



रेल दावा अधिकरण, इलाहाबाद न्यायपीठ

RAILWAY CLAIMS TRIBUNAL, ALLAHABAD BENCH

Quorum:

SHRI MUKESH NIGAM, VICE CHAIRMAN (TECHNICAL)

Case No: OA/IIu/ALD/34/2019

Date of filing: 02/12/2019

Date of order: 29 /09/2023

1. Smt. Prabhawati w/o Late Ramraj Yadav
2. Shri Awaneesh Singh s/o Late Ramraj Yadav

Both residents of Village- Thata, Post- Ugrasenpur, Police Station- Sarai
Mamrej, District- Prayagraj (U.P.)

-Applicants

Versus

Union of India represented through

General Manager, Northern Railway, Baroda House, New Delhi

-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	09/03/2019
b	Person Died (hereinafter referred to as “deceased”)	Late Ramraj Yadav
c	Relationship of the claimants with the deceased	Wife and Son
d	Train involved	Jaunpur Passenger Train
e	Place of occurrence of untoward incident	Near Baryaram railway station
f	Untoward incident narrated :(in verbatim): <i>Para 6B: “The person deceased accidentally fell down when he was traveling by Jaunpur Passenger train near Bariyaram railway station on 09.03.2019.”</i> <i>Para 7: “Second class ticket no. 65193817 from Prayag Ghat to Baryaram was purchased and the ticket has been recovered from the dead body.”</i>	

g	Written Statement and DRM's Report	W.S. & DRM's Report filed on 30/08/2021
h	Averments in reply in Written Statement: (Para 3, 4, 14, 15, 16 & 18 in verbatim) <i>Para 3: "That the contents of para 6(b) of claim application are strongly denied."</i> <i>Para 4: "That the contents of para 7 of the claim application are denied. It is submitted that claimant has to prove that deceased possessed alleged journey ticket."</i> <i>Para 14: "That averments relating to fell down for train number 54107 dated 09/03/2019 are false however as per inquiry report deceased was trying to get down from running train. It is submitted that deceased himself committed such acts and omissions resulting fell down from train. The act of deceased amounts to be self-inflicted."</i> <i>Para 15: "That the alleged incident case is not covered in the definition of "Untoward Incident."</i> <i>Para 16: "That all heirs of the deceased have not been impleaded as party to the claim application and the application is bad for non-joinder of the necessary parties, the applicants are to be further put to strict proof that they are the only dependents of the deceased."</i> <i>Para 18: "That without prejudice, it is submitted that the respondent/railway administration is fully protected under the exemption of Section 124-A of the Railway Act, 1989 as it is a self-inflicted injury caused by his own criminal act."</i>	
i	Averments in reply in DRM's Report: (in verbatim)	

	“जॉच के अनुसार दिनांक 9.3.19 को बरियाराम स्टेशन पर मृतक गाड़ी सं० 54107 के स्टेशन पर रूकने से पहले चलती गाड़ी से उतरने लगा और गिर गया जिसके कारण उसकी मृत्यु हो गयी। टिकट सं० A-65193817 प्रयागघाट से बरियाराम दिनांक 9.3.19 उपलब्ध था। मृतक का घर स्टेशन से पहले रेल लाइनों के पास था जिस कारण वह चलती गाड़ी से उतरने का प्रयास कर रहा था एवं इसी कारण उसकी मृत्यु हुई जिसके लिये वह स्वयं जिम्मेदार है। मण्डल प्रशासन माननीय न्यायालय से इस वाद को खारिज करने का अनुरोध करता है।”
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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 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 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 number one, Smt Prabhawati filed an affidavit and presented herself as AW/1 on 30/05/2023. She was cross-examined and discharged. The applicant had furnished certain documents which are marked Exhibits as under:

1	Copy of Aadhar Card of Prabhawati	Exhibit A/1
2	Copy of Rail Journey Ticket	Exhibit A/2
3	Copy of Station Master Memo	Exhibit A/3

