



रेल दावा अधिकरण, इलाहाबाद न्यायपीठ

RAILWAY CLAIMS TRIBUNAL, ALLAHABAD BENCH

Quorum:

SHRI MUKESH NIGAM, VICE CHAIRMAN (TECHNICAL)

Case No: OA/IIu/ALD/19/2020

Date of filing: 17/03/2020

Date of order: 12/10/2023

1. Smt Rina Devi w/o Late Shri Ashok Das

Resident of Village- Kaharpur, Thana- Beerpur,
District- Bhagalpur, Bihar

-Applicant

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 Ajay Singh, Learned Counsel

JUDGEMENT

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	02/06/2019
b	Person Died (hereinafter referred to as “deceased”)	Late Sangiyash Kumar
c	Relationship of the claimant with the deceased	Mother
d	Train involved	15645 Lokmanya Tilak Terminal-Guwahati Express Train
e	Place of occurrence of untoward incident	Near Markundi Station between Km. No. 1241/9- 1251/10
f	Untoward incident narrated :(in verbatim): <i>Para 6B: “यह कि मेरा पुत्र संगियास कुमार मुम्बई में रहकर मजदूरी का कार्य करता था। दिनांक 1.6.2019 को लोकमान्य तिलक टर्मिनल रेलवे स्टेशन से थाना बिहपुर जं० तक का द्वितीय श्रेणी यात्रा का टिकट क्रय कर 15645 लोकमान्य</i>	

	तिलक टर्मिनल-गुवाहाटी एक्सप्रेस से अपने गांव के निकट स्टेशन थाना बिहपुर जं० होकर अपने गाँव तक आ रहा था। घटना दिनांक को ट्रेन में काफी भीड़ थी जिसके कारण मेरा पुत्र संगियास कुमार ट्रेन के गेट पर ही बैठकर यात्रा कर रहा था कि अचानक यात्रा के दौरान मारकुण्डी स्टेशन के कि०मी० क्र० 1241/9-1251/10 के बीच चलती ट्रेन से गिर गया था। दुर्घटना में आई चोटों के कारण मेरे पुत्र संगियास कुमार को रेलवे स्टाफ की मदद से इलाज के लिये सतना भेजा गया था किन्तु सतना पहुँचने तक उसकी मृत्यु हो गई। उपरोक्त दुर्घटना की सूचना उप स्टेशन प्रबंधक सतना के द्वारा G.R.P. सतना को दी गई थी जिस पर G.R.P. सतना के द्वारा मर्ग क्र० 032/19 पर कायमी की जाकर जांच कार्यवाही की गई थी। G.R.P. पुलिस सतना द्वारा की गई जांच कार्यवाही के अनुसार मेरे पुत्र संगियास कुमार की मृत्यु यात्रा के दौरान चलती ट्रेन से गिरने से आई चोटों के कारण हुई है।” Para 7: “द्वितीय श्रेणी यात्रा का टिकट (उपरोक्त दुर्घटना के दौरान गुम)”	
g	Written Statement and DRM’s Report	W.S. & DRM’s Report filed on 14/07/2021
h	Averments in reply in Written Statement: (Para 3, 4, 15,& 17 in verbatim) Para 3: “That the contents of Para 6A and 6B of the claim application are denied as stated. In fact the deceased was neither a bonafide passenger of the said train, nor did he fell down from the said train in some UNTOWARD INCIDENT on the alleged date of accident but died due to his own illegal and unlawful act.” Para 4: “That the contents of Para 7 of the application are denied as stated. In fact, the deceased was not a bonafide passenger of the train in question on the alleged date of accident as during the course of Jama Talashi of the deceased by the GRP, a black purse and a mobile phone was recovered from him but no journey ticket was found which proved that the deceased was neither bonafide passenger nor died in some UNTOWARD INCIDENT.”	

	Para 15: “That it is not true that the deceased accidentally fell down from the train in question as during the course of Jama Talashi of the deceased by the GRP, a black purse and a mobile phone was recovered from him but no journey ticket was found which proved that the deceased was neither bonafide passenger nor died in some UNTOWARD INCIDENT. The story made by the claimant is false and fabricated.” Para 17: “That the particulars furnished by the claimant are not sufficient to attract the ingredients of Section 123C(2) of the Railway Act, 1989, read with 124-A of the Railway Act, 1989. If applicant proves that his case covered under aforesaid sections then respondent is protected under proviso (exemption) sub clause of Section 124-A read with Sections 147, 148, 153, 154 and 156 of the Railways Act, 1989.”
i	Averments in reply in DRM’s Report: (in verbatim) “मृतक संगीयास कुमार, दिनांक 02.06.2019 को ट्रेन नं. 15645 डाउन लोकमान्य तिलक टर्मिनल-गोहाटी एक्सप्रेस से अपने गांव तक की यात्रा ट्रेन के दरवाजे के पास बैठकर करते समय मारकुण्डी स्टेशन के पास किमी. नं. 1241/9-10 के मध्य चलती गाड़ी से गिर गया, जिससे वह गंभीर रूप से घायल हो गया जिसे उपचार हेतु उपलब्ध ट्रेन से सतना लाते समय रास्ते में ही उसकी मृत्यु हो गई। रेलवे द्वारा लगभग सभी स्टेशनों पर यह उद्घोषणा कराई जाती है कि कोई भी यात्री चलती ट्रेन चढ़ते-उतरने एवं ट्रेन के दरवाजे पर बैठकर या खड़े होकर यात्रा करने का प्रयास न करें। यह आपके लिये घातक हो सकता है। फिर भी मृतक द्वारा ट्रेन के गेट पर बैठकर यात्रा की गई, जिससे उसके साथ उक्त दुर्घटना घटित हुई। इसमें रेल प्रशासन की कोई गलती नहीं है। मृतक के पास रेलवे यात्रा टिकट नहीं पाया गया, जिससे स्पष्ट है कि मृतक रेलवे का बोनाफाईड यात्री नहीं है। अतः दावाकर्ता श्रीमति रीना देवी द्वारा मृतक संगीयास कुमार, के सम्बंध में किया गया दावा देय योग्य नहीं है।”

