



रेल दावा अधिकरण, इलाहाबाद न्यायपीठ

RAILWAY CLAIMS TRIBUNAL, ALLAHABAD BENCH

Corum:

SHRI MUKESH NIGAM, VICE CHAIRMAN (TECHNICAL)

Case No: OA/IIu/ALD/51/2021 (IA/LKO/265/2015)

Date of filing:12/10/2015

Date of order:03/04/2024

1. Bansh Gopal @ Vansh Gopal son of Late Ram Khelawan age about 45 years
2. Smt. Shaila Devi wife of Bansh Gopal @Vansh Gopal age about 43 years

Both residents of Village- Sabhapur, Majra-Khajuriha, Police Station- Pahadi,
District- Chitrakoot, 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: 8,00,000/- with interest

Present:

For the applicant: Shri D. K. Tripathi, Learned Counsel

For the respondent: Shri A. V. 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	24/11/2012
b	Person Died (hereinafter referred to as “deceased”)	Late Vinod Kumar Singh
c	Relationship of the claimant with the deceased	Parents
d	Train involved	Train No. 15159, Sarnath Express Train
e	Place of occurrence of untoward incident	At Manikpur Railway Station
f	Untoward incident narrated :(in verbatim): <i>Para 6 (B): “The person deceased was going from Allahabad to Chitrakoot by Sarnath Express train no. 15159 he accidentally fell down at Manikpur Railway station District- Chitrakoot on 24/11/12.”</i> <i>Para 7: “Second class journey Ticket purchased from Allahabad to Chitrakoot wearing Ticket no. 28352846 in presence of his Friend.”</i>	
g	Written Statement and DRM’s Report	W.S.& DRM’s Report filed on

	15/01/2021
h	Averments in reply in Written Statement: (Para 3, 4, 14&15 in verbatim) <i>Para 3: “That the contents of para 6B of the application are false and concocted hence denied.”</i> <i>Para 4: “That the contents of para 7 of the claim application are denied. Applicants have to prove the deceased possessed alleged journey ticket.”</i> <i>Para 14: “That deceased was not travelling in train no 15159. Sarnath Exp. as the alleged incident took place before arrival of the alleged train, it is submitted that as per report, deceased was travelling in train no 11060, which has no schedule stoppage at Manikpur Station, while the train was passing through the station, deceased jumped from running train and sustained mortal injuries.”</i> <i>Para 15: “That the facts and circumstances of the case do not come in purview of Section 123 (C) (2) and Section 124-A of the Railway Act 1989.”</i>
i	Averments in reply in DRM’s Report: (in verbatim) <i>“धारा 124 (ए) के अन्तर्गत प्रदत्त शक्तियों के तहत निरीक्षक रे0सु0ब0 मानिकपुर के द्वारा जाँच की गई मामले में संलग्न पत्रावली का अवलोकन करने से स्पष्ट होता है कि मृतक विनोद कुमार सिंह इलाहाबाद से चित्रकूट का टिकट लेकर गोदान एक्स0 में बैठकर मानिकपुर के लिये आ रहा था। चूंकि यह गाड़ी मानिकपुर स्टेशन में नहीं रूकती है गाड़ी धीमी स्पीड में थू जा रहा थी। जिससे उतरते समय गिरकर घायल हो गया। कुछ दिन इलाज के दौरान मृत्यु हो गयी। चलती गाड़ी से उतरना व चढ़ना रेल अधिनियम की धारा 156 के तहत दण्डनीय अपराध है। मृतक की मृत्यु स्वयं की लापरवाही के कारण हुई है। जिसके लिए वह स्वयं जिम्मेदार है। रेल प्रशासन कोई जबाबदार नहीं है।”</i>

2. The original application was filed after the period of limitation with a delay of 01 year 10 months and 19 days, which was condoned by the Bench in its order dated 07/12/2020.
3. Upon pleadings of the parties, four issues were framed on 15/07/2021: -
 - 1) Whether the deceased was a bona-fide passenger of the train in question at the relevant time of the incident?
 - 2) Whether 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?
 - 3) Whether the applicant(s) is/are the sole dependant(s) of the deceased and is/are covered by the definition of dependant under Section 123(b) of The Railway Act, 1989?
 - 4) To what amount of compensation and relief, if any, is the applicant entitled?
4. The applicant Bansh Gopal tendered an affidavit as AW/1 and presented Shri Vinay Singh as AW/2 on 04/08/2023. Both were cross-examined and discharged. The applicant had furnished certain documents which are marked Exhibits as under:

1	Copy of Aadhar Card of Bansh Gopal	Exhibit A/1
2	Original Rail Journey Ticket	Exhibit A/2
3	Copy of Aadhar Card of Vinay Singh (AW/2)	Exhibit A/3

5. 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 Rajendra Kumar, ASI/RPF/Post- Manikpur, North Central Railway along with Annexure.
6. 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

