

BEFORE THE RAILWAY CLAIMS TRIBUNAL

BHUBANESWAR BENCH

Case No. OA (IIU)/144/2019

Coram: Hon'ble Sri Virendra Kumar Goyal, Member (Judicial),
RCT/BBS

Date of incident: 25/06/2019

Date of Registration: 23/10/2019

Date of Judgment: 22/07/2024

Claim Amount: Rs. 8,00,000/-

In the matter of

1.K.Shushila aged about 44 years

Applicants

W/o late K.Shrinibas

2.Koribilli Eswari aged about 70 years

W/o late Korubilli Tulasi Rao

Both are of village: Bhupatisahi,

PO/PS; Jaypore, Distt: Koraput

Odisha

-Versus-

Union of India represented through

Respondent

It's General Manager, East Coast Railway

Bhubaneswar

Appearance:

For the Applicants : Sri B. Beura, Advocate

For the Respondent : Sri K.C. Mahapatra, Ld. Standing Counsel

J U D G E M E N T

1. This present original claim application had been filed by the Applicant No.1 (wife of the deceased) under section 16 of the Railway Claims Tribunal's Act, 1987, claiming compensation of Rs. 8,00,000/-

(Rupees Eight Lakhs) with 12% interest from date of filing from the Railway Administration on account of death of her husband namely K.Shrinibas, allegedly in an untoward incident involving fall from a running train. Subsequently during pendency of the case, this bench vide its order dated 26/06/2023, mother of the deceased namely Koribilli Eswari has been impleaded as applicant No. 2 to the claim application.

2. **Brief facts of the case:** As per original claim application, on the date of incident i.e. 25/06/2019 the deceased K.Shrinibas was travelling from Visakhapatnam to Jeypore railway station by Visakhapatnam-Kirandol passenger train and during course of journey, due to jerk push and pull of passengers , he accidentally fell down from the said train in between Chattriput and Jeypore railway station and died out of sustaining injuries on his person. Based on the information given by Station Master, Koraput, GRPS, Koraput has registered an UD case bearing No.3/19 and took up investigation. With regard to ticket, it is stated that the journey ticket purchased by the deceased was lost along with the loss of bag in which the said ticket was kept.

3. **Respondent's Reply:** On receipt of the notice, the Respondent Railway appeared and filed written reply to the claim application along with DRM's statutory investigation report. In the written reply, it is stated that the pleading of the Applicants are false, fabricated and not within the scope of section 123 (C) (2) and 124 A of the Railway Act 1989.It is further stated It is stated that on duty Loco Pilot of train No.58501 VSKP-KRDL passenger during examination stated that during his duty period, he did not notice or receive from any one

about any incident and no passenger informed him regarding falling down of any person in between CTS-JYP section. As per statutory DRM's investigation there is no direct witness to the alleged incident and the deceased died out of self-inflicted injuries while trespassing railway track. It is further stated that there is no any foul play or negligence on the part of railway administration. With these facts and circumstances, the Respondent Railway sought for dismissal of the claim application.

4. **Applicant's Evidence:** The Applicants in support of their claim has filed the copy of FIR, inquest report, dead body challan, voter IDs, final report and Applicant No. 2 mother of the deceased has been examined as AW 1 and another witness namely Koribilli Prasad, elder brother of the deceased has been examined as AW 2. Both these witnesses were cross examined by the Ld. Counsel for the Respondent before the bench.

5. **Respondent's Evidence:** The Respondent Railway on the other hand filed the statutory DRM's investigation report along with enquiry report of ASIF/RPF/Koraput (EO), statement of on duty Loco Pilot and on duty train Guard of train No. VSKP-KRDL passenger train and other documents in connection with the alleged incident. The Respondent railway did not produce any witness to examine before the bench.

6. **Issues:** From the pleadings of the parties, this Tribunal framed the following issues for determination:-

1. Whether the death of deceased was due to any untoward incident as defined under section 123 (c) of the Railways Act 1989?
2. Whether the deceased was travelling as a bona fide passenger of the train at the time of occurrence of the untoward incident?
3. Whether the Applicants are entitled to get compensation under section 124 A of the Railways Act 1989?
4. Whether the Applicants are the dependents of the deceased to receive the compensation as claimed?
5. To what relief the Applicants are entitled to?

