

BEFORE THE RAILWAY CLAIMS TRIBUNAL**BHUBANESWAR BENCH****Case No. OA (IIU)/154/2019**

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

Date of incident: 01/01/2019

Date of Registration: 07/11/2019

Date of Judgment: 19/12/2023

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

In the matter of

1. G.Kiran Kumar aged about 37 years

Applicants

S/o late Gunta Mukkala Veerabhadhara Achary

2. Smt. G.Hemalata aged about 39 years

D/o late Gunta Mukkala Veerabhadhara Achary

3. G.Sujata aged about 62 years

W/o late G. Veerabhadhara Achary

All are resident of Tulasi Nagar

3rd Line, PS: Berhampur Sadar

Distt: Ganjam (Odisha)

- Versus -

Union of India represented through

Respondent

It's General Manager, East Coast Railway,

Chandrasekharapur, Bhubaneswar, Odisha.

Appearance:

For the Applicants : Sri D.K. Padhi, Advocate.

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

JUDGEMENT

1. This present claim application was initially filed by the Applicants (son and daughter of the deceased) under section 16 of the Railway Claims Tribunal's Act, 1987, claiming compensation of Rs.8,00,000/- (Rupees Eight Lakhs) from the Respondent Railway Administration for death of their father namely Gunta Mukkala Veerabhadhara Achary allegedly in an Untoward Incident involving fall from a running train. Subsequently the wife of the deceased G.Sujata has been impleaded as party to the claim application as applicant No. 3 vide order of the bench dated 22/09/2023.

2. **Brief facts of the case** - The pleading of the Applicants are that on the date of incident, the deceased Gunta Mukkala Veerabhadhara Achary along with his daughter and son in law went to Berhampur railway station to see off his daughter who was to travel by the up Prasanti Express train. It is stated that when the Prasanti Express train arrived at platform No.2, the deceased entered into the compartment with his daughter to see that she was comfortably seated in her allotted berth. It is stated that while the deceased was inside the compartment, the train had started to move without blowing the horn, so the deceased hurriedly tried to get down from the train and in the process, due to push and pull of co-passengers, he accidentally fell down on platform No.2, of Berhampur railway station, and sustained injury on his person. He was immediately shifted to MKCG medical college and thereafter shifted to the Apollo hospital, Arilova where in course of treatment, he succumbed to the injuries on 02/01/2019. With regard to the ticket, it is stated that, on the date of the incident, the deceased was having a valid platform ticket.

3. **Respondent's reply**: -On receipt of notice, the Respondent Railway appeared and filed its written statement wherein it is stated that the pleading of the Applicants made in the original claim application is false, fabricated and was not due to any conditions as per section 124 A of the Railways Act 1989 and should be dismissed. It is stated that there is no direct witness to the alleged incident and the on duty train guard, RPF did not notice the alleged incident and there was no ACP or extra detention of the said train. With regard to ticket, it is stated that deceased was not a bona fide passenger and the plea taken by the Applicants that the deceased was having a platform ticket is completely false. With regard to dependents, it is stated that the Applicants be called upon to produce relevant documents to prove that they are the legal heir of the deceased. Besides denying various averments of the Applicants, the Respondent Railway prayed for dismissal of the claim petition.

4. **Applicant's Evidence**: - The Applicant's in support of their claim have filed the copy of FIR of the UD case No. 03/2019, FIR, Inquest report, case diary, dead body challan, post mortem examination, platform ticket, aadhar card, bank passbook details, and Applicant no. 1, son of the deceased has been examined before the bench as AW 1.

5. **Respondent's Evidence** - The Respondent Railway on the other hand have filed DRM's investigation report along with enquiry report of ASI/RPF/Berhampur, station master diary dated 01/01/2019, police intimation, FIR, medical documents, statement of railway personnel and one Bommali Rama Rao, on duty ASI/RPF/KUR has been examined before the bench as RW 1.



