



रेल दावा अधिकरण, इलाहाबाद न्यायपीठ

RAILWAY CLAIMS TRIBUNAL, ALLAHABAD BENCH

Corum:

SHRI MUKESH NIGAM, VICE CHAIRMAN (TECHNICAL)
SHRI AJAY KUMAR GARG, MEMBER (JUDICIAL)

Case No: OA/IIu/ALD/1/2023

Date of filing: 10/01/2023

Date of order: 23/01/2024

1. आशिक S/o श्री हाजी अब्बाज उम्र 47वर्ष
2. श्रीमती हुसने आरा W/o आशिक उम्र 37वर्ष

दोनों निवासी ग्राम कोईया, सालमरी थाना आजमनगर जिला कटिहार (बि.)

-Applicants

Versus

Union of India represented through

General Manager, West Central Railway, Jabalpur

-Respondent

Application under Section 16 of Railway Claims Tribunal Act, 1987 in respect of claim for compensation for the death in an untoward incident

Value of claim: 8,00,000/- with interest

Present:

For the applicant: Shri Ashok Srivastava, Learned Counsel

For the respondent: Shri Arvind Singh, Learned Counsel

JUDGEMENT

By Shri MukeshNigam,Vice-Chairman(Technical)

1. The basic details relating to the accident as contained in the application are listed as under:

a.	Date of accident	03/07/2022
b	Person died (hereinafter referred to as “deceased”)	Late Mohd. Ashraf
c	Relationship of the claimant with the deceased	Parents
d	Train involved	LTT-Guwahati Express
e	Place of occurrence of untoward incident	Between Km No. 1251/16-18 near Basapahad Railway Station
f	Untoward incident narrated :(in verbatim) <i>Para II 1 (b): “द्वितीय श्रेणी अतिरिक्त किराया टिकट क्र. M-0178564 तक की यात्रा टिकट तारीख: दिन/महीना/वर्ष 2.07.2022 को क्रय की गई थी।”</i> <i>Para III 3 (vi): “यह कि मेरा पुत्र अशरफ मुम्बई में ही रहकर मजदूरी का कार्य करता था। अचानक घर में कार्य आ जाने से दिनोंक दिनोंक 2.07.2022 को मेरा पुत्र अशरफ लोकमान्य तिलक टर्मिनल-गुवाहाटी एक्सप्रेस ट्रेन से कटिहार तक आ रहा था। यात्रा के दौरान दिनोंक 3.07.2022 को मेरा पुत्र अशरफ बॉसापहाड रेलवे स्टेशन के कि.मी. क्र. 1251/16 से 18 के मध्य चलती ट्रेन से गिर गया था। दुर्घटना में आई चोटों के कारण मेरे पुत्र अशरफ की घटना स्थल पर ही मृत्यु हो गई थी। उपरोक्त दुर्घटना की मर्ग कायमी थाना GRP पुलिस मानिकपुर के द्वारा GD संख्या 14/22 के तहत की गई है।</i>	

	यह कि मेरे पुत्र अशरफ के साथ हुई दुर्घटना की जांच कार्यवाही थाना GRP पुलिस मानिकपुर के द्वारा किये जाने के अनुसार मेरे पुत्र अशरफ की मृत्यु चलती ट्रेन से गिरने से आई चोटों के कारण होना पाया गया है। ”	
g	Written Statement and DRM's Report	W.S. & DRM's Report filed on 16/05/2023
h	Averments in reply in Written Statement: (Para III 1 in verbatim) <i>Para III 1: “That the contents para nos. 1 [(a) to (h) i, ii, iii & iv)] of the claim application do not need reply.”</i>	
i	Averments in reply in DRM's Report: (in verbatim) “जांच अधिकारी द्वारा जांच में संकलित साक्ष्यों, दस्तावेजों, पुलिस जांच का गहन अध्ययन करने पर स्पष्ट रूप से पाया गया है कि दिनांक 03.07.2022 को सूचना प्राप्त हुई कि एक व्यक्ति का शव किमी. नम्बर 1251/16 में पाया गया है। उक्त व्यक्ति की पहचान असरफ पिता - आशिक उम्र - 19 वर्ष के रूप में हुई। प्रकरण में संलग्न व पुलिस द्वारा प्राप्त दस्तावेज में संलग्न अतिरिक्त किराया टिकट भुसावल से बारसोई प्राप्त हुई है जिसमें कार्यालय पुलिस अधीक्षक रेलवे झोंसी की मुहर लगी है का सत्यापन कराया गया है प्रति संलग्न है। दावाकर्ता व मृतक के पिता श्री आसीक के कथनों में पाया गया है कि उनका बेटा मुंबई में रहकर सरिया व बिल्डिंग बनाने का कार्य करता था दिनांक 02.07.2022 को उसने फोन से बताया कि वह ट्रेन से घर आ रहा है। बाद पता चला कि उनका पुत्र किसी अज्ञात गाड़ी से गिरकर मृत हो गया है। ट्रेन के गेट के पृष्ठ भाग में चेतावनी अंकित होती है कि “दुर्घटना से बचने के लिए प्लेटफार्म व गाड़ी रूकने से पहले गेट न खोलें, चलती गाड़ी में चढ़ना, उतरना व गेट को खुला रखना या खतरनाक हो सकता है।” रेल प्रशासन द्वारा स्टेशनों में सावधानी पूर्वक यात्रा करने हेतु उद्घोषणाएं भी कराई जाती है। श्री प्रभात चौधरी वरि. खण्ड अभियंता मानिकपुर ने प्रमाणित किया है कि उक्त सेक्शन में जर्क की कोई सूचना नहीं थी। उक्त घटित घटना का कोई चश्मदीद या साक्ष्य नहीं है। यदि अशरफ सावधानी पूर्वक यात्रा करता है तो उक्त घटना घटित नहीं होती। अतः उक्त प्रकरण में रेल प्रशासन की कोई गलती नहीं है।”	

