

Before Railway Claims Tribunal, Ahmedabad Bench.

Coram: Shri. Vinay Goel, Member (Judicial)
Shri. Raj Kumar Manocha, Member (Technical)

Modified Judgment in terms of order dated 16.01.2024

CASE No. OA(IIu)/ADI/2019/0079

Date of Institution: 27.03.2019

Date of Decision: 19.12.2023/16.01.2024

1. Chanda Rajendra Araple, Aged 45 yrs.
(Wife of the deceased)
2. Harsh Rajendra Araple, Aged 22 yrs.
(Son of the deceased)
3. Milee Rajendra Araple, Aged 17 yrs.
(Minor daughter of the deceased, through
Appl. No. 1 being her Mother & Natural Guardian)
4. Rekhaben Kashinath Araple, Aged 70.
(Mother of the deceased)

R/at: 15 Maiytri Society, Gujarat Gas Sercul,
Adajan Road, Surat-395009.

....APPLICANTS

-VERSUS-

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

.....RESPONDENT

Mr. A.M. Joshiyara, Ld. Counsel for the Applicants.

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

CLAIM FOR Rs. 8,00,000/-

Judgment

This OA has been filed by the wife, son, minor daughter and mother of Rajendra Kashinath Araple (hereinafter called as 'deceased') to claim compensation for alleged incident occurred during course of train journey under section 16 of Railway claims Tribunal act 1987.

1. Basic details relating to accident as contained and alleged in the Application:-

- a) Date of accident: 01.04.2018

- b) Person Deceased: Rajendra Kashinath Araple.
- c) Relationship of the Applicant No.1 to 4 with the deceased: Wife, Son, Minor daughter and Mother of the deceased respectively.
- d) Train involved and transit details: Travelling by Saurashtra Janta Express from Vapi to Surat with a Monthly Season Ticket bearing No. P-80918162.
- f) Untoward incident narrated: Briefly stated it is alleged OA that on 01.04.2018 the deceased was returning from his office and was travelling from Vapi to Surat by Saurashtra Janta express down train. He was holding valid and legal Railway seasonal pass bearing number P-80918162 having validity from 16.03.2018 to 15.04.2018. Due to heavy rush of passengers the deceased could not get a seat in the compartment and was compelled to travel by standing inside the door of the compartment. During said journey the deceased accidentally fell down from the train near Parcel Office, North Dn main line of Surat Railway station near at KM.No. 267/14–16. He sustained an injury and died at the spot.
- g) Jurisdiction: Place of incident being near Surat Station this Bench of the Tribunal has territorial jurisdiction.

2. Salient features of reply:

- a) Averments in reply: As per the DRM report, shunting Jamadar informed on duty Dy.SS/ST through VHF set about a run over of an unknown person by train near KM No. 267/14 near Surat station and the deceased died due to his own negligent action. The present case is not within meaning of sec. 123 (c)(2) of the Railways Act, 1989 hence, it is requested to be dismissed with cost.
- b) Crux of DRM Report: ***“From the scrutiny of above documents it is found that information received by Dy.SS/ST through VHF Set about run over of a unknown person by unknown train at KM NO 267/14. GRP/ST has mentioned in his inquest punchnama that deceased was having with a season Pass No. P80918162 dated 16.03.2019 to 15.04.2019 V/Rs 355/- Ex Vapi to Surat. GRP/ST mentioned that deceased fallen down from unknown DN train, without any eye witness. ”***
- c) Respondent’s stand: The Railway is appeared and filed its written statement. The Railway denied its liabilities, Bonafide passenger status and occurrence of

untoward incident. It is pleaded that as per the DRM report the deceased was run over by some Dn train before Surat railway station. There was no eyewitness and as per the DRM report, GRP referred fallen down from an unknown Dn train without any eyewitness. The railway prayed for dismissal of the Claim application.

3. From the pleadings, following issues were framed on 17.04.2017:

- 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 passenger train and 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 entitled to compensation as claimed under Para-16 of the claim application?*
- 4) *Relief?*

4. Applicant Evidence and Respondent Evidence: Applicant No.1 filed her affidavit as AW/1 and she was cross-examined. The Respondent did not adduced any oral evidence in this case.

5. Documents filed by the Parties:

5.1 The Applicants filed certified copy of:

Memo at Exh.A/1; Inquest Panchnama at Exh.A/2; Panchnama of Place of Incident at Exh.A/3; Monthly Season Ticket at Exh.A/4; Post Mortem report at Exh.A/5; Ration card at Exh.A/6; Aadhar card and Bank details of the Applicants at Exh.A/7-14; Death certificate of the deceased at Exh.A/15.

5.2 The Respondent filed original DRM report with Investigation report as Exh.R/1.

The Respondent also filed Site Map of incident and TSR of Surat station. The Respondent filed an amendment application to plead that there was an over journey but Respondent withdrew the application on 26.06.2023 got dismissed being not pressed.

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

" Ld. Counsel for Applicants submitted that on 01.04.2018 the deceased was travelling on MST and he accidentally fell down during course of the journey and died on the spot. The Applicants being wife, son, minor daughter and mother of the deceased are entitled for compensation under the Railway Act. He further submitted that the Respondent in written statement has admitted travel and accidental fall.

