

रेल दावा अधिकरण, अहमदाबाद पीठ, अहमदाबाद के समक्ष

Coram : Shri Vinay Goel, Member (Judicial)

Shri Raj Kumar Manocha, Member (Technical)

CASE No. OA Ilu/2019/0100

Date of Institution: 04.04.2019

Date of Decision: 15.12.2023

1. Paulbhai Chohanbhai Dabhi

(Father of the deceased passenger), Age-66 years,

2. Ramilaben Paulbhai Dabhi

(Mother of the deceased passenger), Age-60 years,

Residing at-House No.75/584, Gujarat Housing Board, Sarvodaynagar,

Near Kamdar Kalyan Kendra, Khokhara, Maninagar, Ahmedabad,

Gujarat-380026.

.... APPLICANTS

-VERSUS-

1. Union of India Through General Manager,

..... RESPONDENT

Western Railway, Churchgate, Mumbai-400020.

2. Chhayaben d/o Rajendrakumar Koshti,

(Divorcee of the deceased passenger)

Resident of-C/o Rajendrakumar Koshti, B/6, Gayatrinagar, Behind
Hatkeshwar Bus Depo, Hatkeshwar, Ahmedabad, Gujarat.

Appearance:Mr. K.M. Shah, Ld. Counsel for the Applicants.

Mr. J.H. Joshi, Ld. Counsel for the Respondent.

CLAIM FOR Rs. 8,00,000/-

JUDGMENT

The case in hand has been preferred before this Tribunal by the applicants under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 125 of the Railways Act, 1989 seeking compensation of Rs. 8,00,000/- together with interest on account of death of Kamleshbhai Paulbhai Dabhi (then after referred as deceased) in an alleged untoward incident.

2. In brief, it has been averred in the claim application that, on 10.02.2019, the deceased was travelling from Mahemdavad Kheda Road to Ahmedabad by train carrying passengers, holding valid and proper Railway travelling ticket bearing No.U-0596. On that day, due to overcrowded situation, the deceased had no option except to travel in the said train by standing near to the entrance gate of the compartment. During the course of journey, when the said train was running between KM. No.487/16-487/18, near Vatva Railway Station, at that

time, due to sudden jerk and jolt, heavy rush and push of the passengers, he lost his balance and accidentally fallen down from the said running train. Due this incident she sustained grievous injuries and subsequently died.

3. To establish the claim, the applicants have placed on record certified copy of Railway ticket, Inward Telephone Vardhi, Accident Death Entry, Inquest Panchnama, Panchnama of place of incident, Identification Panchnama, NOC to obtain PM Note, PM Report, PM Certificate, Death Certificate of deceased, Ration Card, Election Card of Deceased, Aadhar Card of Deceased, Election Card, Aadhar Card of applicant No.1, Election Card, Aadhar Card of applicant No.2, divorce deed, relationship certificate, bank details, PAN Card, PAN Card of applicant No.2.

4. On receipt of notice, the respondent railway administration filed its written statement along with the original DRM's Report in which the Respondent denied all the averments made in the claim application. It has been pleaded on behalf of the Respondent that the injured was not a bonafide passenger as no any travelling ticket or authority was recovered in possession of deceased. It has also been pleaded on behalf of the Respondent that the deceased fell down from the running train while he was trying to board the running train from off side. Hence, the alleged incident is covered under clause (b) to the proviso to Section 124-A of Railways Act, 1989. On the basis of these and other pleas, dismissal of the claim application has been sought by the respondent.

5. Based upon the pleadings of the parties and material made available on record, the following issues were framed:

ISSUES

1. *Whether deceased was travelling on a valid railway journey ticket and was a bonafide passenger of the train in question at the relevant time ?*
2. *Whether the deceased met with an untoward incident due to fall from the running train, suffered injuries and died as a result thereof and the present case is covered under the definition of Section 123 (c)(2) of the Railways Act, 1989 ?*
3. *Whether the applicants are the dependents of the deceased ?*
4. *Relief ?*

6. So as to lead evidence, applicant No.1 has filed his own examination-in-chief as AW-1 and got the documents exhibited as A/1 to A/22. AW-1 was cross-examined by counsel for the Respondent on 15.12.2021.

7. Respondent Railway administration has filed examination-in-chief on affidavit of Shri Dhanraj Vahane s/o Kachrubhai, Head Constable-RPF, Vatva Railway Station, as RW/1. He was cross examined by the counsel for the applicants on 13.12.2022. The Respondent also filed DRM investigation report in this case as evidence.

