying declaration which is admissible under Section 32 of the Indian Evidence Act. In support of his contention, he relied on the decision of the Hon'ble Supreme Court passed in ***Bhajju Alias Karan Singh versus State of Madhya Pradesh***¹.

Further the report of the Berhampore GRPS clearly shows that upon inquiry, it revealed that the deceased fell down from running train i.e. Hazarduari Express. The post-mortem report also depict of death due to effect of injuries which is ante-mortem in nature. Therefore, the materials on record clearly show that the victim sustained injuries in an untoward incident which occurred on falling down from the train. The learned

¹ (2012) 4 SCC 327

Tribunal erred in holding that the victim was not a *bona fide* passenger since it was not established that the victim died after falling down from the running train, however, the evidence on record clearly suggests that the victim on the relevant date of accident boarded the down Hazarduari Express and sustained injuries by falling down from the train. A.W.1, father of the victim, also deposed that the victim purchased the railway ticket. In view of the above materials, it manifest, therefore, that the victim was a *bona fide* passenger. The respondent-railway authorities have failed to discharge their burden that the victim was not a *bona fide* passenger. Once it is found that the victim was a *bona fide* passenger and he died out of injuries sustained in an untoward incident while boarding train, the applicant is entitled to get compensation. To buttress his contentions, he relied on the following decisions:

- i. ***Union of India versus Rina Devi*²**
- ii. ***Suchitra As (Ash) versus Union of India*³**
- iii. ***Keshu Shankarlal Giri and Others versus Union of India*⁴**

He further submitted that the idea of best evidence is implicit in the Evidence Act. Evidence under the Act consists of statements made by a witness or contained in a document. The word 'evidence' is used in three different senses: (a) as equivalent to relevant, (b) as equivalent to proof, and (c) as equivalent to the material on the basis of which the Courts come to a conclusion about the existence or non-existence of disputed facts. In support of his contention, he relied on the decision of the Hon'ble Supreme

² ***2018 (3) T.A.C. 26 (S.C.)***

³ ***F.M.A. 384 of 2015 (Decision of High Court at Calcutta)***

⁴ ***(2021) 03 Bom CK 0020***

Court passed in ***Kalyan Kumar Gogoi versus Ashutosh Agnihotri and Another***⁵. The oral evidence of the father of the victim together with the documentary evidence produced clearly establishes the fact that the deceased died out of an accident while boarding a train and, therefore, the applicant is entitled to compensation.

In light of his aforesaid submissions, he prayed that the impugned judgment of dismissal of learned Tribunal be set aside and compensation under the Railways Act be granted in favour of the appellant-applicant.

9. Mr. Sanajit Kumar Ghosh, learned advocate for the respondent-railway authorities submitted that there is no direct evidence that the victim sustained injuries while boarding the train. The father of the victim has categorically stated in his cross-examination that on the relevant date, he was not travelling with his son (victim) and he has not witnessed the accident with his own eyes, therefore, his evidence with regard the incident is a hearsay evidence which is not at all admissible in the eye of law. Further there is no eyewitness to the occurrence examined by the applicant.

He further indicated that such accident has also not been reported to the GRPS. Precisely, there is no record with the railway authorities of such accident. He also submitted that the doctors, who treated the applicant for his injuries, were not examined. Therefore, the applicant has failed to bring on record any substantial evidence to establish the fact that the deceased died out of train accident on the relevant date at Jiaganj station while boarding the train. Therefore, the learned Tribunal on the ground of

⁵ (2011) 2 SCC 532

insufficient evidence has rightly dismissed the application of the appellant-applicant for compensation.

In the aforesaid backdrop, he submitted that the impugned judgment of dismissal of the learned Tribunal should be affirmed in the interest of justice.

10. Having heard the learned advocates for respective parties precisely following issues have fallen for consideration:

Firstly, whether the deceased-victim sustained injuries in the train accident on the relevant date resulting in his death,

And *secondly*, whether the victim was a *bona fide* passenger.

11. Before delving into the merit of this appeal, I concur with regard to the rules of evidence as advanced by learned advocate for appellant-applicant relying on *Kalyan Kumar Gogoi (supra)*.