Ld. Counsel for the Respondent in reply submitted that as there was a over travelling so the deceased cannot be consider as a bonafide passenger and he died due to his negligence so OA merits dismissed."

Findings

7. 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 counsels. Our findings on the aforesaid issues are as under:

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

8. The learned counsel for the Respondent at the time of arguments submitted that there was over travel so the deceased cannot be considered as Bonafide Passenger. Admittedly, the MST was recovered at the time of preparation of Inquest Panchnama and the Respondent has failed to deny validity of said MST on the date of incident. The only plea taken by the Respondent is with regard to over travel and on that count the Respondent denied Bonafide passenger status of the deceased.
9. Before proceeding further we would like to state the deceased was travelling from Vapi to Surat and the incident took place near Parcel Office, North Dn main line of Surat Railway station. The Respondent have failed to deny existence of rush in the train and to our opinion the travel would not be treated as over travel or alleged over travel if any would not snatch Bonafide passenger status of the deceased. There was no intentional over travel, there could be some reason that the deceased could not get down from the train at Surat station. However, the plea of over travel, even otherwise, is not tenable for the want of pleadings and the Respondent

opted to get its application for amendment but subsequently said application got dismissed being not pressed.

10. As per the DRM report “GRP/ST mentioned that deceased fallen down from unknown DN train without any eye witness.” The Respondent, in its written statement, tried to deny accidental fall and has built up its case of run over with some unknown Dn train. But the Respondent has failed to prove such pleadings in any manner. Even there is no question to AW/1 during cross-examination on these lines. Even the Respondent has failed to give any suggestion regarding over travel or run over during cross-examination. It is the duty of the litigant to prove its case in accordance with law and further to put its case to the other side. Although the Respondent has come with plea of negligence but the Respondent has failed to prove on record any element of criminal negligence on the parents of the deceased, which may bring this case within ambit of exceptions of sec. 124-A of the Railways Act, 1989. It is worthwhile to mention here verdict of the Hon’ble Apex Court in the case of Union of India Vs. Prabhakaran Vijaya Kumar & Others reported in 2008(5)ALL MR 917, has held that:

“Section 124A 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.”

11. Once it is established that the deceased was travelling as a bonafide passenger i.e. travelling on valid Railway travelling authority, it is a duty of the Respondent to prove that the alleged incident fall under exception of section 124-A of the Railways Act, 1989. In fact the Respondent has failed to prove its defense and there is no direct evidence but circumstantial evidence indicates adoption of pragmatic and liberal approach under the purview of welfare legislation of Chapter XIII of the Railways Act, 1989. So under given circumstances, we have no hesitation to conclude that the deceased was travelling on valid MST and would come under the ambit of Bonafide passenger and the deceased accidentally fell down from the running train and incident would come within ambit of untoward

incident as defined under Railways Act. Both the issues are decided in favour of the Applicants.

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

At the time of filing of this OA applicant no. 3 was minor, but this Tribunal can take judicial notice of her age and attaining majority by efflux of time.

12. The claim has been filed by the wife, son, daughter and mother of the deceased. In support of dependency they filed documents at Exh.A/6-11. There is no dispute about the relationship of the Applicants with the deceased and Respondent side has failed to counter the documentary evidence produced by the Applicants. The Applicants are wife, son, daughter and mother 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.
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 Rajendra Kashinath Araple 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. 01.04.2018 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.

- 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 Chanda Rajendra Araple	Rs. 3 Lakh + accrued proportionate interest.	Rs. 10,000/- + accrued proportionate interest.	Balance amount of Rs. 2,90,000/- (Two Lakh Ninety Thousand) only shall be split into 29 fixed deposits of Rs. 10,000/- each and invested for a period of 01 to 29 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 Harsh Rajendra Araple	Rs. 2 Lakh + accrued proportionate interest.	Rs. 10,000/- + accrued proportionate interest.	Balance amount of Rs. 1,90,000/- (One Lakh Ninety Thousand) only shall be split into 19 fixed deposits of Rs. 10,000/- each and invested for a period of 01 to 19 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 Milee Rajendra Araple	Rs. 2 Lakh + accrued proportionate interest.	Rs. 10,000/- + accrued proportionate interest.	Balance amount of Rs. 1,90,000/- (One Lakh Ninety Thousand) only shall be split into 19 fixed deposits of Rs. 10,000/- each and invested for a period of 01 to 19 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.4 Rekhaben Kashinath Araple	Rs. 1 Lakh + accrued proport- nate interest.	Rs. 1 Lakh + accrued proport- nate interest.	-Nil-

18. Keeping in view old age of Applicant no.4 amount awarded in her favour is to be released in toto.
19. 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.
20. 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.
21. 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.
22. 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).
23. 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.
24. 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.
25. 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 corrected and signed in open court today i.e. on
19.12.2023/16.01.2024.

Place : Ahmedabad

Date : 19.12.2023/16.01.2024.

[R.K. Manocha]
Member (Technical)

[Vinay Goel]
Member (Judicial)