7. **FINDINGS:** I have carefully gone through the pleadings of the parties, material made available on record, evidence adduced on behalf of the Applicants as well as Respondent and heard the arguments on both sides. My findings on the aforesaid issues are as under:-

7.1. **Issue Nos. 1, 2 & 3:** These three issues are taken up together for the sake of convenience, being interconnected.

AW 1, mother of the deceased has deposed in her affidavit in evidence that her son, K. Shrinibas in course of his journey by Visakhapatnam –Kirandul passenger train, accidentally fell down in between Chattriput to Jeypore railway station, sustained injury and died. She further deposed that after getting death information of her deceased son, her elder son and relatives went to GRPS, Koraput and identified him. She further deposed that she has been examined by the RPF personnel about the incident of death her deceased son. In this connection, Koribilli Prasad, elder brother of the deceased has filed affidavit and examined himself before the bench as AW 2. In the

affidavit in evidence, he deposed that on the date of incident, he had accompanied his younger brother (deceased) to VSKP railway station and the deceased had purchased a journey ticket in his presence to travel to Jeypore railway station. He further deposed that he had purchased a platform ticket and the deceased after boarding into the train, he came out of platform and TTE collected platform ticket at the exit gate. The Ld. Counsel for the Applicants during argument submitted that a station diary entry has been made at SS/Chatrapur based on the report of on duty Loco Pilot of Electric Light Engine to the effect that the deceased was found lying at Km No. 230/8-9 in between JYP CTS section and the GPS, Koraput on completion of enquiry of the UD case submitted final report with the remarks that cause of death of the deceased is due to fall down from running train has not be disputed by the Respondent Railway. He submitted that the deceased died out of untoward incident within the meaning of section 123 (C) (2) read with section 124 A of the Railway Act. With regard to journey ticket of the deceased, he submitted that it was lost in the incident along with the loss of bag and the Respondent railway has not produced any evidence to establish that deceased at the time of death was not travelling in the train. He accordingly sought for compensation as per provision of Railway Act.

7.2 On rebuttal the Respondent Railway in the statutory DRM's investigation report submitted that there are no eye witnesses to the alleged incident and the incident of death has caused out of 'self-inflicted injuries' while he was trespassing. It is further alleged that the deceased was not all a bona fide passenger and plea taken by the Applicants that journey ticket of the deceased along with the loss of bag is completely false, fabricated. The Ld. Counsel for the

Respondent during arguments submitted that there is complete lack of evidence that the deceased at the time of death was travelling in the train and going by the circumstantial evidence supported by non-recovery of journey ticket does appear that he might have died due to some other reasons other than fall from train. He sought for protection of Railway Administration from payment of any compensation under Section 124-A of the Railways Act and prayed for dismissal of the claim application.

7.3 The fact remains that a station diary entry No. 1352 (1) has been made at SS/Chatrapur railway station based on the report of on duty Loco Pilot of DN Electric Light Engine to the effect that the during his duty house, he noticed the deceased was lying at KM No. 230/8-9 in between JYUP and CTS section. It is a fact that the GRPS, Koraput on completion of enquiry of the UD case submitted final report with the remarks that cause of death of the deceased is due to accidental fall running train, not disputed by the Respondent. Although the Respondent railway has come up with the plea that there is no eye witness to the alleged incident and the incident of death of the deceased was caused due to self-inflicted Act but in support of such plea, no cogent or direct evidence is produced by them to establish the same. It is on record that the AW 2, brother of the deceased in the affidavit in evidence deposed that he had accompanied the deceased at VSKP railway station and witnessed his deceased brother boarding into the train. There is no evidence on record to establish that deceased was a trespasser and his intention was to commit suicide on the railway track or died out of self-inflicted act. Therefore, the stand taken by the Respondent railway as stated above is not backed up by sufficient evidence in terms of either direct witness to

the incident or any documentary evidence, thereby failed to establish that the incident of death had arisen due to any one of the expected reasons mentioned under section 124 A of the Railways Act. Therefore, it cannot be held to be a willful act of negligence as the deceased paid the ultimate price of death for an act which certainly cannot be inferred to be a deliberate or suicidal / self-inflicted act.