12. With regard to the first issue as to whether the deceased-victim sustained injuries in the train accident on the relevant date resulting in his death, it is found that the applicant has asserted that on 20th October, 2013 the deceased-victim purchased one railway ticket from Jiaganj in order to proceed to Berhampur railway station. The deceased-victim on the said date boarded Down Hazarduari Express at Jiaganj railway station when the train was stationary. Further when the train started to move, the deceased-victim could not control himself and due to overcrowding pressure of the passengers, he accidentally fell down from the running train and sustained grievous injuries. In order to establish such fact, the applicant, father of the victim, has adduced his evidence. Save and except the evidence of the applicant, there are no other evidence of any other

eyewitness to the occurrence. A.W.1, father of the victim (applicant) deposed on affidavit that on the relevant date (i.e. 20th October, 2013), his son purchased railway ticket from Jiaganj railway station to travel to Berhampur by Hazarduari Express and his son boarded the train when it was stationary. After few minutes when the train took motion, he could not sustain the overcrowded pressure of passengers coming from inside the bogie and accidentally fell down from the running train and sustained grievous injuries. However, in cross-examination, A.W.1, father of the victim admitted that on the relevant date of accident, he was not travelling with his son and he also did not witness the incident with his own eyes. Such being the position, the statement of the witness with regard to the mode and manner of occurrence is nothing but hearsay. That apart, he has admitted in his evidence that he has neither seen his son purchasing the railway ticket from the counter nor seen him boarding the train on the relevant date of incident. A.W.1, father of the victim, further deposed that after the occurrence his son informed him about the incident and, thereafter, he along with others admitted him to Murshidabad Medical College but upon refusal to admit, the victim was taken to N.R.S. Medical College & Hospital on 21st October, 2013 where the victim succumbed to his injuries on 29th October, 2013. It is not clear from the evidence of A.W.1 as to how the information of accident came to his knowledge. This witness deposed that the victim himself informed him but he is silent as to the medium by which the victim informed him. Did the witness receive information over telephone or it was received through some known person? One cannot be oblivious to the fact that, as per the applicant, the victim

sustained grievous injuries. Even if for the sake of argument, it is assumed that the victim was conscious after the incident, there is no evidence that he called from any telephone (landline or mobile). There is also no evidence that some known person informed the witness. No person has been examined who informed of such incident to the witness. Thus, the evidence of the witness that he received the information from his deceased son (victim) is not reliable. It is also admitted position that this applicant along with others took the victim to Murshidabad Medical College. This goes to suggest that other persons also had the knowledge of such accident. Needless to mention that no other person, who accompanied the victim to Murshidabad Medical College, has been examined. The evidence of the witness is also silent on another aspect as to how the victim, who as per the applicant sustained grievous injuries, had been taken to Murshidabad Medical College and Hospital. Be that as it may, in all likelihood, either the victim had to be carried by a private car or by an ambulance. It is pertinent to note that no driver of any private car or any ambulance or any medical assistant were examined by the applicant in support of his case. During the course of hearing, learned advocate for the applicant informed the Court that Down Hazarduari Express leaves Jiaganj at 4:30 P.M. roughly. Therefore, considering the time of the incident in the month of October, 2013, in all probabilities, there was visibility. Thus, the accident having not taken place in the dead of night, the presence of the eyewitness is very much likely. However, the applicant has failed to produce a single eyewitness to the occurrence. Now the next aspect which crops up is that as per the case of the applicant the victim was, at the first instance on 20th

October, 2013 taken to the Murshidabad Medical College and Hospital, where the victim was refused admission and due of such refusal, the victim had to be admitted to N.R.S. Medical College & Hospital on 21st October, 2013. The report of N.R.S. Medical College & Hospital dated 21st October, 2013 (**Exhibit A/3**) shows the date and time of examination of the victim to be 21st October, 2013 at 9:40 A.M. Thus the aforesaid conspectus of fact goes to show that the victim was admitted to N.R.S Medical College & Hospital on the subsequent day. There is no disclosure on the part of the applicant as to where the victim was during the intervening period between refusal of admission at Murshidabad Medical College and Hospital in the evening of 20th October, 2013 till admission on 21st October, 2013 at N.R.S. Medical College & Hospital, since the victim suffered grievous injuries. The aforesaid aspect creates a cloud of doubt in the applicant's case.

