

Before Railway Claims Tribunal, Ahmedabad Bench

Coram : Shri Vinay Goel, Member (Judicial)

Shri Raj Kumar Manocha, Member (Technical)

CASE No. OA(IIu)/ADI/2022/0035

Date of Institution: 06.07.2022

Date of Decision: 04.03.2024

1. Rajubhai Kanubhai Raval, Aged about – 40 yrs.

(Son of the deceased)

Residing at Nano Bhilvado, Navi Nagari, Village – Nand,

Post – Nabipur, Taluka-District – Bharuch – 392210, Gujarat.

2. Champaben Kiranbhai Raval, Aged about – 49 yrs.

(Married daughter of the deceased)

Residing at 867, Vishal nagar, Behind Jivan Prakash School,

Village – Tarasali, Taluka-District – Vadodara – 390009, Gujarat.

3. Laxmiben Kantibhai Rawal – Aged about – 38 yrs.

(Married daughter of the deceased)

Residing at Navi Vasahat Nagari, Jashuvalu Faliyu,

Viilage – Manjola, Taluka – Amod,

District – Bharuch – 392035, Gujarat.

.....APPLICANT

-VERSUS-

Union of India Through General Manager,

Western Railway, Churchgate, Mumbai-400020.

.....RESPONDENT

CLAIM FOR Rs. 8,00,000/-

Mr. K.M. Shah, Ld. Counsel for Applicants

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

JUDGEMENT

This OA has been filed by three Applicants i.e. son and two married daughters of the deceased under section 16 of the Railway Claim Tribunal Act, 1987 read with section 124- A, 125 & 123 (c) (2) of the Railways Act, 1989 for compensation from Respondent Railway on account of alleged death of Sh. Kanubhai Shankarbhai Raval, age- 70 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. Basic details relating to accident as contained and alleged in the Application:-

- a) **Date of accident:** 02.01.2022
- b) **Person Deceased:** Kanubhai Shankarbhai Raval, Aged – 70 years.
- c) **Relationship of the Applicant Nos. 1 to 3 with the deceased:** Son and Two Married Daughters of the deceased respectively.
- d) **Train involved and transit details:** The deceased was travelling by train No. 09172 Bharuch – Surat Memu Special on 02.01.2022 from Bharuch to Navsari railway station with a valid and proper railway travelling ticket bearing No. A-49651368.
- e) **Untoward incident narrated:** During the course of journey, when said train was running between K.M. No. 322/37 and 322/39 between Bharuch and Ankleshwar, at that time, due to sudden jerk and jolt of the said train as well as due to heavy rush and push of the passengers in the passage of the general compartment, the deceased lost his balance and accidentally fell down from the running train and he was dragged with the train and he sustained multiple grievous injuries on different parts of his body and he died on the spot.
- f) **Jurisdiction:** Place of incident was between Bharuch to Ankleshwar railway station, this Bench of the Tribunal has territorial jurisdiction.

3. Salient features of reply:

- a) **Averments in reply:** The deceased was not a bonafide passenger and the Respondent denied this Untoward Incident and its Liabilities to pay compensation. With regards to Part II point no. 1 to 4 of the Applicants, the respondent denies the contention of the applicants and state that the RPF/AKV and GRP/BH in the presence of on duty Gangman/Trackman Mr. Anjani Kumar searched the dead body of deceased at around 06:50 hrs. and there was no travelling ticket/authority/pass was recovered from the deceased at that time nor during Panchnama for the place of incident and Inquest Panchnama. It is hereby specifically denied that the deceased was carrying the general ticket no. A-49651368 for train no. 09172 Bharuch – Surat Memu Special dated 02.01.2022 from Bharuch to Navsari Railway Station of Rs. 100/-. As per GRP the ticket was recovered during Panchnama for clothes after thoroughly searching the dead body in Post Mortem Room, Civil Hospital Bharuch at 14:05 hrs. As per GRP the alleged ticket was recovered by the GRP during Panchnama of Clothes is hereby denied. It is ambiguous and unclear that at the time of when the dead body was

found and searched in the morning in the presence of RPF and on duty Gangman nothing was recovered while the dead body was at Post Mortem Room in the noon GRP found out the ticket from the clothes of deceased which is a questionable fact and arises suspicion.