2. The bonafide of the deceased as a passenger had been accepted by the respondent, upon pleadings of the parties, three issues were framed on 07/06/2023: -

- 1) Whether the death of the deceased was on account of an untoward incident as defined under Section 123(c) read with Section 124 A of The Railways Act, 1989?
 - 2) Whether the applicants are the sole dependant of the deceased and are covered by the definition of dependant under Section 123(b) of The Railways Act, 1989?
 - 3) To what amount of compensation and relief, if any, are the applicants entitled?
3. The applicant tendered an affidavit as AW/1 on 26/09/2023. He was cross-examined and discharged. The applicant had furnished certain documents which are marked Exhibits as under:

1	Copy of Aadhar Card of Aasik	Exhibit A/1
2	Copy of Station Master Memo	Exhibit A/2
3	Copy of G.D. Report	Exhibit A/3
4	Copy of Railway Police Document	Exhibit A/4
5	Copy of Panchnama	Exhibit A/5
6	Copy of Excess Fare Ticket	Exhibit A/6
7	Copy of Application	Exhibit A/7

8	Copy of Rojnamcha	Exhibit A/8
9	Copy of Post-Mortem Report	Exhibit A/9
10	Copy of Aadhar Card of Deceased	Exhibit A/10

4. The Respondent had not adduced any oral evidence and had filed its certified DRM's Report Exh. R/01 along with annexure. Respondent Railway had filed along with its DRM's Report, the Investigation Report of Shri Chandan Singh Mudiya, ASI/RPF/Post- Satna, West Central Railway along with Annexure.
5. Considered the pleadings of both sides, perused all the documents and evidence available on record and heard the submissions made by Ld. Counsels on both sides. The decision on the issues are as under: -

Decision with Reasons

Issues No 1

6. It is seen from the records that on 03/07/2022 Station Superintendent/Basapahaad sent a memo to RPF/Incharge stating that Keyman Shri Anil Kumar during inspection of the area under his jurisdiction mentioned that at Km No. 1251/16-18 between Up and Down lines, one person was lying in the middle whose age was around 20 years and it appeared that he was dead. A memo was also issued by Dy. Station

Manager/Manikpur to Thana Incharge/GRP/Manikpur at 1115 hrs of 03/07/2022 informing the same details. These details also find mention in G.D. no. 14 entered at 1200 on 03/07/2022 in the General Diary Details maintained at GRP Post/Manikpur.

7. The Panchnama proceedings of the deceased were started at 1140 hrs and were completed at 1613 hrs on 03/07/2022. During the proceedings of the Panchnama, the body of the deceased was not identified. In the opinion of Panchas, the cause of death of the deceased was due to his having fallen from the train. It was noted in the Panchnama that a local mobile telephone was found from the body of the deceased which helped in contacting the relatives of the deceased.
8. The Post-Mortem of the body of the deceased was conducted between 1220 hrs and 1310 hrs of 05/07/2022. As per the Post-Mortem Report, the cause of death of the deceased was due to shock and hemorrhage as a result of ante-mortem injuries.
9. The applicant had filed an affidavit in which he reiterated the facts made in the original application. During the cross examination he stated that the deceased was his son who worked as a labour in Mumbai and had called on phone to inform that he was on way to his house.
10. The Respondent Railway had submitted in the DRM's Report that from the documents received from the Police, they have found a receipt of

Excess Fare ticket bearing number 'EFT M0178564' Ex. Bhusawal to Barsoi dated 02/07/2022, which had been verified by them and found to be genuine. The Respondent had found in the enquiry that the deceased was working in Mumbai and had informed to his father that he was on his way to home by train. The Respondent had accepted that the deceased was bonafide passenger and had fallen from a train but stated that they are not responsible for his death as he was responsible for his own death.

