



रेल दावा अधिकरण, इलाहाबाद न्यायपीठ

RAILWAY CLAIMS TRIBUNAL, ALLAHABAD BENCH

Corum:

SHRI MUKESH NIGAM, VICE CHAIRMAN (TECHNICAL)

Case No: OA/IIu/ALD/1896/2020 (OA/IIu/LKO/319/2019)

Date of filing: 03/07/2019

Date of order: 13/05/2024

1. Babali Jatav widow of Late Bhagwan Das
2. Aniket aged 13 years son of Late Bhagwan Das
3. Shraddha aged 10 years daughter of Late Bhagwan Das

Serial no. 2 and 3 are minor and represented through their mother and natural guardian Smt. Babali Jatav.

All residents of Lahar Gird, Near Old Primary School, Ward no. 23, Sipri Bazar, Police Station- Sipri Bazar, District- Jhansi (U.P.)

-Applicants

Versus

Union of India represented through

General Manager, North Central Railway, Allahabad

-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: 20,00,000/- with interest

Present:

For the applicant: Shri N.K.Pandey, Learned Counsel

For the respondent: Shri A.K.Mishra, Learned Counsel

J U D G E M E N T

By Shri Mukesh Nigam, Vice-Chairman (Technical)

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

a.	Date of accident	18/03/2019
b	Person Died (hereinafter referred to as “deceased”)	Late Bhagwan Das
c	Relationship of the claimant with the deceased	Wife, Son and Daughter
d	Train involved	Train name and number not mentioned
e	Place of occurrence of untoward incident	Between Karari and Jhansi railway stations
f	Untoward incident narrated :(in verbatim): <i>Para 6 (B): “The person deceased accidentally fell down when he was traveling by any train carrying passenger between Karari and Jhansi railway station on 18.03.2019 .”</i> <i>Para 7: “Second class ticket no. 08904255 from Agra Cantt to Jhansi was purchased and the same has been recovered from the deceased. The ticket has been lost somewhere. ”</i>	

g	Written Statement and DRM's Report	W.S. & DRM's Report filed on 09/10/2020
h	Averments in reply in Written Statement: (Para 3, 4, 17, 18 & 19 in verbatim) <i>Para 3: "That the contents of para 6(A) of the claim petition need no comments and contents of para 6(B) are strongly denied for want of necessary documents which may prove the death of due to untoward incident."</i> <i>Para 4: "That the contents of para 7 of the claim petition are denied as stated and it is further submitted that the deceased was not the bonafide passenger from Agra Cantt to Jhansi on alleged date 18-03-2019 of accident while travelling from the train because the ticket filed with the claim petition is subject to verification."</i> <i>Para 17: "That the respondent is fully protected under exemption clause of Section 124-A of the Railway Act, 1989. Even if the applicants prove that the deceased was passenger, even then it is self-inflicted attempt caused by his own criminal act. Case is not covered in the definitions of untoward incident which is provided under law."</i> <i>Para 18: "That the particulars furnished by the applicants are not sufficient to attract the ingredients of Section 123-C(2) of the Railway Act, 1989, read with 124-A of the Railway Act, 1989."</i> <i>Para 19: "That without prejudice it is submitted that the applicants are not sole heirs of the deceased. The claim is bad for non-joinder of necessary parties."</i>	
i	Averments in reply in DRM's Report: (in verbatim) <i>“मामले में संलग्न पत्रावली एवं पुलिस रिकार्ड का अवलोकन करने से स्पष्ट होता है कि</i>	

	दावाकर्ता द्वारा मृतक की यात्रा के बारे में कुछ स्पष्ट नहीं बताया गया है, किन्तु पुलिस पंचनामे में मृतक की मृत्यु ट्रेन से गिरकर आयी चोटों के कारण होना बताया गया एवं पीएम रिपोर्ट में शॉक एवं हैमरेज के कारण मृत्यु होना दर्शाया गया है।
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2. Upon pleadings of the parties, five issues were framed on 30/07/2021: -

- 1) Whether the Deceased was a bona-fide passenger of the train in question at the relevant time of the incident?
- 2) Whether there was any untoward incident as defined under the provision of Section 123(c) read with Section 124 (A) of The Railways Act, 1989?
- 3) Whether the applicants are dependants of the deceased?
- 4) Whether the applicants are entitled for any relief and interest as prayed in the application?
- 5) Relief, if any?