It comes into view after verifying the Ticket that the time of the ticket issued was mentioned in the ticket was 06:36 hrs. and the dead body found lying on the railway track at KM No. 323/37-39 by the trackman Mr. Anjani Kumar was at 05:45 hrs. So, the alleged ticket recovered by the GRP and Claimed by the applicants in the claim application that the deceased was travelling at the time of incident is false and fabricated. It is hereby denied that the contents mentioned by the applicants in the claim application that the names and address of other co-passenger were not known by them. Furthermore, the train no. 09172 which the applicants are claiming that the deceased was travelling left at 05:45 hrs between Bharuch – Ankleshwar. So, it is impossible for the deceased to travel in the said train on 02.01.2022. So, as per the DRM Report the deceased was not a bonafide passenger at the time of incident, nor it is possible to fallen down from the Train No. 09172.

b) **Crux of DRM Report:** “

05-45
323/37-39
01 06-30
08 A-49651368
PRS 06/36
09172 02.01.2022 06.50
09172 ”

4. From the pleadings, following issues were framed on 20.10.2022.

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?*

5. Applicants Evidence and Respondent Evidence: Applicants no. 1 has filled his affidavit as AW/1 and he was cross-examined on 16.06.2023 by the Respondent.

6. Description of the documents filed by Applicants certified copies are as under.

Railway Travelling Ticket - Exh.A/1, Seizure Memo - Exh.A/2, Memo - Exh.A/3, Telephone Vardhi - Exh.A/4, Inquest Panchnama - Exh.A/5, Panchnama of place of incident - Exh.A/6, P. M. Report - Exh.A/7, Panchnama of Cloths of deceased - Exh.A/8, Identification Panchnama - Exh.A/9, Death Certificate of deceased - Exh.A/10, Ration card - Exh.A/11, Election card and Aadhar card of deceased and App. No. 1 - Exh.A/12 to Exh.A/15, Election card, Aadhar card and Pan card of App. No. 2 - Exh.A/16 to Exh.A/18, Election card and Aadhar card of App. No. 3 - Exh.A/19 to Exh.A/20, Death Certificate of wife of deceased - Exh.A/21, Bank Pass Book of App. No. 1, 2 and 3 - Exh.A/22 to Exh.A/24.

a. The Respondent Railway administration adduced documentary evidence as the DRM report and filed examination-in-chief on affidavit of Shri Anjani Kumar S/o Shri Vikramaditya, Service as a Track Man at Ankleshwar railway station as RW/1. The Applicants cross-examined him on 29.09.2023.

FINDINGS

7. We have carefully gone through the pleading of the parties, material made available on record evidence adduce on behalf of applicants and heard the arguments advanced on behalf of rival parties by their counsel. Our findings on the aforesaid issues are as under.

Resoning on Issue No. 1 & 2

8. Issue no. 1 and 2 are being taken up together for convenience and to avoid repetition. Our findings on the issues are as under:

9. From at the time of inquest, one ticket was recovered from the body of the deceased bearing No. A – 4965368 dated 02.01.2022 from Bharuch to Navsari for two person purchased at 06:36 hrs. The Respondent denied the bonafide passenger status and travel on the ground that the ticket so recovered at the time

of Inquest Panchnama is planted ticket. To support its contention the Respondent has banked upon timings. It is case of the Respondent that dead body was first seen by Trackman Anjani Kumar at 05:45 hrs. Thereafter, he reported the matter to railway authorities. As such purchase of ticket at 06:36 hrs would not be possible. He further submitted that the train in which the Applicants are claiming travel, that train leaves Bharuch railway station at 06:53 hrs. So travel and accidental fall from the train No. 09176 was not possible. He further submitted that Anjani Kumar has appeared in this Tribunal as RW1 and deposed such facts on oath and he gave his deposition and evidence during course of his employment and it is to be believed as such. He further referred Form-1 and Memo issued by Station Master/ Ankleshwar which is having time of issue at 06:30 hrs. on 02/01/2022. He further submitted that even if we consider timing as 06:50 hrs, the travel from a train left the Bharuch station at 06:56 would not be possible.