7. Issue no 1&2 are being taken up together as they are interconnected. It is noted from the records that in the Station Diary maintained at Manikpur railway station, it was mentioned by the Dy. S.S./Shri K.S.Rajput during the duty hours of 1600-2400 hrs of 24/11/2012, at 1910 hrs, one unknown person had informed that a passenger had fallen from train no. 11060. It was further mentioned that at 1915 hrs Dy. S.S immediately informed RPF/Manikpur and a memo was sent to ADMO but ADMO was not available.
8. As per Nakal Rojnamcha maintained at RPF post- Manikpur, an entry was made vide entry no. 17 at 2100 hrs on 24/11/2012 stating that SI Shri Rajendra Kumar along with Head Constable Shri K.N.Mishra and

Constable Shri S.V.Singh had admitted an injured person namely Shri Vinod s/o Shri Bansh Gopal and resident of Kotwali Karvi, District-Chitrakoot in CHC/Manikpur. It was further mentioned that Shri K.N.Mishra while on duty at the platform had informed around 1900 hrs that one unknown person had jumped from train no. 11060 Godan Express and was injured and on receipt of the information and after informing Dy. S.S/Manikpur to prepare a memo, the RPF staff had reached platform no. 1, where the injured was found. It was further stated in the Rojnamcha that a memo was obtain from Station Master and S.S/Manikpur was requested to inform the railway hospital and doctors but due to non-availability of doctors in the railway hospital and seeing the condition of the injured, the RPF had taken the injured to the CHC/Manikpur where the injured person gained consciousness and gave his name and address and after some time, around 2045 hrs, his father attended the hospital and the RPF staff left the injured under his care. It was also mentioned in the Rojnamcha that no rail journey ticket had been found and that the person was responsible for jumping out from a running train which was a through passing one.

9. The applicant had filed an affidavit in which he had stated that on 24/11/2012, the deceased was travelling from Allahabad to Chitrakoot by Sarnath Express train and that the deceased had purchased a second class ticket in front of his friend Shri Vinay Singh. The applicant had stated

that the deceased was travelling in Sarnath Express and at the Manikpur, he had to catch connecting train to Chitrakoot. The applicant had also stated that after his son was injured, it was the Police which had taken him to the hospital and his son died during the treatment. The applicant had stated that the death occurred after 10 to 12 days in the hospital during the treatment and no Panchnama and Post-Mortem was done. During the cross examination, the applicant had stated that the deceased was taking coaching classes in Allahabad and that he received information about the incident around 1900-1930 hrs from the Police of Manikpur. He had further stated in the cross examination that he had reached CHC/Manikpur at 2100 hrs on the day of the incident and his son was alive but due to injuries, his son was not in the position to talk. Further, he had stated that his son was brought to Vijay Hospital/Allahabad for better treatment and during the treatment around 08 days later, the deceased died on 02/12/2012. The Applicant had stated that upon his arrival at Manikpur railway station, he had found from the pocket of his injured and unconscious son, a rail journey ticket, a mobile phone and cash of Rs. 950.

10. The applicant had presented Shri Vinay Singh, AW/2 who had stated that he had gone to leave the deceased at Allahabad railway station on 24/11/2012 and in his presence the deceased had purchased a rail journey ticket from Allahabad to Chitrakoot. He further stated that the deceased

probably took Sarnath Express train and he had to take another train for his journey to Chitrakoot. During the cross examination, AW/2 had stated that the deceased had purchased the ticket around 1500-1530 hrs in his presence. The deceased had told him that he would take Sarnath Express for Manikpur and another train from Manikpur to Chitrakoot.

11.The Applicant had submitted an original rail journey ticket along with original application bearing no. AD28352846 from Allahabad to Chitrakoot Dham Karvi for journey in second class mail express for one adult for the date of 24/11/2012. The ticket was purchased at 1521 hrs. The respondent had got the veracity of the ticket checked and found it to be genuine and the ticket was issued from the window no. 98 from Allahabad railway station.

12.The applicant had also submitted Medical Card of CHC/Manikpur bearing no. E/2645 dated 24/11/2012 in the name of the deceased.It was mentioned on the card that upon examination, the deceased was found unconscious, bleeding from nose, not responding and was being referred to higher centre for better treatment and management.

13.The respondent had stated that from the basis of available records and evidence, it was apparent that the deceased was travelling after purchasing the valid rail journey ticket from Allahabad to Chitrakoot Dham Karvi and boarded the Godan Express which does not have a

scheduled stoppage at Manikpur railway station and the deceased got injured by getting down from a moving train and, after treatment, he died.

14.The Respondent railway had stated that the negligent act was fully covered under the provision of Section 124-A as this accident appeared to be on account of criminal act of the deceased of getting down from a running train(which was a through train without any stoppage at the station).