3. The applicant no. 1 Babali Jatav tendered an affidavit as AW/1. She was cross examined and discharged. The Applicant had furnished certain documents which are marked Exhibits as under:

1	Copy of Aadhar Card of Babali Jatav	Exhibit A/1
2	Copy of SSE Memo & Rail Journey Ticket	Exhibit A/2
3	Copy of Rail Journey Ticket	Exhibit A/3
4	Copy of G.D.Reports	Exhibit A/4 A/5

5	Copy of Panchnama	Exhibit A/6
6	Copy of Post-Mortem Report	Exhibit A/7
7	Copy of Police Thana Report	Exhibit A/8
8	Copy of Dependency Certificate	Exhibit A/9

4. The Respondent had not adduced any oral evidence and had filed its certified DRM's Report Exh. R/01 along with annexure. The Respondent Railway had filed along with its DRM's Report, the Investigation Report of Shri Shashi Bhushan Mishra, ASI/RPF/Post- Jhansi, North 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&2

6. Issue no 1&2 are being taken up together as they are interconnected. Senior Section Engineer/Permanent Way(North)Jhansi had sent a memo to the GRP/Jhansi that between Jhansi and Karari at km 1132/21-23 on Up line, one dead person was lying and necessary action

may be taken. As per G.D. entry no. 24 with Sipri Bazar/Police Station which was made at 1215 hrs of 18/03/2019, it was mentioned that Shri Om Prakash, Trackman/Unit 24/North Jhansi, submitted a memo stating that in railway section Jhansi-Karari, a dead body of an unknown person was lying at kilometer no. 1132/21-23 on the Up line and that necessary action should be taken.

7. Further, in G.D. entry no. 26 which was entered at 1336 of 18/03/2019 at Police Station/Sipri Bazar/Jhansi, it was mentioned that Shri Ravi Kumar, son of Shri Om Prakash Ahirwar, Jhansi submitted an application stating that his brother-in-law came in grip of a train and died on account of it. In the application, Shri Ravi Kumar had stated that the deceased had come to attend a wedding to his house on 12/03/2019 and on 15/03/2019 after the function, he had stated that he would go to Agra and on his return from Agra when he was coming to Jhansi, he came in grip of a train near Pal Colony Bridge and on account of which, he died.
8. The Panchnama proceedings of the body of the deceased started at 1345 hrs and were completed 1430 hrs of 18/03/2019. It was mentioned in the Panchnama that the person who gave the first information about the dead body was Shri Om Prakash, Trackman/Jhansi and it was also mentioned that he had stated that the form and cause of the death of the deceased, was train accident. It was also mentioned that in the enquiry of Constable

no. 839 Krishna Murari and no 1342 Rajesh Kumar of Thana Sipri Bazar, Jhansi the cause of death of the deceased was due to train accident. It was mentioned in the Panchnama that when Police reached the site, people who gathered at the site, had informed that the deceased was brother-in-law of Shri Ravi Kumar, which helped in identifying the deceased. It is also mentioned that at the site of the incident the relatives of the deceased had reached. There was a mention of two rail journey tickets found from the body of the deceased: first, bearing number UCC 03242214 from Jhansi to Agra Cant ; and second, between Agra Cant to Jhansi dated 17/03/2019 bearing number 08904255 . In the opinion of the Panchas, the cause of death of the deceased was due to fall from a train.

9. The Post-Mortem of the body of the deceased was done between 1610 hrs to 1655 hrs of 18/03/2019. The immediate cause of death given in the Post-Mortem Report was due to hemorrhage and shock due to ante mortem injuries.
10. The applicant had presented herself as AW/1 and had stated that the deceased was travelling on 17/03/2019 from Agra to Jhansi and on 18/03/2019 when the train was between Karari and Jhansi, he fell and died. During the cross-examination, AW/1 had stated that the deceased was travelling with a valid rail journey ticket.

- 11.The respondent railway had stated that during the Panchnama, rail journey ticket from Jhani to Agra bearing number UCC-03242214 dated 15/03/2019 and a general ticket bearing number UCC-08904255 dated 17/03/2019 from Agra to Jhansi were found from the deceased. The respondent had stated that the veracity of the tickets were checked by them and they were found to be genuine.
- 12.The respondent had stated that the body of the deceased was found between Jhansi and Karari block section and as per Panchnama the cause of death was on account of falling from train and rail journey tickets were also found from the body of the deceased, which showed that the deceased was a bonafide passenger when the incident took place. However, it was mentioned by the respondent railway that the deceased died due to his own negligence and railway was not responsible for his death.
- 13.The Respondent Railway had stated in their reply that the respondent is fully protected under exemption clause of section 124A of Railways Act 1989 and the act of the applicant is 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.”