In this connection I would rely upon the observation of Hon'ble Supreme Court's judgments in the cases of Union of India - vs - Prabhakaran Vijaya Kumar & Ors. (2008) 9 SCC 527 and Jameela and Ors - vs - Union of India (2010) 12 SCC 443, being relevant, wherein the Hon'ble Apex Court has held that ... the liability of Railways is a strict liability even if there is negligence of a passenger i.e. unless and until the negligence is a criminal negligence or a case of suicide or self-inflicted injury, Railways are held liable to compensate the passenger for such untoward incident.

7.4 With regard to journey ticket, it is true that during physical verification no journey ticket was recovered in possession with the deceased but non production of ticket does not necessarily establish the fact that the deceased at the material time was an unauthorized passenger of the train in question. In this connection AW 2, Koribilli Prasad by way of affidavit in evidence stated that he had accompanied his deceased brother to VSKP railway station and witness the purchased of ticket by him. The statement of AW 2 has not been controverted and the Respondent railway has not produced any evidence to establish that AW 2 was not with the deceased at VSKP railway station thereby failed to discharge the burden of proof shifted upon them to prove that the deceased was not a bona fide passenger of the alleged train at the relevant time. Keeping in view of the

principle laid down in the judgment of the Hon'ble Supreme Court in the case of Union of India Vs Rina Devi, 2018 SCC on Line SC 507, the Respondent Railway Administration has failed to discharge the burden of proof shifted upon them to prove that the deceased was not a bona fide passenger of the alleged train at the relevant time. Hence, the conclusion arrived in the DRM's investigation report that the deceased was not a bona fide passenger at the material time is not accepted for want of sufficient evidence.

7.5 Thus, keeping in view of settled principles of law (supra) supported by accepted evidence available on record and circumstances of this particular case, it is held that the deceased was a bona fide passenger and his death has occurred on account of an accidental fall from the running train and the said incident is an "untoward incident" as defined under section 123(c) (2) of the Railways Act, 1989, for which Railway Administration is liable to pay compensation under Section 124-A of Railways Act, 1989 to the Applicants for such death. Therefore, these issues are decided in favour of the Applicants.

7.6 **Issue Nos. 4 & 5:** The original claim application had been filed by the Applicant (wife of the deceased) and subsequently, this bench vide its order dated 26/06/23, mother of the deceased has been Impleaded as Applicant No.2 in this case. AW 1, Applicant No.2, has deposed in her affidavit that her deceased son has no son and daughter. She deposed that her husband had died prior to the death of her deceased son. She further deposed that her widow daughter in law (Applicant No.1) has got second marriage. Although the Applicant No.2, mother of the deceased has deposed by way of affidavit that her daughter in law, Applicant No.1 subsequent to death of her

husband left house and got remarried. Merely Applicant No.1, wife of the deceased got remarried subsequent to death of her husband, she cannot be deprived of her legal right to claim compensation, on account of death of her husband being, first sufferer. Both the Applicants have filed their respective Aadhaar Cards in support of their identity and relationship with the deceased. The Respondent has not adduced any evidence to prove anything otherwise. Thus, in view of above, the Applicants being the wife and mother are 'dependent' of the deceased under section 123 (b) of the Railways Act, 1989 and accordingly, they are entitled to get compensation of Rs. 8,00,000/- (Rupees Eight Lakhs), as prescribed under part I of the Schedule appended of Rule 3 (3) of the Railway Accidents and Untoward Incident (Compensation) Rules 1990 (as amended on 22/12/2016, applicable w.e.f 01/01/2017) along with the simple interest @ 9% per annum from the date of incident i.e. 25/06/2019 till the date of payment. Both these issues are decided accordingly. Hence ordered.

