

BEFORE THE RAILWAY CLAIMS TRIBUNAL**BHUBANESWAR BENCH**

Case No. OA (IIU)/ 155 /2019

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

Date of Incident: 09/08/2019

Date of Registration: 15/11/2019

Date of Judgment: 19/03/2024

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

In the matter of

SUSILA MANGARAJ, aged about 42 years

Applicant

W/o. Hemsagar Mangaraj

Residence of At: Nuapara,

Khetrarajpur Town, Sambalpur,

Odisha-768 003.

Versus

Union of India represented through

Respondent

It's GENERAL MANAGER, EAST COAST RAILWAY,

Chandrasekharapur, Bhubaneswar, Odisha.

Appearance: -

for the Applicant : Sri R.K. Chhotaray, Advocate

for the Respondent : Smt. P. Pattnaik, Ld. Addl. Standing Counsel

JUDGEMENT

1. This present claim application has been filed by the injured Applicant namely Susila Mangaraj under section 16 of the Railway Claims Tribunal's Act, 1987, claiming compensation of Rs.8,00,000/- (Rupees Eight Lakh) along with 12% interest from the date of filing till the date of realization of the claim amount from the Railway Administration on account of injuries sustained by her allegedly in an untoward incident involving fall from running train.

2. **Brief facts of the case:** As per the original claim application on the date of incident i.e. on 09/08/2019 while the injured Applicant namely Susila Mangaraj was travelling from Sambalpur to Rourkela railway station by standing near the door of the compartment of Allappuzha-Dhanbad (Bokaro) express train (13352), on the way near Jharsuguda road railway station, due to sudden jerk of the compartment she

accidentally fell down from the running train and sustained fracture injuries on her left leg from thigh level. It is stated that just after the incident, she was immediately shifted to the nearest Dist. Head quarter Hospital, Jharsuguda, with the help of railway personnel and thereafter shifted to VSS Medical College & Hospital, Burla, where she was admitted as an Indoor patient in Orthopaedic ward from 09/08/2019 to 02/09/2019. It is further stated that during course of treatment in the said hospital, the doctor amputated her left leg from above knee. With regard to journey ticket, it is stated that on the date of incident, she was travelling on the strength of one MST ticket bearing No. 13201161 valid from 15/07/2019 to 14/08/2019 which was seized by RPF/OP/BXQ from the possession of the injured Applicant.

3. Respondent's Reply: On receipt of notice, the Respondent railway appeared and filed its written reply along with DRM's statutory investigation report, wherein it is stated that the averments of the injured applicant made in the claim application is false, fabricated and not within the ambit of section 123(c) of the Railways Act and should be dismissed. It is stated that the on duty train guard of the alleged train during his duty hours from Sambalpur to JSG railway station, did not notice or receive any information about falling down of any passenger from his train. The reply further reveals that the injured Applicant herself admitted before the enquiry officer that while the said train was running through line No. 3 at JSG road railway station she was trying to get down from the said running train as a result her leg slipped from the foot board of the compartment and she fell down from the said running train and sustained injuries on her left leg from above knee. As per statutory provisions when the incident occurred due to travelling in a negligent manner as standing at the door, travelling on the roof, footstep, footboard and tries to board and alight into or from the running train, it is an offence under Section 154 & 156 of the Railways Act, 1989, and as such cases no compensation is payable by the Respondent Railway Administration to the injured Applicant.

4. Applicant's Evidence: The injured Applicant in support of her plea has filed the copy of discharge certificate of VSSIMSAR, Burla, aadhar card, photograph of the injured Applicant, copy bank account and examined herself before the Bench as AW1. She was cross examined by the Ld. Counsel for the Respondent Railway Administration.

5. Respondent's Evidence: The Respondent Railway on the other hand have filed DRM's statutory investigation report along with other related documents in connection with the alleged incident. The Respondent Railway did not adduce any evidence in this case.

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

1. Whether the Applicant was a bona fide passenger for his journey from Sambalpur to Rourkela railway station by Allappuzha-Dhanbad (Bokaro) express train (13352) on 09/08/2019?
2. Whether the Applicant sustained injury is an untoward incident as defined U/s 123 (c) of the railway Act 1989?
3. Whether the Respondent is exempted from payment of compensation to the Applicant u/s 124 (a) of the Railways Act, 1989?
4. To what relief the Applicant is 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 injured Applicant as well as Respondent and heard the arguments of both the counsels and written note of arguments filed by the Ld. Counsel for the Applicant. My findings on the aforesaid issues are as under: -

7.1 Issue No. 1: The injured Applicant (AWI), Susila Mangaraj has deposed by way of an affidavit that on the date of incident i.e. on 09/08/2019 she was travelling from Samabalpur to Jharsuguda railway station by Train No. 13352 (Allapuzha-Dhanbad express train) on the strength of one MST ticket bearing No. 13201161 valid from 15/07/2019 to 14/08/2019 and the said MST ticket has seized from the possession of the injured Applicant by RPF/OP/BXQ. During cross examination of AWI nothing contradictory has come out.

