

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

CASE No. OA Ilu/2019/0212

Date of Institution: 19.04.2019

Date of Decision: 22.01.2024

1. Shantaben Chhaganbhai Vijuda
Wife of Deceased, Aged-73 years, Delete the Name of App.
(Died on 15.04.2021)
 2. Lammanbhai Chhaganbhai Vijuda
Son of the deceased, Aged-56 years,
 3. Dineshbhai Chhaganbhai Vijuda
Son of Deceased, Aged-53 years,
All Residing at Sr. 1 to 3 at Saurashtra Society,
Vijalpore Road, Navsari, Gujarat.
 4. Naniben Dahayabhai Babariya
Married daughter of the Deceased,
Aged – 58 years,
Residing at 4 Near Darbar App,
Gandhi Vasant, Nanpura Post Office,
Surat Tal. : Dist. Surat, Gujarat.
 5. Premilaben Laljibhai Vora
Married daughter of the Decased,
Aged – 55 years,
Dr. Ambedkar udhan,
Saiyedpura, Surat,
Tal. Dist. : Surat, State : Gujarat
- APPLICANTS

-VERSUS-

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

Appearance:Mr. A.M. Joshiyara, Ld. Counsel for the Applicants.
Ms. Alka Vaniya, 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 i.e. Wife, two sons & two daughters, under Section 16 of the Railway Claims Tribunal Act, 1987 under the provision of section 124-A and 125 of the Railways Act, 1989 read with section 123 (c)(2) of Railway Act, 1989-“Untoward Incident” seeking compensation of Rs. 8,00,000/- together with interest on account of death of Chhanabhai Premabhai Vijuda (then after

referred as deceased) in an alleged untoward incident, in alleged train journey. The Applicant No. 1 i.e. Wife of the deceased, died during pendency of this Original Application (OA).

2. In brief, it has been averred in the claim application that, applicant No.1 is widowed wife of the deceased, applicant No.2 & 3 are sons of the deceased and applicant No.4 & 5 are married daughters of the deceased. On 29.09.2017, the deceased was travelling from Vapi to Navsari Junction after purchasing valid legal ticket for the said journey. On the fateful day, there was heavy rush in the train and due to heavy rush of passengers and overcrowded situation, the deceased could not get seat in the compartment and therefore, he was standing inside near the door of the compartment. On the fateful day the deceased accidentally fell down from the running train between KM. No.172/2-4, on down line, near platform No.1 of Vapi Railway station, while travelling in Saurashtra Express Train. Due to this incident the deceased sustained serious injuries on his body and resulting into his death. The travelling ticket was lost in the incident.

RAILWAY CLAIMS TRIBUNAL

3. To establish the claim, the applicants have placed on record certified/true copies of Memo, Inquest Panchnama, Panchnama of place of incident, Panchnama of Identification, Death Certificate, Aadhar Card of Deceased, Aadhar Card of applicant No.1 to 5 and Bank Pass Book of applicant No.1 to 4.

AHMEDABAD BENCH

4. On receipt of notice, the respondent railway administration appeared and filed its written statement along with the original DRM's Report in which the Respondent accepted recovery of the one Railway season pass from the possession of the deceased but the Respondent submitted that the incident occurred while the deceased was boarding the running train. Hence, the alleged incident is covered under clause (b) to the proviso to Section 124-A of Railways Act, 1989. The Applicant be put into strict proof regarding averments made in OA. 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 28.01.2020 :

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 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 under Para-16 of the claim application ?*
4. *Relief ?*

6. So as to lead evidence, applicant No.3 has filed his own examination-in-chief as AW-1 and got the documents exhibited as Memo A/, Inquest Panchnama A/2, Panchnama of place of incident A/3, Panchnama of Identification A/4, Death Certificate A/5, Aadhar Card of Deceased A/6, Aadhar Card of applicant No.1 to 5 A/7 to A/11 and Bank Pass Book of applicant No.1 to 4 A/12 to A/15. AW-1 was cross-examined by counsel for the Respondent on 20.07.2023.

7. Respondent has opted not to adduce any oral evidence but has relied upon its DRM Report and Documents annexed thereto.

At the time of final hearing both the counsel argued as under :

Ld. Counsel for the Applicant submitted that deceased Chhannabhai Premabhai Vijuda on 29/09/2017 was travelling from Vapi to Navsari and while boarding train due to rush he accidentally fell down and came under the wheels of Saurashtra Exp., at Platform no. 1 of Vapi station. The deceased was having valid ticket but said ticket had been lost during incident. The Applicants being dependants are entitled to compensation. Wife of the deceased i.e. applicant no. 1 died during the pendency of OA.

Counsel for the Respondent submitted that deceased was not a bonafide passenger as no ticket was recovered from the body of the deceased and further the alleged MST recovered from the body of the deceased was valid for Navsari to Valsad and Vapi is not situated on that route. So at Vapi station said MST was not valid.

She further submitted that at that time Railway filed the Written Statement (WS) on the basis of MST but subsequently Railways filed amendment application but that application was dismissed by this Tribunal. She fairly admitted that after dismissal, Respondent has not preferred any appeal or review. She further submitted that although this Tribunal has accorded permission to the Railways that Railways may file fresh amendment

application, upon query, Counsel for the Railways submitted that no such fresh application has been filed by the Railway. Not argued on any other points despite opportunity.