The awarded amount shall be distributed in the following manner: -

- | | |
|--|------------------------|
| 1. K.Shushila, wife of the deceased | : Rs.4,00,000/- |
| 2. Koribilli Eswari mother of the deceased | : <u>Rs.4,00,000/-</u> |
| | Rs. 8,00,000/- |

9. ORDER : The awarded amount) shall be made in the following manner:-

9.1 As regards disbursal of the amount of award, it may be seen that in the case of Geeta Devi Vs Union of India, Hon'ble Delhi High Court 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.

The Hon'ble High Court went on to lay down the mode of payment and in pursuance of the Orders passed by the Delhi High Court, Government of India has issued a Notification of 3rd June, 2020 amending Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 2020, adding Rule 5 which reads as under:

Rule-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 sub-serve justice.
- 5.2. If any of the claimant 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.

In view of the above, the Applicants are entitled to get compensation of Rs.8,00,000/- (Rupees Eight Lakhs only) along with simple interest @ 9% from the date of incident i.e.25/06/2019 till the date of payment without costs and the disbursements will be made in the following manner keeping in view the broad guidelines laid down as per the Judgment of Delhi High Court in FAO No. 22/2015 and CM Application No. 4501/2015 in Geeta Devi Vs Union of India.

9.2. The applicant No.1 wife of the deceased is permitted to withdraw only 10% of her awarded amount, i.e. Rs.40,000/-(Rupees Forty Thousand only) along with proportionate share in interest, which will be deposited in her savings Bank A/c opened in any Nationalized Bank near her place of permanent residence. I feel that a manner of disbursement that can ensure security of the bulk funds out of the award is justified in this case. For the judicious use of the awarded sum, I also feel that a method of disbursement to the Applicant that can ensure a regular monthly income would serve her interest in the best possible manner in order that she can have an assured liquidity during the pendency of the deposits in the bank and also, that she otherwise is not subjected to any kind of exploitation

at the hands of unscrupulous elements who can target the bulk funds available with her out of the award. Accordingly, the balance amount of Rs.3,60,000/-(Rupees Three Lakh Sixty Thousand) shall be split into 36 fixed deposits of Rs.10,000/-(Rupees Ten Thousand) and invested for a period of 1 to 36 months in the ascending order at the bank near the place of her permanent residence. The bank shall release the amount with accumulated interest upon maturity of the deposits to the credit of the bank account of the Applicant No.1, wife of the deceased.

It is often seen that unscrupulous elements target the bulk funds available to poor Applicants out of the award and insist upon the Applicants to open their bank account near to the place of residence of such middlemen or touts, but not near to that of the Applicants themselves. Applicants are coerced into submission that they have shifted their place of residence to a place which is other than their place of permanent residence. The place of residence for the purpose of opening of the bank account is deemed as the place where the Applicant normally resides and this is best proven by the address as depicted in documents such as the Aadhaar card, the voters' identity card and ration card. The entire rationale for opening of the bank account in the place of their normal residence as depicted in such documents is defeated if the same is allowed to be opened at any other location, since apart from inconvenience for operation of the bank account, it also becomes a stepping stone for exploitation at the hands of unscrupulous elements. Therefore, in order to safeguard the Applicants from any kind of exploitation at the hands of unscrupulous elements operating in the field, it is imperative that the bank account is operated close to the place of residence and not opened at any location which is far away from the place of their

residence while being near the place of residence of such persons intending to exploit them by targeting the bulk funds available with them out of the award.

9.3.The Applicant No.2, mother of the deceased, being old aged about 70 years is permitted to withdraw 50% of the awarded amount, i.e. Rs.2,00,000/- (Rupees Two Lakhs) along with proportionate share in interest, which will be deposited in her savings Bank A/c opened in any nationalized bank near her place of permanent residence. Accordingly, the balance amount of Rs. 2,00,000/-(Rupees Two Lakhs) shall be invested in the shape of a fixed deposit for a period of two years in her name in the said bank. The bank shall release the amount with accumulated interest upon maturity of the deposit to the credit of the bank account of the Applicant No.2, mother of the deceased. The Applicant will be at liberty to seek withdrawal of the funds held in the fixed deposits in the event of any exigencies, for which she will have to apply specifically citing reasons and the Tribunal may consider modifications in the manner of disbursements under clause 5.3 of the Gazette of India Notification dated 03.06.2020.