4. **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 U/s 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 U/s 124 A of the Railway 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** :- We 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. Our findings on the aforesaid issues are as under:-

7.1. **Issue No.2** :- The pleading of the Applicants is that on the date of incident, the deceased was having a platform ticket and the said ticket purchased by the deceased before arrival at Berhampur railway station. The Applicants in support of such plea has filed the copy of the said platform ticket in original bearing No. UYA 36328907 dated 01/01/2019. In this connection AW 1, son of the deceased has filed affidavit in evidence and deposed before the bench that the deceased before entering into the train compartment he had purchased the said platform ticket and kept in his pocket. The Ld. Counsel for the Applicants during argument submitted that platform ticket produced by the Applicants has not been disputed by the Respondent who have also not produced any evidence to the contrary. He stated that although no platform ticket was recovered during course of inquest but during course of enquiry, the son of the deceased had produced the said platform ticket before the GRPS, Berhampur. The Respondent's contention is that the platform ticket holder is not entitled to enter into the compartment as per Railway Commercial Manual Rules and as per pleadings of the Applicants, the deceased entered inside the compartment to see off his daughter but when he was trying to get down from the compartment, he accidentally fell down from the running train and died during treatment. Therefore, the deceased was not a bona fide passenger being platform ticket holder. In this



connection we would like to add Section 124 A (ii) of the Railway Act, which stipulates that "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

Hence under section 124 A of the Railways Act 1989 which clearly stipulates that 'passenger' includes a person who has purchased a valid platform ticket and becomes a victim of an untoward incident, the rule quoted by the learned counsel becomes redundant and it is held that the deceased was a bona fide passenger at the time of occurrence. This issue is decided in favour of the Applicants.

7.2. **Issue Nos. 1 & 3:-** These issues are taken up together for convenience being interconnected.

The pleadings of the Applicants is that the deceased Gunta Mukkala Veerabhadhara Achary in course of getting down from the train compartment after seeing off his daughter leaving by the Prasanti Express train, fell down at platform No.2 of Berhampur railway station due to push and pull of other passenger, sustained injury and died in course of treatment. In this connection, AW 1, son of the deceased has filed affidavit in evidence where he has reiterated the same facts as stated in the claim petition. The Ld. Counsel for the Applicants during argument submitted that the incident of fall occurred at platform No.2 of the Berhampur railway station wherein the victim sustained severe injury on his head and died in course of treatment in the hospital. He submitted that police intimation report filed along with the claim petition wherein, in the column brief history of the case, it is stated that it is a case of accidental fall from running train which cannot be denied. He further stated that Respondent railway has not produced any substantial evidence to establish that death of the deceased was caused otherwise and accordingly sought for compensation under the extant provisions.

7.3. In his counter arguments, the Ld. Counsel for the Respondent railway submitted that there is no direct witness to the alleged incident and no complaint and no station diary has been made anywhere regarding the alleged accidental fall. It is stated that the on duty train guard during course of his duty in the said train, did not notice nor receive any information from any corner regarding falling down of any person. It is further stated the alleged train arrived Berhampur railway station at 08.22 hours and took departure at 08.27 hours in broad day light and if the deceased would have fallen down from train, then in all



likelihood there would have been ACP for rescue but in this case no such thing was reported. The Id.counsel for the Respondent submitted that Berhampur railway station is a major station, where many railway officials of different department perform duty round the clock but it is surprising that nobody had noticed him falling down and also the son in law of the deceased who was supposedly present had not reported the matter to any Railway authority and this puts a question mark about genuine claim of the applicants. It is stated that the incident of death as alleged is not accidental and accordingly sought for dismissal of the claim petition.