12.1. Mr. Dhar, learned advocate for the appellant-applicant referring to column 10 of the report of N.R.S. Medical College & Hospital dated 21st October 2013 (**Exhibit A/3**) indicated that the victim stated before the doctor that he sustained injuries due to train accident. Relying on *Bhajju Alias Karan Singh (supra)*, he submitted that such statement is admissible in evidence and should be treated as dying declaration under Section 32 of the Evidence Act.

12.2. In order to appreciate the aforesaid aspect raised by the learned advocate for the appellant-applicant, it would be apposite to reproduce the principles governing dying declaration as laid down by the Hon'ble Supreme Court in ***Muthu Kutty & Anr. versus State By Inspector of***

Police, T.N.⁶ which has been relied in *Bhajju Alias Karan Singh (supra)* as hereunder:

*“15. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in *Paniben v. State of Gujarat* [(1992) 2 SCC 474 : 1992 SCC (Cri) 403 : AIR 1992 SC 1817] : (SCC pp. 480-81, paras 18-19)*

*(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See *Munnu Raja v. State of M.P.* [(1976) 3 SCC 104 : 1976 SCC (Cri) 376 : (1976) 2 SCR 764])*

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base

⁶ (2005) 9 SCC 113

conviction on it, without corroboration. (See *State of U.P. v. Ram Sagar Yadav* [(1985) 1 SCC 552 : 1985 SCC (Cri) 127 : AIR 1985 SC 416] and *Ramawati Devi v. State of Bihar* [(1983) 1 SCC 211 : 1983 SCC (Cri) 169 : AIR 1983 SC 164] .)

(iii) The Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See *K. Ramachandra Reddy v. Public Prosecutor* [(1976) 3 SCC 618 : 1976 SCC (Cri) 473 : AIR 1976 SC 1994] .)

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See *Rasheed Beg v. State of M.P.* [(1974) 4 SCC 264 : 1974 SCC (Cri) 426])

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See *Kake Singh v. State of M.P.* [1981 Supp SCC 25 : 1981 SCC (Cri) 645 : AIR 1982 SC 1021])

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See *Ram Manorath v. State of U.P.* [(1981) 2 SCC 654 : 1981 SCC (Cri) 581])

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (See *State of Maharashtra v. Krishnamurti Laxmipati Naidu* [1980 Supp SCC 455 : 1981 SCC (Cri) 364 : AIR 1981 SC 617] .)

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See *Surajdeo Ojha v. State of Bihar* [1980

Supp SCC 769 : 1979 SCC (Cri) 519 : AIR 1979 SC 1505] .)

(ix) Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See Nanhau Ram v. State of M.P. [1988 Supp SCC 152 : 1988 SCC (Cri) 342 : AIR 1988 SC 912])

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See State of U.P. v. Madan Mohan [(1989) 3 SCC 390 : 1989 SCC (Cri) 585 : AIR 1989 SC 1519] .)

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See Mohanlal Gangaram Gehani v. State of Maharashtra [(1982) 1 SCC 700 : 1982 SCC (Cri) 334 : AIR 1982 SC 839] .)”

12.3. It manifest from the aforesaid proposition that the court insists that the dying declaration should be of such a nature so as to inspire full confidence of the court in its correctness, since the accused has no power of cross-examination which is essential for eliciting truth as an obligation of oath could be. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind to make such declaration and such declaration was true and voluntary in nature. Applying the principles with regard to

