



रेल दावा अधिकरण, इलाहाबाद न्यायपीठ

RAILWAY CLAIMS TRIBUNAL, ALLAHABAD BENCH

Quorum:

SHRI MUKESH NIGAM, VICE CHAIRMAN (TECHNICAL)

Case No: OA/IIu/ALD/69/2022

Date of filing: 08/06/2022

Date of order: 05 /10/2023

1. Dhaneshwar Ram s/o Late Salabi Ram

Resident at Present Address- Police Line, P.S. Kotwali Sadar, District-
Pratapgarh (U.P.)

Permanent Address- Village- Balupur, P.S.- Khejuri, District- Ballia (U.P.)

-Applicant

Versus

Union of India represented through

General Manager, North Eastern Railway, Gorakhpur

-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 A. P. Singh, Learned Counsel

For the respondent: Shri D. Tripathi, 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	01/12/2021
b	Person Died (hereinafter referred to as “deceased”)	Late Shri Vinod Kumar
c	Relationship of the claimant with the deceased	Father
d	Train involved	14015 Sadbhawana Express
e	Place of occurrence of untoward incident	At Ballia railway station
f	Untoward incident narrated :(in verbatim Para II 1(b) and Para) <i>Para II 1(b): “E- Ticket PNR No.- 6560111016, Journey- Ballia to Varanasi Jn., Date- 01/12/2021.”</i> Para II 1(d): The alleged site of the incident falls within the route described above Para II 2(a): The station of origin was Ballia and of destination was Varanasi Junction. Para III 2 (d) : The accident was due to fall from train	

	Para III 2 (d) : Fall from the train was while boarding the train at the railway platform of the station of origin station <i>Para III (d) (vi): “The deceased was travelling from Ballia to Varanasi on dated 01/12/2021 with his father & two sisters when the deceased was boarding at the footboard of the compartment in meantime the train was started with heavy jerk & Jolt as the result of this the deceased was fallen down from the running train & grievously injured & carried to Disstt. Hospital Ballia where on duty doctor declared him dead.”</i>	
g	Written Statement and DRM’s Report	W.S. & DRM’s Report filed on 12/08/2022
h	Averments in reply in Written Statement: (Para 7, 9, 10, & 11 in verbatim) <i>Para 7: “That the contents of part VII of the claim application are denied. The applicants are not entitled to get any compensation from the respondent/Railway administration the liability of the respondent is confined to the provision of law if proved.”</i> <i>Para 9: “That it is not true that the deceased accidentally fell down from the train carrying passenger the story made by the claimant is false and fabricated and the case of the applicant is not covered in the definition of UNTOWARD INCIDENT.”</i> <i>Para 10: “That without prejudice of the above plea it is submitted that the respondent fully protected under exemption clause of Section 124-A of Railway Act 1989.”</i> <i>Para 11: “That the particular 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.”</i>	

i	Averments in reply in DRM's Report: (in verbatim) “दिनांक 01-12-2021 को मृतक विनोद कुमार s/o धनेश्वर राम निवासी - ग्रा० बालूपुर थाना- खेजुरी जि० बलिया उ० प्र० उम्र 27 वर्ष की बलिया रेलवे स्टेशन PF No – 03 पर गाड़ी सं० . 14015 पर चढ़ने के प्रयास में गिरकर घायल हो गये जिसे आनन फानन में सदर अस्पताल बलिया पहुंचाया गया जहां Dr. द्वारा चेक करने पर मृत घोषित किया गया। मृतक के पास यात्रा टिकट PNR- No- 656-0111016 TNo- 14015- BUI-BSB dt 01-12-2021 मिला। घटित घटना मृतक की लापरवाही का परिणाम है जिसके लिये मृतक स्वयं जिम्मेदार है। घटित घटना के लिये रेल प्रशासन जिम्मेदार नहीं है।”
---	--

2. Upon pleadings of the parties, four issues were framed on 12/08/2022: -

- 1) Whether the applicant is the sole dependant of the deceased and is covered by the definition of dependant under Section 123(b) of The Railways Act, 1989?
- 2) Whether the deceased was a bona-fide passenger of the train in question at the relevant time of the incident?
- 3) Whether the death of the deceased was on account of an untoward incident as defined under Section 123(c) read with Section 124A of The Railway Act, 1989?
- 4) To what amount of compensation and relief, if any, is the applicants entitled?

3. The applicant Dhaneshwar Ram filed an affidavit as AW/1, was cross-examined and discharged. The applicant had furnished certain documents which are marked Exhibits as under:

1	Copy of Aadhar Card of Dhaneshwar Ram	Exhibit A/1
---	---------------------------------------	-------------

2	Copy of Online Rail Journey Ticket	Exhibit A/2
3	Copy of Police Report	Exhibit A/3
4	Copy of Panchnama	Exhibit A/4
5	Copy of Post-Mortem Report	Exhibit A/5

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 Ramesh Chandra Singh, ASI/RPF/Post- Ballia, North Eastern 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 2 & 3

6. Issues no 2 & 3 are being taken up together as they are interconnected. It is recorded in the Station Diary of Ballia railway station for 01/12/2021 that RPF on platform duty informed that one person aged about 40 yrs while trying to board 14015 Up when the train was running had been badly

injured and the SI/RPF and the family members of the injured had been immediately taken the injured to the District Hospital. It is also mentioned that a memo was also sent to RPF and GRP.

