

Before Railway Claims Tribunal, Ahmedabad Bench
Ahmedabad
Coram :Shri Vinay Goel, Member (Judicial)
Shri Raj Kumar Manocha, Member (Technical)

CASE No. OA Ilu/2022/0108

Date of Institution: 06.12.2022

Date of Decision: 10.01.2024

1. Sumanbai Akhadu Ahire

(Mother of the deceased passenger), Age-46 years,

Residing at-Village Chichpada, Bajar Peth Patibedaki,

Tal.-Navapur, District-Nandurbar, Maharashtra-425417 APPLICANT

-VERSUS-

Union of India Through General Manager,
Western Railway, Churchgate, Mumbai-400020.

.....RESPONDENT

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

Ms. Ruchita Jain, Ld. Counsel for the Respondent.

RAILWAY CLAIMS TRIBUNAL
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 Prakash Aakhadu Ahire alias Prakash Akhadu Ahirey (then after referred as deceased)in an alleged untoward incident.

2. In brief, it has been averred in the claim application that, on 22.09.2022, the deceased was travelling from Kikakui Road to Surat by train No.09096 Nandurbar-Surat Memu, holding valid and proper Railway travelling ticket. There was rush in the train on the fateful day, when the said train was running near KM. No.68/03, near Kikakui Road Railway station, due to sudden jerk and push of the passengers he accidentally fallen down from the said running train. Due this incident he sustained grievous injuries and died on the spot.

3. To establish the claim, the applicants have placed on record attested & true copies of Railway ticket, Accident Memo, Inquest Panchnama, Panchnama of place of incident, Police Report for Post Mortem, Post Mortem Report, Death Certificate of the deceased, Ration Card, Aadhar card of the deceased,

Aadhar Cards of applicant No.1, Death certificate of Akhadya Jagan Ahire, PAN Card of applicant and Bank Pass Book of applicant.

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 is pleaded that ticket recovered was in torn condition carrying blood stains so it could not be verified. It has 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. 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 on 13.03.2023:

ISSUES

RAILWAY CLAIMS TRIBUNAL

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 passenger carrying 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 sole dependents of the deceased and are entitled to compensation as claimed, as per Section 123 (b) of the Railways Act, 1989?*
4. *To what Relief ?*

6. So as to lead evidence, applicant No.1 has filed her own examination-in-chief as AW-1 and got the documents exhibited as A/1 to A/13. AW-1 was cross-examined by counsel for the Respondent on 08.06.2023.

7. Respondent Railway administration has filed examination-in-chief on affidavit of Smt. Kailashben Jayeshbhai Rathod, Pointsmen at Kikakui Railway Station as RW/1. RW-1 was cross-examined by counsel for the applicant on 20.07.2023. 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:

“Counsel for the applicant submitted that mother of the deceased has filed this OA for compensation for death of her unmarried son during train journey for untoward incident deceased was travelling Kikakui Road to Surat on a valid ticket. Ticket was recovered from the body of the deceased as such applicant is entitle to the compensation. Whereas counsel for the respondent submitted that deceased died due to his own negligence.”

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.

Issue No. 1& 2

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

10. on 22.09.2022, the deceased was travelling from Kikakui Road to Surat by train No.09096 Nandurbar-Surat Memu, holding valid and proper Railway travelling ticket. On the fateful day, when the said train was running near KM. No.68/03, near Kikakui Road Railway station, due to sudden jerk and push of the passengers he accidentally fallen down from the said running train. Due this incident he sustained grievous injuries and died on the spot.

As per opinion of panchas *“The deceased person from the train no.09096 Up Nandurbar-Surat Memu Passenger train due to falling accidently and due to cutting has been died. Yet for knowing cogent reason of the death it is the opinion of panchas and police for autopsy.”*

As per Station Diary “□□ 9096 □□ □□□□□□
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As per Post Mortem Report, the cause of death is mentioned as “Cause of Death is sudden cardiorespiratory arrest due to haemorrhagic shock due to grievous Injury of All Abdominal organ & grievous Injury of (L) upper limb (Amputation) & Both Lower limb (Amputation) due to Accident.”

At this juncture we would like to produce the memo and crux of the DRM Report and as per DRM Report and the Respondent admitted the accidental fall of the deceased. In conclusion of DRM Report it has been mentioned that “0000 000000 00 0000000/00000000
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Respondent has come with plea of negligence but has failed to prove any element of criminal negligence upon deceased as such stand taken by the Respondent would not push this case within the ambit of exception under Section 124 A of Railways Act.

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. The Respondent has admitted fall from train and travel also. The recovery of ticket was there. The Railways has produced verification of issuance of two tickets on 22.09.2022 from Kikakui Road to Surat. One such ticket was recovered from the body of the deceased so it can be concluded that deceased was a bonafide passenger.

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 PrabhakaranVijaya 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 :

“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 attendant circumstances of this particular case when collated holistically, 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 train No.09096 Nandurbar-Surat Memu, 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 and 2 are decided in favour of the applicant and against the Respondent.

Issue nos. 3 & 4

15. In this case the applicant mother of the unmarried deceased. So for the purpose of adjudication of this claim application, the applicant is the dependent on the deceased and also entitled to get compensation.

16. Hence, it is held that the applicant is the dependent of the deceased and in view of our findings on issue no. 1, 2 & 3 above, she is 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 shall pay to the applicant 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. 22.09.2022 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. 22.09.2022 till the date of realization.

20. 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.

21. 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
Sumanbai Akhadu Ahire (Applicant No.1)	Rs. 8,00,000/- (Eigh Lakh only) + Whole Interest	1,00,000/- (One Lakh only) + Whole Interest	Balance amount of Rs.7,00,000/- (Rs.Seven Lakh only) shall be split into 35 fixed deposits of Rs.20,000/- each and invested for a period of 01 to 35 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.

22. 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.

23. 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.

24. 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.

25. 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).

26. 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.

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सत्यमेव जयते
AHMEDABAD BENCH

27. 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.

28. 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 10.01.2024.

(R.K. Manocha)
Member (Technical)

(Vinay Goel)
Member (Judicial)

Date :10.01.2024

Place: Ahmedabad



RAILWAY CLAIMS TRIBUNAL

AHMEDABAD BENCH