At the time of final hearings Ld. Counsel for the parties argued as under:
“Ld. Counsel for the applicants submits that the deceased was travelling from Mehamdabad to Ahmedabad on valid journey ticket, on 10.02.2019 and he fell down from the running train near Vatva Railway station. Counsel for the applicants also submits that the parents of the deceased are dependent on the deceased and they entitled to compensation. Counsel for the applicants further submitted that wife of the deceased is joined as Performa Respondent No.2 in this case and she is not turned up before the Bench therefore, she is not entitled to compensation. Upon querying Counsel for the applicants fairly admitted that no divorce decree was passed by any competent Court of Law.

Counsel for the Respondent submitted that as per statement made by AW/1, the ticket was planted and it reveals that the ticket was produced after three days of the incident and the deceased was not a bonafide passenger and vicinity home of the deceased was nearer to the place of incident. He further submits that there is no probability of travelling but he did not rebut the case of applicants.

Counsel for the applicants submits that the ticket recovered at the time of panchnama. During the proceedings of this case he further submits that the deceased was boarded from Mehmdabad Railway station and the alleged incident occurred at Vatva Railway station. Vicinity of residence of the deceased is not near to the place of the incident.”

FINDINGS

8. We have carefully gone through the pleadings of the parties, material made available on record evidence adduced on behalf of applicants and heard the arguments advanced on behalf of rival parties by their counsel.

9. Issues no 1 & 2 are being taken up together as they are interconnected. Our findings on the issues are as under :-

10. This is a case that the deceased was travelling from Mehmdabad to Ahmedabad on a valid journey ticket and during the course of journey he accidentally fell down from the running train. In the DRM Report and oral arguments the Counsel for Respondent denied the status of bonafide passenger of the deceased on the ground that the alleged ticket which was produced by the applicants was a planted ticket as the applicant himself admitted in his statement that someone handed over the said ticket to him after three days of the incident. Whereas Counsel for the applicants has drawn out attention on the Panchnama of Place of the incident in which all the necessary details of the ticket i.e. ticket number, value of ticket, originating and destination stations had been mentioned. Once the ticket was recovered at the time of Panchnama, we find no reason to disbelieve the said Panchmama as we are very much conscious that the documentary evidence would prevail upon oral testimony. The statements given to the RPF would lose their significance as the said statement is against the documents which were prepared by the Police authorities in ordinary process. The Rail ticket particulars have been verified by Chief Booking Supervisor-Mehmdabad Kheda Road and found correctly issued on 10.02.2019 during the shift of 14:00 hours to 22:00 hours. So, on the basis of ticket it can be safely concluded that the deceased was a bonafide passenger.

At this juncture we would like to produce the memo and crux of the DRM Report and as per DRM Report and statements the Respondent admitted the accidental fall of the deceased.

In conclusion of DRM Report it has been mentioned that “उपरोक्त मामले की जांच के दौरान प्राप्त दस्तावेजों के अवलोकन तथा पुलिस के पंचनामा और ऑन ड्यूटी RPF स्टाफ के कथन से यह स्पष्ट है कि कमलेश भाई घटना के दौरान अधिकृत यात्री नहीं था । कमलेश भाई के साथ अनपेक्षित घटना कैसे घटित हुई थी का अज्ञात व्यक्ति के अलावा कोई भी प्रत्यक्षदर्शी नहीं है किन्तु स्टेशन मास्टर के कथन और चार्ज बुक की सत्यापित प्रति, Form 1 और

Form 2 से यह स्पष्ट है कि कमलेश भाई के द्वारा सवारी गाड़ी संख्या 69127 DN (Memu Train) के वटवा स्टेशन से समय 18:35 बजे रवाना होने पर कमलेश के द्वारा उक्त चलती सवारी गाड़ी में प्लैटफार्म के ऑफ साइड में चढ़ने का प्रयास करने पर गाड़ी से गिरकर गंभीर रूप से घायल हुआ था की बाद में मृत्यु हो गई थी जो उसकी स्वयं की गलती व लापरवाही से घटित हुई थी ।