7. The item number 28 entered at 1030 hrs in the Rojnamcha maintained at RPF post at Ballia for 01/12/2021 mentioned that when SI/RPF Shri J.K.Mishra along with other constables were attending to train passing duty, one person was badly injured on train 14015 on platform number three and the said train was stopped after it had started and the injured person taken out from the space between the platform and the train and was immediately sent for treatment along with his family members to Sadar Hospital ,Ballia where the Doctor after check up declared the injured person, dead. It is further mentioned that the family members present identified the deceased and a PNR 6560111016 for rail journey from Ballia to Varanasi was found on his mobile. It also mentioned that the deceased was trying to board a running train and while doing so was badly injured when he came between the running train and the platform.
8. The proceedings of Panchnama started at 1425 hrs and completed at 1620 hrs of 01/12/2021. In the opinion of the Panchas, the cause of the death of the deceased was due to injuries on account of fall from train when he tried to board Sadbhawana Express for journey from Ballia to Varanasi and slipped.

9. The Post-Mortem of the body of the deceased was started at 1710 hrs and completed at 1740 hrs of 01/12/2021. The cause of death given in the Post-Mortem Report was haemorrhagic shock due to ante mortem injuries.
10. The Applicant had filed an affidavit in which he reiterated the facts made in the original application. He stated that the deceased was travelling with his sisters Nirmala and Maya and him from Ballia to Varanasi in Sadbhawana Express for which they had a valid e-ticket for the aforementioned four persons for rail journey in sleeper class. He stated during cross examination that the sisters and he had boarded the train when it stopped at Ballia and when the deceased was boarding the train, it started moving due to which he fell and was badly injured.
11. The Respondent Railway had accepted that the deceased was travelling with a valid rail journey ticket from Ballia to Varanasi in Sadbhawana Express on 01/12/2021 but had stated that he accidentally fell from the train due to negligence of trying to board a running train for which he is responsible.
12. 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.”

13. 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 untoward incident as defined in Section 123(C)(2) read with Section 124-A of the Railway Act 1989. Hence, the issues number (2) and (3) are decided in favor of the applicant and against the respondent railway.

Issues No 1 & 4

2. In order to prove his relation with the deceased, the applicant had placed on record, the Aadhar card of the deceased which showed the applicant as father of the deceased. This further was validated by the entries in the Death Certificate of the deceased, the place of residence certificate dated 21/02/2018

issued by the competent authority in the Jan Sewa Kendra, Ballia. The applicant had also submitted his Aadhar Card as a proof of his identity. In the affidavit filed before the Bench and during his cross examination, the applicant had stated that the deceased was unmarried and the wife of the applicant was also dead before the incident in which the deceased died. The applicant Shri Dhaneshwar Ram s/o Late Salabi Ram is the father of the deceased and the only dependent. There is nothing on record to disbelieve the said evidence of the applicant to establish his relation with the deceased. The applicant Dhaneshwar Ram s/o Late Salabi Ram being father 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.

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 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 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 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

3. The applicant Shri Dhaneshwar Ram s/o Late Salabi Ram 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 01/12/2021 till the date of judgment with no order as to cost.

- 15.The applicant Dhaneshwar Ram s/o Late Salabi Ram being father of the deceased is entitled to amount of Rs. 8,00,000/- (Rupees Eight Lakhs Only) with proportionate interest thereon to him and permitted to withdraw Rs. 80,000/- (Rupees Eighty Thousand Only) with proportionate interest from compensation amount awarded to him 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.
- 16.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 his respective saving bank account through ECS.
- 17.The amount invested in FDR along with interest upon maturity of FDR should be credited in his saving account without recourse to this Tribunal. The monthly accruals of the fixed deposit should also be credited in his savings bank account.
- 18.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.

19. The applicant is hereby directed to submit the details of his Aadhar linked Bank account of a Nationalized Bank situated nearest to his place of residence to the Additional Registrar of this Tribunal. The Bank shall not permit any joint name(s) to be added in his saving bank account or fixed deposit account, i.e., his Saving Bank Account shall be an individual Saving Bank Account and not a Joint Account.
20. No loan, advance, withdrawal, or pre-mature discharge be allowed on the fixed deposit without permission of the Tribunal.
21. 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.
22. 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 his Saving Bank Account by means of a withdrawal form only.

- 23.The application is allowed in the above terms. No order to costs.
- 24.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.
- 25.The Registry is directed to send a free certified copy of this judgment directly to the applicant at his address mentioned in the claim application by Speed Post in compliance of Rule 34 (3) of the Railway Claims Tribunal (Procedure) Rules, 1989.
- 26.Fix 22/01/2024 for hearing on the compliance of the orders by the applicant and the respondent

Date: 05/10/2023

(MUKESH NIGAM)
VICE-CHAIRMAN (TECHNICAL)