15.It would be relevant here to reproduce relevant provision of Section 124-A of the Railway Act 1989 which provides for compensation to the victims in an untoward accident and the same are as under:

Section 124-A. Compensation on account of untoward incidents.—"When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to—

(a) Suicide or attempted suicide by him;

(b) Self-inflicted injury;

(c) His own criminal act;

(d) Any act committed by him in a state of intoxication or insanity;

(e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation.—For the purpose of this section, "passenger" includes—

(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.

16. Thus, a passenger includes a person travelling with a valid pass or ticket as well as who has purchased a valid ticket for travelling by a train carrying passenger on any date or having a valid platform ticket and becomes a victim of an untoward incident. If it is established that the deceased was a bonafide passenger then whether there has been any wrongful act, neglect or default on the part of the railway administration, the railway administration would be liable to pay compensation.

17. There is no case brought out by the respondent or the counsel of the respondent that the act of the deceased was “His own criminal act (124-A/c)” or “ Any act committed by him in a state of intoxication or insanity(124-A/d)” and, therefore, the respondents submissions that the negligence of the deceased is covered under section 124-A/(c and d) are set aside. Similarly, the respondent had not brought any case against the applicant with respect to 124-A/a and 124-A/e. The issue to be decided is whether the death of the deceased can be termed as a self-inflicted injury to deny the compensation to the applicant or not. It is relevant to decide whether an act to disembark from a moving train by the deceased had an element of malicious intent and was an imprudent act resulting in his death.

18. 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 deboarding 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."

19. In the various judgments, i.e., Hon'ble Railway Claims Tribunal in Union of India versus Manno Devi in OA No. DLI/343/2019 decided on 20/04/2021, Hon'ble Railway Claims Tribunal, Chandigarh Bench in Union of India versus Akash Agarwal in OA No. CDG/158/2018 decided on 01/02/2021, and Hon'ble Delhi High Court in FAO No. 28/2016 decided on 17/04/2018 in Dharmvir versus Union of India, it is evident that trying to deboard from a moving train might be a negligent act but cannot be a callous and imprudent act on behalf of the deceased when he tried to deboard from the moving train. No doubt, in the case under consideration, the act of the deceased in deboarding the 11060 train at

Manikpur station was a rash and negligent act but it was not an intentional act of attempted suicide or an intention to inflict himself with injury.

20. Therefore, in view of the facts and circumstances of the present case and law applicable thereon, it is held that in the regime of strict liability, compensation cannot be denied to the applicant. It has been proved on record that the deceased was a bonafide passenger 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) and (2) are decided in favor of the applicants and against respondent railway.

Issues No 3& 4

21. 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 Uttar Pradesh, district- Karvi which showed that they are the parents of the deceased. The applicant Bansh Gopal had also submitted his Aadhar Card and the Aadhar Card of the deceased was available with the DRM's report, which further established their relationship. In the affidavit filed before the Bench as well as during the cross-examination, the applicant had submitted that the deceased was his unmarried son and he and his wife, applicant no. 2 Smt. Shaila Devi were the only dependents of the

deceased. The applicant no.1 Bansh Gopal @ Vansh Gopal is father of the deceased and applicant no.2 Smt. Shaila Devi is mother 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, these issues are also decided in favor of the applicants and against the respondent railway.

22. 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 before 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 24/11/2012, hence the applicants are entitled for an amount of Rs. 8,00,000/-(Rupees Eight Lakh Only). 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 shall be disbursed in the following manner:-

O R D E R

- 23.The applicants Bansh Gopal @ Vansh Gopal and others are entitled for an award for an amount of Rs. 8,00,000/- (Rupees Eight Lakh Only).
- 24.The applicant no. 1 Bansh Gopal @ Vansh Gopal s/o Late Ram Khelawan, being father of the deceased, is entitled to an amount of Rs. 4,00,000/- (Rupees Four Lakh Only) and permitted to withdraw Rs. 40,000/- (Rupees Forty Thousand Only) through ECS in his saving bank account and the balance amount from his share i.e. Rs. 3,60,000/- (Rupees Three Lakh Sixty Thousand Only) should be invested in a fixed

deposit for a period of three years in any nationalized Bank situated nearest to his place of residence.

25.The applicant no. 2 Smt. Shaila Devi, being mother of the deceased, is entitled to an amount of Rs. 4,00,000/- (Rupees Four Lakh Only) and permitted to withdraw Rs. 40,000/- (Rupees Forty Thousand Only) through ECS in her saving bank account and the balance amount from her share i.e. Rs. 3,60,000/- (Rupees Three Lakh Sixty Thousand Only) should be invested in a fixed deposit for a period of three years in any nationalized Bank situated nearest to her place of residence.

26.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.

27.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.

28.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.

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

30.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.

31.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.

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

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

34.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.

35.Fix on 02/07/2024 for hearing on compliance report and payment status from both the parties of the above order.

Date:03/04/2024

(Mukesh Nigam)
Vice-Chairman (Technical)