As per Station Charge Book of Vatva Railway station “ 18:35 पर 69127 से एक अज्ञात व्यक्ति platform No. 2 व 3 के बीच DN-M/Ln KM 847 16 से 487/18 के बीच घायल हुआ है जिसकी सूचना तुरंत SIPF RPF VTA, 100 न. पर श्री राकेश व 108 को सूचित किया । 18:50 पर 108 जीवित हालत में व्यक्ति को लेकर चली गई ।

As per Form-1 “5 (क)- आकस्मिक घटना - चलती गाड़ी में चढ़ते समय प्लैटफार्म व लाइन के बीच में गिरने से गंभीर घायल हो गया था ।

As per Form-2 “2 (क)- आकस्मिक घटना - KM N. 487/16-18 स. गाड़ी 69127 DN चलती ट्रेन में चढ़ते समय गिरा । There is no evidence on record that the deceased fell down due to his criminal act and guilty.

11. We are dealing with a claim petition filed under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 125 of the Railways Act, 1989. The Respondent has failed to prove its defence that ticket was planted in any manner. One ticket has its reference in initial police records the applicants cannot be disbelieved on that account unless and until there is crucial material on record to suggest otherwise.

12. As regards act of negligence as brought out in oral arguments by Counsel for the Respondent, it is pertinent to refer to rulings of Apex Court: The Hon'ble Apex Court in the case of Union of India V/S Prabhakaran Vijaya Kumar & others reported in 2008 ACJ 1895, has held that :

“Section 124 A of the Railways Act, 1989 casts strict liability on the Railway even the deceased died due to his own fault. Then also, Railway is liable to pay amount of compensation.”

13. In the case of Union of India V/S Rina Devi reported in 2018 AIR (SC) 2362, the Hon'ble Apex Court has held that :

“Death or injury in course of boarding or de-boarding train will be untoward incident. Victim will be entitled to compensation and will not fall under proviso to Section 124A merely on plea of negligence of victim as contributing factor.”

The Respondent has failed to prove on record any element of criminal negligence which may bring this case within exception of Section 124-A of the Railways Act.

14. In view of the above judgments and under the facts and circumstances of this particular case, it is held that the deceased was travelling as a bonafide passenger and met with an untoward incident due to an accidental fall from the Demu train, suffered injuries and the present case is well within the definition of Section 123 (c) (2) read with Section 124-A of the Railways Act, 1989. Accordingly, issue No.1 & 2 are decided in favour of the applicants and against the Respondent.

Issue nos. 3 & 4

15. In this case the applicants are parents of the deceased and wife of the deceased is impleaded as Respondent No.2 and applicants annexed one divorce deed which was executed between the deceased and his wife. Admittedly no divorce had been granted under Hindu Marriage Act by the competent Court. The annexed deed of divorce allegedly executed between deceased and his wife would not abandon the marital status of the Respondent No.2. So for the purpose of adjudication of this claim application, the Respondent No.-2 was still legally married wife of the deceased and is dependent on the deceased and also entitled to get compensation.

16. Hence, it is held that the applicants and Respondent No.-2 are the dependents of the deceased and in view of our findings on issue no. 1, 2 & 3 above, they are entitled to get compensation of Rs. 8,00,000/- as prescribed under part-I of the Schedule appended to Rule 3 (3) of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 as amended on 22.12.2016.

17. These issues are decided accordingly in favour of applicant.

18. We pass the following order :-

ORDER

19. The application is allowed. The Respondent No.1 shall pay to the applicants and Respondent No.2 a sum of Rs.8,00,000/- (Rs. Eight Lakh only) as compensation as per apportionment given below within 30 days from the date of this order. The awarded sum will carry simple interest @ 9% per annum from the date of the incident i.e. 10.02.2019 till the date of this order. If the Respondent Railway fails to pay the amount within above stipulated time (30days), the awarded sum will carry simple interest @ 9% per annum from the date of the incident i.e. 10.02.2019 till the date of realization.

22. The Respondent Railway Administration is directed to deposit the whole amount along with interest with the Registry of RCT/Ahmedabad within a period of 30 days from the date of this order. Further the Respondent is directed to place the proof of awarded amount on record with up to date interest along with the calculation sheet.

