

Before Railway Claims Tribunal, Ahmedabad Bench.

Coram: Shri Vinay Goel, Member (Judicial)
Shri R.K. Manocha Member (Technical)

CASE No. OA(IIu)/ADI/2019/0166

Date of Institution: 19.07.2019
Date of Decision: 09.01.2024

1. Chandubhai Kasnabhai Meda, Aged 41 yrs.
(Father of the deceased)
2. Ramikaben Chandubhai Meda, Aged 38 yrs.
(Mother of the deceased)

....Applicants

R/at: Vill.-Khangel, Mota Faliya,
Dahod, Gujarat-389151.

-VERSUS-

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

.....Respondent

Mr. K.M. Shah, on behalf of Mr. J.S. Jadava, Ld. Counsel for the Applicants.
Ms. R.T. Jain, Ld. Counsel for the Respondent.

CLAIM FOR Rs. 8,00,000/-

Judgment

This OA has been filed by the parents of the deceased under section 16 of the Railway Claims Tribunal Act, 1987 read with section 124/124-A & 123 (c) (2) of the Railways Act, 1989 for getting compensation from Respondent Railway on account of alleged death of Sh. Rajeshbhai Chandubhai Meda, age-18 yrs. (hereinafter referred to as 'deceased') in an alleged untoward incident during alleged train journey, on the ground that they are the dependents of the deceased.

2. It is the case of the Applicants that on 20.03.2019 the deceased, along with four person, was travelling from Vadodara to Dahod in train no. 12929 Valsad-Dahod intercity Express with a ticket for said journey. There was heavy rush in the train. Due to an unexpected sudden jerk of bogie and push of the passengers, the deceased fell down from the running train at Km.No. 447/8-10 near Derol station.

The co-passengers of the deceased got down at Godhra and informed father of the deceased that the deceased had fell down from the running train. Due to the incident the deceased sustained serious injuries on his head and other parts of the body, which resulting in to his death on the spot. In this consequence, the deceased was a bonafide passenger and he met with untoward incident during journey hence, the Applicants are entitled to get compensation from the Respondent Railway

3. The Respondent Railway Administration has contested the claim of the Applicant by filing the written statement along with the DRM Report, wherein apart from denying all the averments, it is contended; that as per the DRM report two general class journey ticket came to be recovered by the I.O.; that the deceased seems to be fallen down from the train, while sitting at the door of compartment, sustained injuries; Hence, the injuries sustained by him is *self-inflicted injuries* and he died due to his own *negligence*. Hence, this act of the deceased is shown gross negligence and the incident comes under the purview of “*Self-inflicted injury*” and for that the Applicants are not entitled the compensation and the claim may be dismissed.

4. **Crux of DRM Report:** “ मृतक व्यक्ति सवारी गाड़ी संख्या 12929 में दरवाजे में बैठकर यात्रा करने के दौरान गिर जाने के कारण उसकी मृत्यु होना प्रतीत होता है। मृतक व्यक्ति के कब्जे से रेल यात्रा संबंधी टिकट प्राप्त हुआ है।”

5. Based upon the pleadings of the parties and material made available on record, the following issues were framed on 04.02.2020.

ISSUES:

1. *Whether the 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 Applicant(s) is/are the dependent(s) of the deceased?*

4. *What is the Relief ?*

6. Applicant Evidence and Respondent Evidence: Applicant no.1 filed his examination-in-chief on affidavit as AW/1 and he was cross-examined on 07.12.2021.

The Respondent filed the Statutory DRM report and TSR of Baroda station.

7. Documents filed by the Parties:

7.1 The Applicants filed certified copy of:

Ticket (original) at Exh.A/1; Memo at Exh.A/2; Vardhi at Exh.A/3; Inquest Panchnama at Exh.A/4; Panchnama of Place of Incident at Exh.A/5; Police report to be forwarded for Post Mortem at Exh.A/6; Post Mortem Report at Exh.A/7; Aadhar card of the deceased at Exh.A/8; Ration card, Aadhar card and Bank details of the Applicants at Exh.A/9-13.