2. Upon pleadings of the parties, five issues were framed on 11/10/2021: -

- 1) Whether the Deceased was a bona fide passenger of the train in question at the time of the incident?
- 2) Whether there was any untoward incident as defined under the provisions of section 123(c) read with Sec 124 (A) of the Railways Act, 1989?
- 3) Whether the applicant/s is/are dependant/s of the deceased?
- 4) Whether the applicant/s is/are entitled for any relief and interest as prayed in the application?
- 5) Relief, if any?

3. The applicant Rina Devi filed her own affidavit as AW/1, cross-examined and discharged. The applicant had furnished certain documents which are marked Exhibits as under:

1	Copy of Station Master Memo	Exhibit A/1
2	Copy of Station Diary Details	Exhibit A/2
3	Copy of Register of Unusual Incident Occurrence	Exhibit A/3
4	Copy of Panchnama	Exhibit A/4
5	Copy of Post-Mortem Report	Exhibit A/5
6	Copy of Dependency Certificate	Exhibit A/6
7	Copy of Aadhar Card of the deceased	Exhibit A/7

8	Copy of Aadhar Card and PAN card of Rina Devi	Exhibit A/8
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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 Munishwar Prasad Shukla, ASI/RPF/Post- Majhgawan, 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 decisions on the issues are as under: -

Decision with Reasons

Issues No 1&2

6. Issues no 1&2 are being taken up together as they are interconnected. The Station Dairy extract of 02/06/2019 at Markundi railway station shows an entry by Station Master Shri Akhilesh Kumar who was on duty from 0000 hrs to 0800 hrs that at 0735 hrs, the Keyman Shri Dhananjay Kumar informed on P&T telephone that between kilometer 1241/9-1241/10 on the Down track one unknown person was lying injured and unconscious but was alive.

7. Another entry in the Station Diary of Markundi railway station made by Station Master Shri H. L. Tripathi, who was on duty between 0800 hrs to 1600 hrs on the same date stated that the person who had fallen at kilometers 1241/09-10 was put in the brake van of Up train Sambalpur (SBPY) for further treatment at Satna on the instructions of the Section Controller /Jabalpur. It was mentioned that it was done so because there were no chances of availability of a mail/express train for a long time. It is mentioned that the injured person was accompanied by Gangman Shri Rajesh Singh and Shri Rajendra, who were sent with the injured along with a stretcher and the Deputy Station Superintendent /Satna had been advised to give a memo to GRP for making arrangements for the admission of the injured in the hospital.
8. It is seen from the records that on 02/06/2019 at 1000 hrs, a memo was issued by Deputy Station Manager/Satna to GRP/Satna stating that the Section Controller and Deputy Station Master/Markundi had informed on phone at 0830 hrs that in the Guard brake van of a freight train SBPY, one injured person whose age is about 25 years had been sent with two Gangmen. It is mentioned in the memo issued by Deputy Station Manager/Satna that upon arrival of the train it was found that the person was dead and the dead body had been kept on the end of the platform no. 1 on Manikpur end. It is also mentioned in the memo that Guard of the

freight train Shri S. K. Mandal from Satna headquarters had informed that injured person was alive until the train passed Jaitwar station on the way from Markundi to Satna.

9. It is further noted that the proceedings of Panchnama were completed on 02/06/2019 at Station House/GRP/Satna. The deceased had not been identified during the Panchnama. In the opinion of the Panchas, the cause of the death of the deceased was due to falling from a train and the injuries suffered on his head on account of it.
10. The Post-Mortem of the body of the deceased was done on 02/06/2019 at 1230 hrs. The cause of death given in the Post-Mortem Report was coma due to head injury.
11. It had been mentioned in the DRM's Report that when the GRP took possession of the body, they found a black purse and a mobile telephone from the pockets of the pants of the deceased. It is mentioned in the DRM's Report that when the mobile was restarted, they dialed a number which turned out to be that of the brother of the deceased and on informing about the death of the deceased, the relatives of the deceased reached GRP Post-Satna, where the body of the deceased was kept and identified the deceased.