7.4. The fact remains that an UD case No.13/2019 dated 18/04/2019 under section 174 Cr.P.C. has been made at GRPS, Berhampur to the effect that the deceased in course of treatment succumbed to the injuries in the hospital. From the case records of the hospital it is confirmed that the case had a history of fall from a train and a valid platform ticket was recovered in this case. There is no denying the fact therefore, that the incident of fall occurred at platform No.2 of Berhampur railway station and during course of enquiry the son of the deceased has produced one platform ticket in support of the plea that on the date of incident, the deceased had purchased the said ticket with the intention to see off of his daughter at Berhampur railway station who was to travel in Prasanti express train. Although the Respondent railway has come up with the defense that there is no direct witness to the alleged incident and no information with the on duty train guard or any co-passenger, but in support of such plea, they have not produced any cogent or tangible evidence to prove that the deceased had died due to some other reason other than fall from train. In this case it is seen that there was no intent of the deceased to travel by the train, but the deceased in all probability, as averred, had entered the coach to make sure that his daughter was seated comfortably in her allotted berth, which is a common practice all over the Indian Railways network. The recovery of platform ticket clearly indicates that there is a preponderance of probability that the deceased had got into the train with that objective only. As regarding the point that how was it possible that nobody had noticed the deceased falling down and nor was the case reported to any railway authority at the Berhampur station, the attending circumstances of this case do point to the possibility of the deceased having fallen down at the time of alighting from the train which had already started moving. Even assuming he had fallen down, the fact that he had not succumbed to the injury sustained then and there but much later at the hospital, where he had been admitted for treatment, points to the possibility that in that injured state, the first thing in priority for the attending person of the deceased was to rush the injured person by first means to the



hospital for medical aid and in such a situation, merely because the incident had not been reported upon to any of the railway personnel at Berhampur station, it certainly cannot be construed that, the incident had not occurred. In this case that the deceased had sustained injury and died out of an accidental fall while getting down from train compartment cannot be disputed even if the deceased did not have any intent to travel by the train.

There is a well settled principle of law that the accidental falling of a passenger shall include a passenger trying to board a train and also trying to alight from a train and if in that process the passenger loses control and falls down and sustains injuries, it will come under the definition of untoward incident as mentioned under section 123 (c) of the Act. In the case of Rina Devi Vs. Union of India in Civil Appeal No. 4945 of 2018 Hon'ble Supreme Court has held:-

16.6..... "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 124 A merely on the plea of negligence of victim as a contributing factor"

Looking to the circumstances of the case, we observe that the judgment of Hon'ble Supreme Court passed in the case (2008) 9 SCC 527 Union of India Vs. Prabhakarn Vijaya Kumar & Ors is very relevant in this case, where it has been held that "since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one".

7.5 Thus, in view of above discussion supported by the settled principles of law, we are of the view that the injury and death caused to the victim was 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 u/s 124 A of the Railways Act 1989. Therefore, both these issues are decided in favour of the claimants.

8. **Issue No. 4 & 5:** This claim application has been filed by the Applicants (son and daughter and wife of the deceased) and they have filed their respective Aadhaar and PAN 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, we hold that the Applicants being the children and wife of the deceased are the sole 'dependents' 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/- (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 along with the simple interest @ 9% per annum from the date of incident i.e 01/01/2019 till the date of payment. Both these issues are decided accordingly. Hence ordered.

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

- | | |
|--|-------------------------|
| 1. G.Kiran Kumar, son of the deceased | : Rs. 1,50,000/- |
| 2. Smt. G.Hemalata, daughter of the deceased | : Rs. 1,50,000/- |
| 3. G.Sujata, wife of the deceased | : <u>Rs. 5,00,000/-</u> |
| | Rs.8,00,000/- |

9. ORDER:

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 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.

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 (01/01/2019) 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. Applicant No.1 & 2 (son and daughter of the deceased) are permitted to withdraw only 10% of their awarded amount, i.e. Rs. 15,000/- (Rupees Fifteen Thousand only) each along with proportionate share in interest, which will be deposited in their savings Bank A/c opened in any Nationalized Bank near their place of permanent residence. The balance amount of Rs.1,35,000/- (Rupees One Lakh and Thirty-Five Thousand) each to be invested in the shape of a fixed deposit in their names in the said bank for a period of 2 (two) years. 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.1 and 2, son and daughter of the deceased. The Applicants will be at liberty to seek withdrawal of the funds held in the fixed deposits in the event of any exigencies, for which they 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.