7.2 The Respondent filed original DRM report with Investigation report. Also filed TSR of Baroda station at Exh.R/1.

8. At the time of arguments, the Ld. Counsels for parties argued as under:

"Counsel for the applicant submitted that deceased was travelling with a valid ticket and during the journey he accidentally fall down midsection and Railway has admitted bonafide passenger status and occurrence of untoward incident. He further submitted that ticket was recovered at the time of inquest only. Whereas Counsel for the Respondent submitted that the ticket was purchased two minutes after the departure of train, so ticket is a planted ticket. This Tribunal put query to Ld. Counsel for Respondent as to how Respondent admitted bonafide passenger status in its written statement and whether such admission is binding upon Respondent or not.

In reply there to Counsel for the Respondent submitted that Respondent tried to bring that fact on record but the same was not allowed. This Tribunal put further query to the Counsel for the Respondent whether Respondent filed any Appeal against said order. Counsel for the Respondent replied in negative. Further, Counsel for the Respondent submitted that deceased died due to his own negligence."

FINDINGS

9. We have carefully gone through the pleadings of the parties, material made available on record; evidence adduced by them and heard the arguments advanced

on behalf of rival parties by their counsel. Our findings on the aforesaid issues are as under:

Reasoning of Issue No. 1 & 2 for the judgment:

These two issues are taken up for consideration simultaneously for sake of convenience and as also they are interrelated.

10. Admittedly in this case ticket was recovered from the body of the deceased at the time of Inquest panchnama. But the Respondent has come with plea that the ticket was purchased after 02 minute of departure of train from the station as per timings mentioned in TSR. But the Respondent has failed to place on record any material about correctness of timings recorded in the TSR. The time gap is too short and there is every possibility of human or clerical error while recording timings. The distance between place of incident and Baroda is about 50-55 kilometer and incident was report at 12:40 hour and Inquest panchnama was prepared on 17:35 hrs. and the ticket was recovered at the time of Inquest panchnama only. After recovery of body on track, dead body remained in the custody of Respondent/Police, so if Respondent is alleging planting of ticket burden lies on it, to prove that. But the Respondent has failed.

11. So practically there was no possibility even to plant a ticket in a body, which is in the custody of police/the Railways, at 12:40 at the place of incident from purchase of ticket from Baroda at 10:58 hours. So objection of the Railway is not tenable and we are of the considered opinion the deceased was travelling on a valid ticket. Further the arguments advanced the regarding attempt made by the Railway to bring some new facts and order of this Tribunal to decline such request has also no bearing on the merits of this case because the said order passed by this Tribunal vide which request of Railway had been declined has attained finality as the Respondent has failed to file any appeal against said order and accepted the order of consequences thereof.

12. The Respondent in written statement admitted bonafide passenger status of the deceased and further in one way or other the Respondent admitted accidental fall also the crux of the DRM report is read as under:

“ मृतक व्यक्ति सवारी गाड़ी संख्या 12929 में दरवाजे में बैठकर यात्रा करने के दौरान गिर जाने के कारण उसकी मृत्यु होना प्रतीत होता है। मृतक व्यक्ति के कब्जे से रेल यात्रा संबंधी टिकट प्राप्त हुआ है।”

13. But it is astonishing that at the time of arguments, Ld. Counsel for the Respondent argued that the recovered ticket is a planted ticket. Once the Respondent in its Written Statement admitted that the deceased was a bonafide passenger, the Respondent has no right to argue contrary to the admission made in their Written Statement. The conduct of the Respondent warrants order for a heavy cost, but taking a lenient view same is not being imposed this time. However, if the Respondent would repeat such instances certainly such action would be met with its consequences by a strict order.

Directions: The Presenting Officer is directed to look into the matter and advise its office to contest their cases as per defence taken and not to add or subtract facts according to their whim. Indeed it is required for fair adjudication of the cases proper assistance is extended.