12. The respondent had also submitted that 15645 LTT Guwahati Express train on 02/06/2019 left Tikariya station at 0430 hrs, passed Markundi through at 0435 hrs and reached Barahmafi at 0440 hrs.
13. The applicant had filed an affidavit in which she reiterated the facts made in the original application. She stated that the deceased always travelled on train with a rail journey ticket and on 01/06/2019, he had purchased a railway ticket for journey from Lokmanya Tilak Terminal railway station to his home at Bihpur and was travelling by 15645 Lokmanya Tilak Terminal -Guwahati Express train and this information he had given on his mobile telephone to her. During the cross examination, the applicant had stated that she received the information about the death of the deceased on 02/06/2019.
14. The Respondent Railway had argued that no railway journey ticket was found from the body of the deceased to prove that he was a bonafide passenger. The Respondent had argued that there is no proof of the deceased having undertaken rail journey or of his falling from a running passenger carrying train. The Applicant's counsel had drawn attention to the observations made by the Hon'ble Supreme Court in Union of India v/s Rina Devi (2018 ACJ 1441) wherein, it is held that if an affidavit is filed by the victim or the dependents of the victim, the same is sufficient to hold

that the victim was a bonafide passenger. It would be apposite here to reproduce para 17.4 of the judgement of Rina Devi (supra) as under: -

“17.4 We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

15.It is seen that the applicant has complied with the requirement as observed in case of Rina Devi (supra) by stating on affidavit that the deceased was a bonafide passenger. The respondent had admitted in the DRM's Report that from the available evidence and records, the deceased was travelling by 15645 Down Lokmanya Tilak Terminal-Guwahati Express on 02/06/2019 to go to his village but he was travelling near the door of the compartment and he fell from the running train at kilometer 1241/9-10 near Markundi station, due to which he was injured in a very serious manner and while he was taken for treatment to Satna, he died on the way.

16.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 as he was travelling near the gate of the compartment. 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."

17. 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 of the train in consideration and 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 issues no (1) & (2) are decided in favor of the applicant and against the respondent railway.

Issues No 3 & 4

18. In order to prove her relationship with the deceased, the applicant had placed on record the Aadhar Cards of the deceased as well as of her own. The Aadhar Card of the deceased showed that the deceased was the son of the applicant (mother) and Shri Ashok Das (father). The Aadhar Card of the applicant showed that she is the wife of Shri Ashok Das. In the original application, the applicant had stated that the deceased was unmarried and the father of the deceased had already passed away when the deceased was alive. There is nothing on record to disbelieve the said evidence of the applicant to establish her relation with the deceased. The applicant being mother of the deceased is a dependent of the deceased as defined in the Railway Act 1989. Hence, this issue is also decided in favor of the applicant and against the respondent railway.

19. 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 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.”

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 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

20. The applicant Smt. Rina Devi is 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 02/06/2019 till the date of judgment with no order as to cost.

- 21.The applicant Smt. Rina Devi w/o Late Shri Ashok Das, being mother of the deceased is entitled to an amount of Rs. 8,00,000/- (Rupees Eight Lakh Only) with proportionate interest thereon to her and permitted to withdraw Rs. 80,000/- (Rupees Eighty Thousand Only) with proportionate interest from compensation amount awarded to her and the balance amount of Rs. 7,20,000/- (Rupees Seven Lakh Twenty Thousand Only) with proportionate amount of interest should be invested in a fixed deposit for a period of three years in any nationalized Bank.
- 22.The amount of Rs. 80,000/- (Rupees Eighty Thousand Only) with proportionate interest amount permitted to be withdrawn shall be disbursed to the applicant in her respective saving bank account through ECS.
- 23.The amount invested in FDR along with interest upon maturity of FDR should be credited in her saving account without recourse to this Tribunal. The monthly accruals of the fixed deposit should also be credited in her savings bank account.
- 24.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 applicant 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.

25. The applicant is hereby directed to submit the details of her Aadhar linked Bank account of a Nationalized Bank situated nearest to her place of residence to the Additional Registrar of this Tribunal. The Bank shall not permit any joint name(s) to be added in her saving bank account or fixed deposit account ,i.e., her Saving Bank Account shall be an individual Saving Bank Account and not a Joint Account.
26. No loan, advance, withdrawal, or pre-mature discharge be allowed on the fixed deposit without permission of the Tribunal.
27. The concerned Bank shall not issue any cheque book and/or debit card to applicant. 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.
28. The Bank shall make an endorsement on the passbook of the applicant 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 applicant 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 applicant to withdraw money from her Saving Bank Account by means of a withdrawal form only.

- 29.The application is allowed in the above terms. No order as to costs.
- 30.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.
- 31.The Registry is directed to send a free certified copy of this judgment directly to the applicant at her address mentioned in the claim application by Speed Post in compliance of Rule 34 (3) of the Railway Claims Tribunal (Procedure) Rules, 1989.
- 32.Fix 23/01/2024 for hearing on compliance of the order by the applicant and the respondent.

Date:12/10/2023

(MUKESH NIGAM)
VICE-CHAIRMAN (TECHNICAL)