9.3. Out of compensation amount of Rs.5,00,000/- (Rupees Five lakhs) as awarded in favour of Applicant No.3 wife of the deceased (aged about 62 Years), taking note of her advanced age, she shall be permitted to withdraw 50%, i.e. Rs.2,50,000/- (Rupees Two lakhs Fifty only) along with proportionate share of interest which shall be deposited in her



savings bank account opened in any nationalized bank near the place of her permanent residence and the balance amount of Rs.2,50,000/- (Rupees Two lakhs Fifty Thousand) shall be invested in the shape of a fixed deposit in the said bank for a period of 3 (three) years. Upon maturity of the deposit, the maturity amount along with interest will go to the credit of the bank account of the Applicant No.3 wife of the deceased. The Applicant No. 3 will be at liberty to seek withdrawal of the funds held in the fixed deposit in the event of any exigencies, for which she has 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 (01/01/2019) till the date of actual deposit of the awarded amount with the Registry of this Bench.

9.5. That, the Claimants are directed to open individual savings bank account in a nationalized bank near the place of their 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 claimants i.e. the saving bank account of the claimants shall be an individual saving bank account and not a joint account.

9.6. The concerned bank is directed not to issue any cheque book (s) and /or debit card (s) to the claimants. 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 claimants 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 claimants is directed to permit the claimant to withdraw money from their saving bank account by means of a withdrawal form only. The claimants are 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.

9.6. 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 claimants. The monthly interest to be credited by ECS in the saving bank account of the claimants near the place of their residence. The maturity amount of the FDRs be credited by ECS in the saving bank account of the claimants near

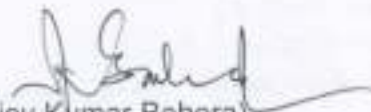


the place of their residence. The bank shall not grant any loan, advance, withdrawal or premature discharge on the fixed deposit without permission of the RCT.

9.7. If the claimants are entitled to exemption of deduction of TDS, they 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.

9.8. Accordingly, the claim application filed by the Applicants stands disposed of. The Registry is directed to send the certified copy of this judgment directly to the Applicants in their residential address. Pronounced in the open tribunal today on 19/12/2023.

Fix. 29/02/2024 for compliance on the points as mentioned in the judgment above in order No. 26.


(Ajoy Kumar Behera)
Member (Technical)
Date: 19/12/2023

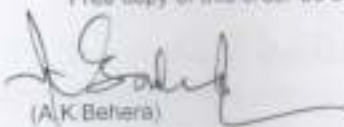
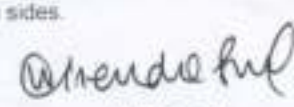

(Virendra Kumar Goyal)
Member (Judicial)
Date: 19/12/2023

RAILWAY CLAIMS TRIBUNAL

BHUBANESWAR BENCH

ORDER SHEET

Nature of application _____ Number OA No. 24 of 2019 G.Kiran Kumar and others -versus- UOI /GM /East Coast Railway, Bhubaneswar

Date	Proceeding of the Bench	Notes of the Registrar
26 19/12/23	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. 01/01/2019 till date of 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. The Applicants shall be entitled to interest @ 9% per annum from the date of incident to till the date of actual deposit of the amount with the Registry of this Bench. Fix 29/02/2024 for compliance on the following points:- For the Claimants. - 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 For the Respondent Railway The Respondent railway shall place on record the proof of deposit of the awarded amount with upto date interest along with a calculation sheet. Free copy of this order be served to both sides.  (A.K. Behera) Member (Technical) Dt. 19/12/2023  (V.K. Goyal) Member (Judicial) Dt. 19/12/2023	