23. The Registry is directed to disburse the total compensation amount as per detailed apportion as given below :

Applicants Name	Awarded Amount	Amount to be given through ECS/NEFT/ RTGS	Amount to be invested under Annuity Scheme
Paulbhai Chohanbhai Dabhi (Applicant No.1)	Rs. 2,50,000/- (Two Lakh Fifty Thousand only) + Proportionate Interest	50,000/- (Fifty Thousand only) + Proportionate Interest	Balance amount of Rs.2,00,000/- (Rs. Two Lakh only) shall be split into 20 fixed deposits of Rs.10,000/- each and invested for a period of 01 to 20 th months in the ascending order. The bank shall release the amount monthly with accumulated interest upon maturity of each of these deposits to the credit of the respective Bank Account.
Ramilaben Paulbhai Dabhi (Applicant No.2)	Rs. 2,50,000/- (Two Lakh Fifty Thousand only) + Proportionate Interest	50,000/- (Fifty Thousand only) + Proportionate Interest	Balance amount of Rs.2,00,000/- (Rs. Two Lakh only) shall be split into 20 fixed deposits of Rs.10,000/- each and invested for a period of 01 to 20 th months in the ascending order. The bank shall release the amount monthly with accumulated interest upon maturity of each of these deposits to the credit of the respective Bank Account.
Chhayaben d/o Rajendrakumar Koshti (Respondent No.2)	Rs. 3,00,000/- (Three Lakh only) + Proportionate Interest	Nil	Balance amount of Rs.3,00,000/- (Rs. Three Lakh Only) alongwith Proportionate Interest shall be deposited in Fixed Deposit in the same bank in the name of the Respondent No.2, for a period of Three years. She

			is at liberty to withdraw the quarterly interest from time to time.
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24. The Applicant(s) is/are hereby directed to furnish the particulars of his/her/their savings bank account of a Nationalized/Scheduled bank *near to his/her/their permanent place of residence* along with a copy of Aadhar Card, PAN card, two photographs, specimen signature and pass book of the bank with necessary endorsement of the bank that no debit card/Cheque book has been issued, with the Registry of this Bench. The Applicant(s) is/are directed to produce the copy of the order passed by the Tribunal before the concerned bank whereupon the bank is directed to make an endorsement on the passbook.

25. The Applicant(s) is/are further directed to submit Form 15G of Form 15H (for senior citizen) to the Presenting Officer of the Railway (as applicable under sub-section (2) of section 19 of the Railway Claims Tribunal Act, 1987) within 30 days of this order otherwise, the Railway Administration will deduct the applicable TDS as per the provisions of the income tax act.

26. The Registry is directed to defer the disbursement of award amount till passbook of saving bank account of the claimant(s) in a bank near the place of his/her/their permanent residence is not produced along with necessary endorsement.

27. The Registry is further directed to ensure that the statement containing FDR number/FDR amount/date of maturity and maturity amount shall be furnished by the Bank to the claimant(s).

28. Further, we deem it proper to direct the concerned bank that :

- (a) The Bank shall not permit any joint name to be added in the savings bank account or fixed deposit amount of the claimant(s) i.e. savings bank account of the claimant(s) shall be an individual bank account and not joint account.
- (b) The bank shall not issue any Cheque book and debit card to the claimant(s). However, in case the debit card or Cheque has already been issued, bank shall cancel the same before the disbursement of the awarded amount.
- (c) No loan, advance, withdrawal or premature discharge is allowed on fixed deposit without the permission of the court.
- (d) The bank shall make an endorsement on the pass book of the claimant(s) to the effect that no Cheque book and/or debit card have been issued.
- (e) The statement containing FDR number/FDR amount/date of maturity and maturity amount shall be furnished to the claimant(s).

(f) The Bank is directed not to permit any debit to Saving Bank of Applicant(s) from any electronic channel or e-payment platform and to permit the claimant(s) to withdraw money from his/her/their savings Bank Account by means of a withdrawal form only.

29. The Registry is directed to send a free certified copy of this judgment directly to the Respondent and the Applicant(s) at his/her/their postal address mentioned in the claim application by Register A.D. in view of Rule 34(3) of the Railway Claims Tribunal (Procedure) Rules, 1989.

30. In terms of the above, the present claim application is disposed of. Let this case file be consigned to the Records Room. No order as to costs.

(R.K. Manocha)
Member (Technical)

(Vinay Goel)
Member (Judicial)

Judgment pronounced, signed and sealed in open Court today i.e. on 15.12.2023.

RAILWAY CLAIMS TRIBUNAL

(R.K. Manocha)
Member (Technical)

(Vinay Goel)
Member (Judicial)

AHMEDABAD BENCH

Date : 15.12.2023
Place: Ahmedabad