11. The Respondent Railway had stated in their reply that the respondent was fully protected under exemption clause of section 124A of Railways Act 1989 and the act of the deceased was a self-inflicted attempt caused by his own criminal act. On the concept of 'self-inflicted injury' it would be apposite to draw from the judgement of Hon'ble Supreme Court in Rina Devi versus Union of India (CA No 4945 of 2018(SLP (Civil)No.10223 @ D.No.6059/2018) in which it held that:

"16.6 We are unable to uphold the above view as the concept of 'self-inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree.

Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. We may in this connection refer to judgment of this Court in United India Insurance Co Ltd., versus Sunil Kumar laying down that plea of negligence of the victim cannot be allowed in claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor."

12.It is, therefore, proven on record that the deceased who was a bonafide passenger of the train in question , died in the incident by falling down from the running train which is untoward incident as defined in Section 123(C)(2) read with Section 124-A of the Railway Act 1989. Hence, the issue no (1) is decided in favor of the applicants and against the respondent railway.

Issues No 2 & 3

13.In order to prove their relation with the deceased, the applicants have placed on record, a Ration Card issued by Food and Supply Department of Bihar, District- Katihar stating that they are the parents of the deceased. The applicants have also submitted their Aadhar Cards which further establishes their relationship with the deceased. The applicant no.1 Shri Aasik and applicant no.2 Smt. Husne Aara are parents of the deceased. In the affidavit filed before the Bench as well as during the cross-examination, the applicant Shri Aasik had submitted that the deceased was his unmarried son and he and his wife are the only dependents of the deceased. There is nothing on record to disbelieve the said evidence of the applicants to establish their relation with the deceased. The applicants being parents of the deceased are dependents of the deceased as defined in the Railway Act 1989. Hence this issue is also decided in favor of the applicants and against the respondent railway.

14. We may notice that in ***Geeta Devi Vs Union of India***, Hon'ble High Court, Delhi has observed as under: -

“5. As Regards Amendment to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 5.1. Many of the claimants are drawn from rural areas with low levels of literacy and lower levels of making appropriate decision for the use of amounts guaranteed under the awards. There are several instances of their exploitation by middlemen and touts operating in the field. The scope for such exploitation is itself one of the incentives for fomenting bogus claims, fabricated documents and duplicate claims in different Benches of the Tribunal for the same cause of action. The availability of bulk funds in the name of an ill-informed claimant is also a cause for exploitation. A scheme for protection of the amount due to such a claimant is the need of the hour. Earlier, this Court has involved 21 Nationalized Banks in dialogue to evolve a scheme of annuities for disbursement of claims. They have been ordered already to be implemented in this case, vide directions passed on 22nd February, 2019. This scheme as applied to motor accident claims has been approved by the Supreme Court in its order dated 05th March, 2019 in Krishnamurthi v New India Insurance Company, SLP (C) No.31521-31522 of 2017. A statutory rule backing will, therefore, best serve the interest of the litigant in the manner set out below:-

5.2. Insert following Rule 5 after Rule 4:-

Rule 5: Mode of payment--(1) The Tribunal may, in order to protect the sum awarded to the claimant, having due regard to the illiteracy or other disabling factors impairing the judicious use of such sum, issue directions for disbursing the award in terms of annuities, fixed deposits or other suitable mode as shall sub-serve justice.

(2) If any of the claimants is a minor or person of unsound mind, the Tribunal may give liberty to the guardian ad litem to use the interest accruals on the deposit that shall be made during the minority for maintenance.

(3) Nothing in this Rule shall limit the power of the Tribunal to make modifications of the mode of disbursement for reasons to be stated in writing depending on the exigencies

requiring liquidation of any corpus created for annuity or premature closure of fixed deposit, for the benefit of the claimant.”