4	Copy of Nakal Rapat	Exhibit A/4
5	Copy of Panchnama	Exhibit A/5
6	Copy of Post-Mortem Report	Exhibit A/6
7	Copy of Pariwar Register	Exhibit A/7
8	Copy of Death Certificate	Exhibit A/8

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 Deepak Kumar, SI/RPF/Post- Janghai, Northern 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: -

Decisions with Reasons

Issues No 1&2

6. Issue no 1&2 are being taken up together as they are interconnected. It is seen from the entries in the Unusual Occurrence Register by Station Master/Baryaram that on 09/03/2019, train 54107 Dn Passenger arrived

Baryaram railway station at 1911 hrs and left at 1912 hrs. At 1913 hrs, some passengers who had got down from the train at Baryaram railway station informed the Station Master that an old person had been run over at some distance from the station. It is noted in the Register that Porter Shri Rajkumar was sent to the site of the incident who reported that at km 09/1-2 a dead body was found on Main line number one of the station. The track was cleared by Porter Rajkumar at 1945 hrs. The details of the incident were advised to the GRP/PRG and RPF/Janghai who attended the site at 2315 hrs and 2035 hrs, respectively.

7. In the Unusual Occurrence Register at Baryaram station, it was also mentioned that the deceased had a rail journey ticket bearing number A65193817 for journey from Prayag Ghat to Baryaram and the deceased was identified and the mobile number of his family members were also available with the Station. Similar details are also available in the Rojnamcha entry made at RPF Post /Janghai on the incident at 0230 hrs of 10/03/2021.
8. The proceedings of Panchnama on the body of the deceased started at 2040 hrs of 09/03/2019 and completed at 0900 hrs of 10/03/2019. The body of the deceased had been identified at the time of Panchnama from someone in the crowd. It was mentioned in the Panchnama that a rail journey ticket no. 65193817 was found from the body of the deceased. In the opinion of

the Panchas, the cause of the death of the deceased was due to injuries on account of fall during de-boarding from train.

9. The Post-Mortem of the body of the deceased was started at 1200 hrs and completed at 1230 hrs of 10/03/2019. The cause of death given in the Post-Mortem Report was haemorrhagic shock due to ante-mortem injuries (instantaneous death).
10. The applicants had filed rail journey ATVM ticket bearing number A65193817 issued on 09/03/2019 at 1647 hrs for journey of one adult from Prayag Ghat to Baryaram in second class ordinary as a proof of the deceased being a bonafide passenger as it was found from the body of the deceased at the site of the incident. The Respondent had the veracity of the ticket checked and had found it to be a genuine one.
11. The Applicant had filed an affidavit in which she reiterated the facts made in the original application.
12. Upon enquiry, the Respondent Railway had concluded that 09/03/2019 the deceased was travelling with a valid ticket from Prayag Ghat to Baryaram in train 54107 but had stated that the deceased was trying to de-board from a running train at Baryaram and in the process he accidentally fell from the train which resulted in his death. It had been stated by the respondent that the deceased was responsible for his own acts and it was his own negligence which led to his death. The Respondent's case was that the

applicants are not due to get compensation from the railways on account of negligence of the deceased.

13. 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 of the train in question and died in the incident by falling down from the running train which is an untoward incident as defined in Section 123(C)(2) read with Section 124-A of the Railway Act 1989. Hence, the issues no (1) and (2) are decided in favor of the applicants and against respondent railway.