10. We have considered the rival contention of both the parties and also gone through records. Before proceeding further we would like to note that upon receipt of information, Station Master would first make entry in its station diary and thereafter will issue Memo to concerned person. The Station Master/ Ankleshwar issued Memo dated 02/01/2022 allegedly issued at 06:30 hrs. but as per station diary of Ankleshwar station, the entry was made after 02.00 p.m. There is no entry in the station diary about incident at 05:45 a.m. or 06:50 a.m. or at 06:30 a.m. The time mentioned on the Memo issued has become irrelevant once timing of entry made in the station diary is itself sufficient and clear. Admittedly at 02:00 p.m. no person was found injured and it appears that the Station Superintendent in the morning did not make any entry in the station diary about the incident. The Station Superintendent made entry in diary at 02:00 p.m. of same incident happened in morning. So it has lost its credibility u/s 191 of Railways Act to the detriment of the Applicants. Further, there is no RPF Journal of concerned Railway Station placed on record by the Respondent Railway in support of their stand. Under given circumstances benefit would shift in the favour of the Applicants to gain out of such contradictions. Even in Form-1, time of occurrence is 06:30 a.m. So the Respondent in fact has taken different stands about timings on different occasions and if such is the position of defence, certainly the Applicants would be able to get benefit out of confused and foggish defence of the Respondent. Further, RW1 has stepped in to the witness box but he first time saw the body on the track at 05:45 a.m. but he and the Respondent

railways have failed to place on record even a single document, where in such time was recorded on the date of incident in ordinary course of working in the records maintained by the railway in its ordinary course of official business. So practically the Respondent intends to believe on oral testimony of a trackman, ignoring documentary evidence on record. The ticket was recovered at the time of Inquest Panchnama and confused defence of the Respondent would not be able to displace the said documentary evidence. It is settled proposition of law that documentary evidence would prevail upon oral evidence. So under given circumstances we feel fair and judicious to ignore arguments, objections and defence of the Respondent about planting of ticket. The ticket was recovered and a person was found on track. There is no direct evidence or eye witness. So we have to bank upon circumstantial evidence. The circumstances indicates that person would have been fallen down from a train and the Respondent has failed to prove on record that deceased was guilty of any criminal negligence which may push this case with in the content of proviso of Section 124-A of Railway Act.

11. It is concluded that deceased was a bonafide passenger of the train and accidentally fell down. Accordingly, we hold that these issues are decided in favour of the Applicants.

Reasoning on Issue No. 3

12. The Applicants have proved on record, Ration card on Exh.A/11, Death Certificate of wife of deceased on Exh.A/21, KYC documents from Exh.A/14 to Exh.A/20 and from Exh.A/22 to Exh.A/24. The Respondent has failed to dispute inter-se relations of Applicants and their relationship with deceased. The O.A. has been filed by son and two married daughters to claim compensation. Total number of Applicants is seven. We find no legal impediment to hold that Applicants are the dependent upon deceased in terms of Section 123 (b) of Railways Act, 1989. Upon admission of other factors, applicants are entitled to get compensation.

Reasoning on Issue No. 4

13. Thus, the Applicants in this case will be entitled to get Rs. 8,00,000/- as compensation from the Respondent Railway Administration on account of death of Kanubhai Shankarbhai Raval 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.

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

ORDER

15. The claim application is allowed. The Respondent shall pay to the Applicants in 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. 02.01.2022 till the date of this order. If the Respondent Railway fails to pay the amount within above stipulated time (30 days), the awarded sum will carry simple interest @ 9% per annum from the date of the incident till the date of realization.

16. 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.

17. 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	Amount to be invested under Annuity Scheme
Applicant No.1 Rajubhai Kanubhai Raval	4 Lakh + accrued proportionate interest.	Rs. 40 Thousand + accrued proportionate interest.	Balance amount of Rs. 3,60,000/- (Three Lakh Sixty Thousand) only shall be split into 36 fixed deposits of Rs. 10,000/- each and invested for a period of 01 to 36 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.
Applicant No. 2 Champaben Kiranbhai Raval	2 Lakh + accrued proportionate interest.	Rs.20 Thousand + accrued proportionate interest.	Balance amount of Rs. 1,80,000/- (One Lakh Eighty Thousand) only shall be split into 18 fixed deposits of Rs. 10,000/- each and invested for a period of 01 to 18 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.

Applicant No. 3 Laxmiben Kantibhai Rawal	2 Lakh + accrued proportionate interest.	Rs. 20 Thousand + accrued proportionate interest.	Balance amount of Rs. 1,80,000/- (One Lakh Eighty Thousand) only shall be split into 18 fixed deposits of Rs. 10,000/- each and invested for a period of 01 to 18 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.
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18. 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.
19. The claimants are further directed to submit Form 15G or 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 the 30 days from this order otherwise the Railway Administration deduct the applicable TDS as per the provisions of the income tax act.
20. The Registry is directed to defer the disbursement of award amount till the 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.
21. 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).
22. 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.

23. 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.

24. 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 and signed in open court today i.e. on 04.03.2024.

Place: Ahmedabad

Date: 04.03.2024.

[R.K. Manocha]
Member (Technical)

[VinayGoel]
Member (Judicial)