In pursuance of the orders passed by the Hon’ble High Court, Delhi, recently, Government of India has issued a Notification of 3rd June, 2020 amending Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 2020, amending Rule 5 which reads as under: -

“5.Mode of payment—

- 5.1 The Tribunal may, in order to protect the sum awarded to the claimant, having due regard to the illiteracy or other disabling factors impairing the judicious use of such sum, issue directions for disbursing the award in terms of annuities, fixed deposits or other suitable mode as shall subserve justice.*
- 5.2 If any of the claimants is a minor or person of unsound mind, the Tribunal may give liberty to the guardian ad litem to use the interest accruals on the deposit that shall be made during the minority for maintenance.*
- 5.3 Nothing in this Rule shall limit the power of the Tribunal to make modifications of the mode of disbursement for reasons to be stated in writing depending on the exigencies requiring liquidation of any corpus created for annuity or premature closure of fixed deposit, for the benefit of the claimant.*
- 5.4 The orders dated 21st April, 2017, 24th May, 2019 and 6th November, 2019 of Hon’ble High Court of Delhi in FAO No. 22/2015 and CM Application No. 4501/2015 in Geeta Devi Vs Union of India, relating to disbursement of compensation shall be read as part of this Rule.”*

This case pertains to untoward incident occurred after amendment of the Railway Accidents and Untoward Incidents (Compensation) Rules 1990 vide G.S.R No. 1165(E) dated 22.12.2016 which is applicable with

effect from 01.01.2017 and hence the applicants are entitled for an amount of Rs. 8,00,000/-(Rupees Eight Lakh Only) with simple interest @ 9% per annum from the date of incident till date of judgment. Therefore, relying upon the judgment rendered by the Hon'ble High Court, Delhi in the case of *Geeta Devi* (supra) and in pursuance of Rule 5 quoted above, in the present case, the amount of award along with the interest shall be disbursed in the following manner: -

O R D E R

15. The applicants Shri Aasik and Smt. Husne Aara are entitled for an award for an amount of Rs. 8,00,000/-(Rupees Eight Lakh Only) with interest @ 9% per annum from date of the incident i.e. from 03/07/2022 till the date of judgment with no order as to cost.
16. The applicant no. 1 Shri Aasik s/o Shri Haji Abbas being father of the deceased and applicant no. 2 Smt. Husne Aara w/o Shri Aasik, are entitled to amount of Rs. 4,00,000/- (Rupees Four Lakhs Only) each with proportionate interest thereon to each of them and permitted to withdraw Rs. 40,000/- (Rupees Forty Thousands Only) each from their respective shares of compensation awarded to them alongwith proportionate share and the balance amount of Rs. 3,60,000/- (Rupees Three Lakh Sixty Thousand Only) from each of their share with proportionate amount of

interest should be invested in a fixed deposit for a period of three years in any nationalized Bank.

17. The amount of Rs. 40,000/- (Rupees Forty Thousand Only) each with proportionate interest amount permitted to be withdrawn shall be disbursed to the applicant No. 1 & 2 in their respective saving bank account through ECS.
18. The amount invested in FDR alongwith interest upon maturity of FDR should be credited in their saving account without recourse to this Tribunal. The monthly accruals of the fixed deposit should also be credited in their savings bank account.
19. The Respondent Railway Administration is hereby directed to deposit the awarded amount with the Additional Registrar of this Tribunal within a period of 60 days from the date of communication of the award failing which applicants shall be entitled to receive interest @ 9% per annum from the date of award till the actual date of depositing of the decretal amount with the Additional Registrar.
20. The applicants are hereby directed to submit the details of their Aadhar linked Bank accounts of a Nationalized Bank situated nearest to their place of residence to the Additional Registrar of this Tribunal. The Bank shall not permit any joint name(s) to be added in their saving bank

account or fixed deposit account i.e. their Saving Bank Account shall be an individual Saving Bank Account and not a Joint Account.

21.No loan, advance, withdrawal, or pre-mature discharge is allowed on the fixed deposit without permission of the Tribunal.

22.The concerned Bank shall not issue any cheque book and/or debit card to applicants. However, in case the debit card and/or cheque book have already been issued, Bank shall cancel the same before the disbursement of award amount.

23.The Bank shall make an endorsement on the passbook of each the applicants to the effect that no cheque book and/or debit card have been issued or will be issued without the permission of the Tribunal and the applicants shall produce the passbook with the necessary endorsement duly signed and stamped by the Bank before the Additional Registrar of this Tribunal. The Bank is further directed to permit the each of the applicants to withdraw money from his Saving Bank Account by means of a withdrawal form only.

24.The application is allowed in the above terms. No order to costs.

25.The Respondent Railway Administration is further directed to place on record the proof of deposit of the award amount with up to date interest along with a calculation sheet and the same shall be filed with the Additional Registrar.

26.The Registry is directed to send a free certified copy of this judgment directly to the applicants at their address mentioned in the claim application by Speed Post in compliance of Rule 34 (3) of the Railway Claims Tribunal (Procedure) Rules, 1989.

27.Fix 18/04/2024 for hearing on compliance of the orders by the applicants and the respondent.

Date: 23/01/2024

(Ajay Kumar Garg)
Member (Judicial)

(Mukesh Nigam)
Vice-Chairman (Technical)