Issues No 3 & 4

15. In order to prove their relation with the deceased, the applicants have submitted Pariwar Register issued by Shri Rajbahadur, Gram Vikas Adhikary, Block Pratappur, District Prayagraj on 01/06/2019 in which the deceased is shown to have died on 10/03/2019 and shows Smt Prabhawati as his wife, Gayatri, Archana, Priti as his daughters and Saurabh alias Awaneesh as his son. The applicants have also submitted their Aadhar Cards, which establishes their relationship with the deceased. The applicants Smt. Prabhawati and Shri Awaneesh Singh are the wife and son of the deceased. In the affidavit filed before the Bench, the applicant number 1 Smt Prabhawati had submitted that the deceased was her husband and she and her son and her four daughters are the only dependents of the deceased. She stated that she had four daughters and one son and does not know the reason that why the daughters name was not in the claim application. Further stated that all four daughters of her had stated that they don't need compensation amount and their shares shall be given to their younger brother Shri Awaneesh Singh. On 11/08/2023, the applicant counsel had submitted the Aadhar Cards of the daughters of the deceased, namely, Gayatri, Archana Sanjay Yadav, Poonam Devi and Preeti Yadav which were taken on record. The daughters of the deceased have not appeared before the Tribunal to assert that they do not need their share of claim compensation. There is nothing on record to disbelieve the said

evidence of the applicants to establish their relation with the deceased. The applicants being wife, son and daughters of the deceased are dependents of the deceased as defined in the Railway Act 1989. Hence, the issue number (3) is 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 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

- 17.The applicants Smt. Prabhawati, the daughters of the deceased, namely, Gayatri, Archana Sanjay Yadav, Poonam Devi, Preeti Yadav and Shri Awaneesh Singh are entitled for an award of Rs. 8,00,000/- (Rupees Eight Lakh Only) with interest @ 9% per annum from date of the incident i.e. from 09/03/2019 till the date of judgment with no order as to cost.
- 18.The applicant No. 1 Smt. Prabhawati w/o Late Ramraj Yadav being wife of the deceased is entitled to an amount of Rs 3,00,000/- (Rs Three Lakh only) with proportionate interest and each of the five children of the deceased, namely, Gayatri, Archana Sanjay Yadav, Poonam Devi and

Preeti Yadav and Shri Awaneesh Singh s/o Late Ramraj Yadav, are entitled to amount of Rs. 1,00,000/- (Rupees One Lakh Only) each with proportionate interest thereon to each of them.

19. Smt Prabhawati is permitted to withdraw Rs. 30,000/- (Rupees Thirty Thousand Only) from her respective share of compensation awarded to her along with proportionate interest and the balance amount of Rs. 2,70,000/- (Rupees Two Lakh Seventy 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.

20. Each of the five children of the deceased, namely, Gayatri, Archana Sanjay Yadav, Poonam Devi and Preeti Yadav and Shri Awaneesh Singh s/o Late Ramraj Yadav are permitted to withdraw Rs. 10,000/- (Rupees Ten Thousand Only) from their respective share of compensation awarded to them along with proportionate interest and the balance amount of Rs. 90,000/- (Rupees Ninety 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.

21. The amount of Rs. 30,000/- (Rupees Thirty Thousand Only) to Smt Prabhawati and the amount of Rs 10,000/- (Rupees Ten Thousand Only) awarded to each of the five children of the deceased, namely, Gayatri, Archana Sanjay Yadav, Poonam Devi and Preeti Yadav and Shri

Awaneesh Singh s/o Late Ramraj Yadav with proportionate interest amount permitted to be withdrawn shall be disbursed to the applicant No. 1 & each of the five children of the deceased, namely, Gayatri, Archana Sanjay Yadav, Poonam Devi and Preeti Yadav and Shri Awaneesh Singh s/o Late Ramraj Yadav in their respective saving bank account through ECS.

22.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.

23.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.

24.The applicant number 1 and each of the five children 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.

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

26.The concerned Bank shall not issue any cheque book and/or debit card to applicant number 1 and the five children. 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.

27.The Bank shall make an endorsement on the passbook of applicant number 1 and each of the five children 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 number 1 and each of the five children 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 number 1 and each of the five children to withdraw money from their Saving Bank Account by means of a withdrawal form only.

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

29.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.

30.The Registry is directed to send a free certified copy of this judgment directly to the applicant 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.

31.Fix 10/01/2024 for hearing on the compliance of the order from the applicants and the respondent.

Date: 29 /09/2023

(MUKESH NIGAM)
VICE-CHAIRMAN (TECHNICAL)