9.4 The Respondent Railway is directed to deposit the awarded amount within 30 days from the date of communication of this award with the Registry of this Bench. The Applicants are eligible for interest @ 9% per annum from the date of incident i.e. (25/06/2019) till the date of actual deposit of the awarded amount with the Registry of this Bench.

9.5. The Applicants are directed to open individual savings bank account in a nationalized bank near the place of her permanent

residence. The bank is directed not to permit any joint name(s) to be added in the savings bank account or fixed deposit accounts of the claimant i.e. the saving bank account of the claimant shall be an individual saving bank account and not a joint account.

9.5. The concerned bank is directed not to issue any cheque book (s) and /or debit card (s) to the claimant. If the same have already been issued, the bank is directed to cancel the same before the disbursement of the award amount and the bank shall freeze the account of the claimant so that no debit card is issued in respect of the account of the claimant from any other branch of the bank. The bank should make an endorsement on the passbook of the claimant to the effect that no cheque book and/ or debit card have been issued to the claimant and shall not be issued without the permission of RCT. The concerned bank of the claimant is directed to permit the claimant to withdraw money from her saving bank account by means of a withdrawal form only. The claimant is directed to produce the copy of the order passed by the RCT before the concerned bank whereupon the bank is directed to make an endorsement on the passbook.

9.8. The original fixed deposit shall be retained by the bank in safe custody. However, the statement containing FDR number, FDR amount, date of maturity and maturity amount shall be furnished by the bank to the claimant. The monthly interest to be credited by ECS in the saving bank account of the claimant near the place of her residence. The maturity amount of the FDRs be credited by ECS in the saving bank account of the claimant near the place of her residence. The bank shall not grant any loan, advance, withdrawal or

pre-mature discharge on the fixed deposit without permission of the RCT.

9.9. If the Claimants are entitled to exemption of deduction of TDS, she shall submit form 15 G or form 15 H (for senior citizen) to the Presenting Officer of the respondent railway (as applicable under sub section (2) of Section 19 of the Railway Claims Tribunal Act,1987), so that no TDS may be deducted.

9.10. Accordingly, the claim application filed by the Applicant stands disposed of. The Registry is directed to send the certified copy of this judgment directly to the Applicant in her residential address. Pronounced in the open tribunal today on 22/07/2024.

Fix. 23/09/2024 for compliance on the points as mentioned in the judgment above in order No.31

(Virendra Kumar Goyal)
Member (Judicial)
Date 22/07/2024

RAILWAY CLAIMS TRIBUNAL
BHUBANESWAR BENCH

ORDER SHEET

Nature of application _____ Number OA (IIU) No. 144 of 2019 in the case of
K.Shushila and Another versus- UOI /GM / East Coast Railway, Bhubaneswar

Date	Proceeding of the Bench	Notes of the Registrar
31 22/07/24	Judgment pronounced vide separate sheet attached to the record. The O.A. is allowed on contest on its merit for Rs. 8,00,000/- (Rupees Eight Lakhs only) in favour of the Applicants along with interest @ 9% per annum from the date of incident i.e. 25/06/2019 to till the date of actual payment without costs. The Respondent Railway is directed to deposit the awarded amount within 30 days from the date of communication of this award with the Registry of this Bench. Fix 23/09/2024 for compliance on the following points: - <u>For the Claimants: -</u> 1) Production of Bank Account details opened near their place of permanent residence. Passbook must contain the necessary endorsement by the Branch Manager of the concerned bank that "No cheque book and/or debit card has been issued." If it has already been issued, there should be endorsement that "cheque book and/or debit card has been cancelled and the same shall not be issued without the permission of the RCT." The endorsement must be signed and stamped by the bank official. 2) Production of Aadhaar Card and PAN Card or any other appropriate I.D.Card. 3) Two sets of photographs and specimen signatures of the Claimants. <u>For the Respondent Railway</u> The Respondent Railway shall place on record the proof of deposit of the awarded amount with upto date interest along with a calculation sheet. <i>Free copy of this order be served to both sides</i>  (V.K. Goyal) Member (Judicial) Dt: 22/07/2024	