admissibility of dying declaration as laid down by the Hon'ble Supreme Court as aforesaid, let me revert back to the case at hand. The applicant produced the report of N.R.S. Medical College & Hospital dated 21st October, 2013 marked as **Exhibit A/3**. The column 10 – Short History of the Case as stated by the patient records “*H/o train accident. Patient fell down from running train on off side of Jiagunj Station and sustained polytrauma*”. Now the question arises whether such fact noted in the report can be considered as a dying declaration. At the outset, the column 10 of the report (**Exhibit A/3**) is a formal noting by a doctor in the injury report and not a statement. The report (**Exhibit A/3**) shows that the doctor had noted that the patient was conscious. However, whether the patient was conscious and fit so as to make statement or not has never been established by any medical evidence of attending doctor during trial. There is also no evidence of any doctor stating that the statement made by the victim during his medical examination was voluntary and that it was not tutored. Further no case has been made out that the victim made statement voluntarily before the doctor of any circumstances which ultimately resulted in his death. In view of the above, the notings in column 10 of the report fails to pass the test as noted by the Hon'ble Supreme Court as above so as to inspire full confidence of the court in its correctness. No endeavor was taken by the applicant to prove any other statement of the victim disclosing the circumstances leading to his death. For the aforesaid reasons, this court is disinclined to accept argument raised on behalf of the appellant-applicant in this regard.

12.4. Mr. Dhar, learned advocate for the appellant-applicant referring to report of Berhampore GRPS dated 30th October, tried to impress upon the court that such report clearly indicates that the victim while trying to board Down Hazarduari Express at Jiajang railway station fell down from running train and received injuries. The fact disclosed in the report shows that it was learnt from the local public and relatives of victim. However, it is relevant to note that no member of public or the relatives made any complaint before the railway authorities or GRPS till the date when the report was sent. It is quite unbelievable that if such an occurrence has taken place at all in the evening time, there should have some recording of such incident in the official records or at the railway police station at the first instance which is missing in the present case.

12.5. In view of the above discussion, it is found that the appellant-applicant failed to establish that the victim sustained injuries in the train accident on the relevant date.

13. Now the next issue which falls for consideration is whether the victim was a *bona fide* passenger. In *Rina Devi (supra)*, the Hon'ble Supreme Court has held that initial burden to prove that the victim was a *bona fide* passenger is on the claimant. It is found that the only evidence that the victim was *bona fide* passenger is the evidence of the A.W.1, father of the victim. Although the applicant (A.W.1) stated in his evidence-in-chief that his son (victim) boarded Hazarduari Express on the relevant date after purchasing railway ticket at Jiaganj Station but in cross-examination he has categorically stated that he has not seen his son purchasing ticket or boarding such train. Therefore, the evidence of A.W.1 fails to establish that

the victim on the relevant date purchased ticket to board the train. There is no independent witness who stated that he saw the victim boarding the train or was in queue purchasing ticket. Further from the discussion in the foregoing paragraph, it is found that the applicant has failed to establish that the victim sustained injuries in the train accident on the relevant date. Such being the position, the applicant has failed to discharge his onus of proof that the victim was a *bona fide* passenger.

13.1. In *Suchitra As (Ash) (supra)*, a permanent High School teacher accidentally fell down from the overcrowded train in between Serampore and Rishra Railway Stations. There was evidence of eyewitness, monthly ticket was produced, railway memo was issued by Station Master, Seoraphuli to O.C., GRPS, inquest was conducted. The evidence in the cited decision is absent in the case at hand. Thus, the facts of the cited decision is distinguishable and does not apply to the present case.

13.2. In *Keshu Shankarlal Giri (supra)*, the victim was a private car driver who was travelling by an unknown local train from Bhandup to Dadar on the strength of a valid second class railway ticket. Due to overcrowding, he fell down from the train resulting in amputation of his both legs and ultimately death. In this case also, there was D.R.M's report, inquest and spot panchanama and evidence of an independent witness who saw the victim purchasing ticket. Such evidence is lacking in the present case and thus is distinguishable.

14. In light of the above discussion, the appeal stands dismissed. The impugned judgment of dismissal of claim application dated 10th April, 2017 of the learned Tribunal is affirmed.

15. There shall be no order as to costs.
16. All connected applications, if any, stand disposed of.
17. Interim order, if any, stands vacated.
18. Let a copy of this judgment along with the lower court records be forwarded to the learned Tribunal in accordance with rules.
19. Urgent photostat certified copy of the judgment, if applied for, be given to the parties upon necessary compliance of legal formalities.

(Bivas Pattanayak, J.)