14. Accordingly, in our considered view, it is found that the Respondent did not adduce any tangible evidence to refute the case. Even the Respondent has failed to prove any element of criminal negligence on the part of the deceased. Hence, we have no hesitation in coming to the conclusion that the deceased fell down accidentally from the train and the present case is covered under the definition of section 123 (c) (2) of the Railways Act, 1989. Accordingly both issues are decided in favour of the Applicants and against the Respondent.

Reasoning of Issue No. 3 & 4 for the judgment:

15. The claim has been filed by father and mother of the deceased and they deposed that they are the only dependents of the deceased. In support thereof the Applicants filed documents regarding dependency at Exh.A/9-13.

16. There is no dispute about relationship of the Applicant with the deceased and Respondent side has failed to counter the documentary evidence produced by the Applicant. The Applicants are parents of the deceased and they have every locus to file this petition under Section 16 of RCT Act, 1987 read with Section 124A and 125 of Railways Act, 1989. Issue No.3 is decided accordingly.

17. Thus, the Applicants in this case will be entitled, as dependents, to get Rs. 8,00,000/- as compensation from the Respondent Railway administration on account of death of Rajeshbhai Chandubhai Meda as prescribed under part-1 of the Schedule appended to Rule 3 (3) of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 as amended on 22.12.2016 w.e.f. 01.01.2017.

Both these issues are decided accordingly in favour of the Applicants.

On the facts and in the circumstances of this case, we find it just and proper to award compensation as mentioned below ;

ORDER

18. The application is allowed. The Respondent Railway shall pay to the Applicants a sum of Rs.8,00,000/- (Rs. Eight lakhs) 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. 20.03.2019 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 till the date of realization.

19. 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 the awarded amount on record with up to date interest along with the calculation sheet.

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

Applicants' Name	Awarded Amount	Initial Amount to be given through ECS/ NEFT	Amount to be invested under Annuity Scheme
Appl. No.1 Chandu bhai Kasna bhai Meda	Rs. 4,00,000/- + accrued proportionate interest.	Rs. 50,000/- + accrued proportionate interest.	Balance amount of Rs. Three Lakh Fifty Thousand only shall be split into 35 fixed deposits of Rs.10,000/- each and invested for a period of 01 to 35 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.
Appl. No.2 Ramika ben Chandu bhai Meda	Rs. 4,00,000/- + accrued proportionate interest.	Rs. 50,000/- + accrued proportionate interest.	Balance amount of Rs. Three Lakh Fifty Thousand only shall be split into 35 fixed deposits of Rs.10,000/- each and invested for a period of 01 to 35 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.

*** Although the Respondent did not raise any objection qua age and physical appearance of the Applicants as shown in the photographs. But judicial notice can be taken that from photographs the physical appearance of the Applicants in the photographs exhibits/reflects that the Applicants are older than the age mentioned in the OA. So the Respondent and Registry are directed to be careful about identity of the person before disbursement of amount. Registry would call photo identity certificate from Village Panchayat and other Govt. documents to rule out such suspicion.

21. 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. So that after being satisfied with such KYC norms amount can be released. 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.

22. 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.

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

24. 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 Applicant(s).

25. 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 Applicant(s) i.e. savings bank account of the Applicant(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 Applicant(s). However, in case the debit card or Cheque has already been issued, the 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 Applicant(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 Applicant(s).
- (f) The Bank is directed not to permit any debit to Saving Bank of the Applicant(s) from any electronic channel or e-payment platform and to permit the Applicant(s) to withdraw money from their savings Bank Account by means of a withdrawal form only.

26. 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.

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)

AHMEDABAD BENCH

Judgment pronounced and signed in open court today i.e. on 09.01.2024.

Place : Ahmedabad

Date : 09.01.2024.

[R.K. Manocha]
Member (Technical)

[Vinay Goel]
Member (Judicial)