14. Therefore, in view of the facts and circumstances of the present case and law applicable thereon, it has been proved on record that the deceased was a bonafide passenger and he died in the incident by falling 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, issues no (1) & (2) are decided in favor of the applicants and against respondent railway.

Issues No 3&4

15. To prove her relationship with the deceased, the applicant had placed on record, a certificate of dependency issued by Shri Sanjay Singh Rajput, Sabhasad/Ward No 23/Nagar Nigam/Jhansi stating that the applicants are dependents of the deceased. The applicant had also submitted her Aadhar Card, which further establishes her relationship with the deceased. In the affidavit filed before the Bench as well as during the cross-examination,

the applicant Babali Jatav had submitted that the deceased was her husband and she, her children and her mother-in-law are the only dependents of the deceased. On the day arguments were heard, the Applicant counsel had filed details of Aadhar Card of mother of the deceased, Smt Shanti Jatav. There is nothing on record to disbelieve the said evidence of the applicants to establish her relationship with the deceased. The applicants being wife, son, daughter and mother of the deceased are dependents of the deceased as defined in the Railway Act 1989. Hence, these issues are also decided in favor of the applicants and against the respondent railway.

16. 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 disbursal 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 the incident date is 18/03/2019, hence the applicant is 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 the 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

17. The applicants are entitled to 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 18/03/2019 till the date of judgment with no order as to cost.

18.The applicant no. 1 Babali Jatav w/o Late Bhagwan Das @Bhagwan Das Jatav being wife of the deceased, is entitled to an amount of Rs. 5,00,000/- (Rupees Five Lakh Only) along with proportionate interest thereon to her and permitted to withdraw Rs. 50,000/- (Rupees Fifty Thousand Only) along with proportionate share of interest from her share of compensation awarded to her through ECS/NEFT transfer and the balance amount of Rs. 4,50,000/- (Rupees Four Lakh Fifty Thousand Only) from her share along with proportionate amount of interest should be invested in a fixed deposit for a period of three years in any nationalized Bank.

19.The applicant no. 2 and 3 Aniket s/o Late Bhagwan Das and Shraddha d/o Late Bhagwan Das being son and daughter of the deceased, are entitled to an amount of Rs. 1,00,000/- (Rupees One Lakh Only) each with proportionate interest thereon to them. Applicant no. 2 and 3 are minor, therefore, their awarded amount with proportionate amount of interest to each of them should be invested in a fixed deposit for a period of three years in any nationalized Bank and the interest should be credited in their natural guardian and mother, applicant no. 1 Smt. Babali Jatav for their maintenance and upkeep.

20. Shanti Jatav being mother of the deceased, is entitled to an amount of Rs. 1,00,000/- (Rupees One Lakh Only) with proportionate interest thereon to her and permitted to withdraw Rs. 10,000/- (Rupees Ten Thousand Only) from her share of compensation awarded to her through ECS/NEFT transfer and the balance amount of Rs. 90,000/- (Rupees Ninety Thousand Only) from her share with proportionate amount of interest should be invested in a fixed deposit for a period of three years in any nationalized Bank.
21. The amount invested in FDR along with 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.
22. The Respondent Railway Administration is hereby directed to deposit the awarded amount in Suitors Account of 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.
23. The applicants and Mrs Shanti Jatav, mother of the deceased are hereby directed to submit the details of their Aadhar linked Bank account 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 to their saving bank accounts or fixed deposit account i.e. their Saving Bank Account shall be an individual Saving Bank Account and not a Joint Account.

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

25.The concerned Bank shall not issue any cheque book and/or debit card to applicants and Mrs Shanti Jatav, mother of the deceased. 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.

26.The Bank shall make an endorsement on the passbook of the applicants and Mrs Shanti Jatav, mother of the deceased 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 and Mrs Shanti Jatav, mother of the deceased 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 and Mrs Shanti Jatav, mother of the deceased to withdraw money from his Saving Bank Account by means of a withdrawal form only.

27.Claim Application is allowed in the above terms. No order to costs.

- 28.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.
- 29.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.
- 30.Fix on 13/08/2024 for hearing on compliance report and payment status from both the parties of the above order.

Date:13/05/2024

(Mukesh Nigam)
Vice-Chairman (Technical)