FINDINGS

8. I 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. My findings on the issues are as under :-

10. This is a case that on 29.09.2017, the deceased was travelling from Vapi to Navsari Junction after purchasing valid legal ticket for the said journey. On the fateful day, there was heavy rush in the train and due to heavy rush of passengers and overcrowded situation, the deceased could not get seat in the compartment and therefore, he was standing inside near the door of the compartment. On the fateful day the deceased accidentally fell down from the running train between KM. No.172/2-4, on down line, near platform No.1 of Vapi Railway station, while travelling in Saurashtra Express Train. Due to this incident the deceased sustained serious injuries on his body and resulting into his death. The travelling ticket was lost in the incident.

11. At this juncture I would like to reproduce 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 *“From the security of the above document, it is found that, SS/Vapi mentioned in his document that one unknown person fallen down while boarding running train No.19215 DN and sustain injury. GRP/Vapi mentioned in his inquest panchnama that deceased accidentally fallen down and died while boarding running train, for which railway is not responsible. On personal search GRP/Vapi has recovered one Railway season pass from his possession. During the inquiry it is found that deceased accidentally fell down and died while boarding running train, for which railway is not responsible.”*

The Station Superintendent-Vapi issued memo exhibit A/1 as under :

“□□ □□□□ □□□□ 19215 □□□□ □□ □□□□ □□□□ □□ □□□□
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As per opinion of panchas in Inquest Panchnama exhibit A/2 *"The deceased died due to injuries sustained by him on account of cut of his both the legs from thigh as he accidentally fell down from while boarding running train No.19215 Down Saurashtra Express and died due to injuries, even though to know the exact cause of action it is opinion to get P.M. of the deceased done."*

As per Post Mortem Report, the cause of death is *"Death due to multiple injury over body."*

There is no evidence on record that the deceased fell down due to his criminal act and guilty.

12. 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. Respondent has failed to prove its defence that the deceased was travelling without ticket in any manner. One MST 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 possibility of loss of ticket during incident or while shifting to hospital cannot be ruled out. The Railways has admitted accidental fall but has failed to prove or discharge its burden that the deceased was a ticketless passenger.

13. As regards act of negligence as bought 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."

14. 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.

On holistic evaluation of all the fact, evidence on record and attending circumstances collated together. There is no legal impediment in coming to conclusion that deceased was a bonafide passenger who died in an untoward incident within the ambit of Section 123 (c) (2) of Railways Act. Thus issue No.1 and 2 are decided in favour of applicants accordingly.

Issue nos. 3 & 4

15. In this case the applicants are wife and sons and married daughters of the deceased. So for the purpose of adjudication of this claim application, the applicants No.-1 to 5 are the dependents on the deceased and also entitled to get compensation. Applicant No.1 i.e. wife of the deceased died during the pendency of the case.

16. Hence, it is held that the applicants 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.

As per Post Mortem Report and other documents of Inquest Panchnama the name of deceased is Chhanabhai Premabhai Vijuda. In the death Certificate name of deceased as Chhanabhai s/o Premabhai Vijuda but the applicants have written the name of deceased as Chhaganbhai in cause title of the original application as well as in aadhar cards of applicant No.1 and 2. The reason for such discrepancy has not been explained by the applicants in the OA. There is no dispute as to identity of the applicants but how name of the deceased appeared differently in different documents is a matter of concern. So, applicants would be under obligation to explain such discrepancies in name of deceased for satisfaction of registry and after removal of such discrepancy they would be able to get money.

18. I pass the following order :-

ORDER

19. The application is allowed. The Respondent shall pay to the applicants 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. 29.09.2017 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. 19.09.2017 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
Shantaben Chhagan bhai Vijuda (Applicant No.1)	Nil	Nil	As applicant No.1 is died during the pendency of the case on 15.04.2021.
Laxmanbhai Chhagan bhai Vijuda (Applicant No.2)	Rs. 2,00,000/- (Two Lakh only) + Proportionate Interest	20,000/- (Twenty Thousand only) + Proportionate Interest	Rs.1,80,000/- (Rupees One Lakh Eighty Thousand only) shall be deposited in Fixed Deposit in the same bank in the name of the applicant No.2, for a period of two years. He is at liberty to withdraw the quarterly interest from time to time.
Dineshbhai Chhagan bhai Vijuda (Applicant No.3)	Rs. 2,00,000/- (Two Lakh only) + Proportionate Interest	20,000/- (Twenty Thousand only) + Proportionate Interest	Rs.1,80,000/- (Rupees One Lakh Eighty Thousand only) shall be deposited in Fixed Deposit in the same bank in the name of the applicant No.3, for a period of two years. He is at liberty to withdraw the quarterly interest from time to time.
Naniben Dahaya bhai Babariya (Applicant No.4)	Rs. 2,00,000/- (Two Lakh only) + Proportionate Interest	20,000/- (Twenty Thousand only) + Proportionate Interest	Rs.1,80,000/- (Rupees One Lakh Eighty Thousand only) shall be deposited in Fixed Deposit in the same bank in the name of the applicant No.4, for a period of two years. She is at liberty to withdraw the quarterly interest from time to time.
Premilaben Laljibhai	Rs. 2,00,000/-	20,000/- (Twenty	Rs.1,80,000/- (Rupees One Lakh Eighty Thousand only) shall be

Vora (Applicant No.5)	(Two Lakh only) + Proportion ate Interest	Thousand only) + Proportionate Interest	deposited in Fixed Deposit in the same bank in the name of the applicant No.5, for a period of two years. She is at liberty to withdraw the quarterly interest from time to time.
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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.

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.

AHMEDABAD BENCH

(Vinay Goel)
Member (Judicial)

Judgment pronounced, signed and sealed in open Court today i.e. on 22.01.2024.

(Vinay Goel)
Member (Judicial)

Date :22.01.2024
Place: Ahmedabad