Moreover, in the DRM's statutory investigation report the Respondent Railway has admitted that although one MST ticket was seized from possession of the injured Applicant by RPF/BXQ but the Respondent Railway has verified the said MST ticket and it is found that the said MST ticket was issued in the name of one Bilasini Mugri instead of Susila Mangaraj (injured Applicant). The Ld. Counsel for the Respondent Railway has also submitted that in this regard the injured Applicant has

not filed any cogent and concrete documents to prove that the Bilasini Mugri and Susila Mangaraj is one and same person.

On the other hand, the Ld. Counsel for the Applicant submitted that the injured Applicant has categorically mentioned in her deposition that Bilasini Mugri is one of her other name and Susila Mangaraj and Bilasini Mugri is one and the same person. The Respondent Railway has not disputed the said MST ticket nor did they adduce any evidence to prove anything otherwise.

Thus in view of above, it is held that the injured Applicant was a bona fide passenger at the time of occurrence. This issue is decided in favour of the Injured Applicant.

7.2 Issue Nos. 2 and 3: Both issues being inter-related are taken up together for discussion and decision.

The pleading of the injured Applicant is that in course of journey by Train No. 13352 (Allapuzha-Dhanbad express train) from Samabalpur to Jharsuguda railway station on the way near Jharsuguda road railway station, due to sudden jerk of the compartment, she accidentally fell down from the running train, sustained fracture injuries on her left leg from above knee. The Ld. Counsel for the Applicant submitted that just after the incident she was rescued with the help of on duty RPF personnel, first taken to District Head Quarter Hospital, Jharsuguda and thereafter shifted to VSS Medical College & Hospital, Burla, wherein during course of treatment the doctor amputated her left leg from above knee and she remained in the said hospital for more than 25 days. It is stated that on account of fall, she became permanently disabled and also suffered irreparable loss by way of losing her limb and getting incapacitated for all time to come. He submitted that a station diary entry had been made at JSG Road railway station based on the report of the on duty RPF staff, which clearly established that the injured is a victim of an untoward incident which is within the scope of section 123 (c) (2) of the Railways Act. He submitted that the incident of fall has already been admitted by the Respondent Railway but the cause of such fall has only been attributed to the own fault and negligence of the injured victim although it was never a case of willfully causing herself harm. He summed up his argument with the plea that Respondent railway is responsible for the injury sustained by the victim and under section 124-A of the Railways Act, the Respondent Railway administration is liable to pay compensation to the injured Applicant.

7.3. Whereas on the other hand, the Respondent Railway in the DRM's statutory investigation report submitted that there is no eye witness to the alleged incident and the incident of injury as alleged has occurred due to own negligence and carelessness on the part of the injured applicant. It is stated that the injured applicant herself was admitted before the Enquiry Officer and that, during the course of her journey, while the train was in running condition, she tried to get down from the train at JSG road railway station in the meantime her leg slipped in the foot board of the train, and she and she fell down from the said running train and the wheel of the train ran over her left leg, which clearly proves that the incident had occurred due to her own negligence. She also drew attention of the Bench that as per provisions of Railways Act, 1989, if any accident occurred due to a person travelling in a negligent manner as standing at the door, travelling on the roof, on the footboard and boarding into or alighting from a running train, it is an offence under section 154 and 156 of the Railways Act and as such no compensation is payable by the Railway Administration and the case is liable to be dismissed under one of exceptions under section 124-A of the Railways Act.

7.4 The fact remains that a station diary entry No. 2185 dated 09/08/2019 has been made by SM/JSGR based upon the report of on duty RPF staff of OP/BXQ to the effect that the injured was found lying on the railway track having grievous injury on her left leg. It is a fact that just after the incident, the injured was rescued with the help of RPF staff from the railway track and shifted to the nearest District Head Quarter Hospital, JSG, which cannot be ruled out. There is not an iota of doubt that the injuries sustained by the Injured had occurred due to a fall from running train. Although the Respondent Railway has admitted to the incident of fall, but they have attributed the cause of such injury as being caused due to the own negligence of the victim. 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".

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 at the facts and circumstances of the case, I am of the view that the incident in which the injured lost her left leg and became permanently disabled, cannot be inferred to be that of a fall which was out of a deliberate act in which the injured applicant caused harm to herself for the sake of getting compensation from the Railway.

7.5. Thus, in view of above discussion supported by the settled principles of law, I am of the view that the applicant injury caused to 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 injured Applicant.

8. Issue No. 4: So far as quantum of compensation is concerned, I have gone through the medical documents on record such as discharge certificate of VSS medical college, Burla, Sambalpur as well as the photographs of the injured Applicant which clearly shows that there is Amputation on her left leg from above knee. The injured Applicant has also presented herself before the Bench in support of her injury and the DRM's investigation report confirm that the injured Applicant has sustained injuries due to train accident. Considering the nature of injury sustained by the victim on her left leg, I am of the opinion that the said injury comes under Sl. No. 17 of Part III of schedule for Compensation payable for death and injuries as prescribed in the Railway Accidents and Untoward Incidents (Compensation) Rules 1990, "For amputation below hip with stump not exceeding 5" in length measure from tip of great trochanter but not beyond middle thigh" for which a sum of Rs.6,40,000/- (Rupees Six lakhs

forty Thousand) has been mentioned. Hence, the injured Applicant is entitled to get total compensation of Rs. 6,40,000/- (Rupees Six lakhs forty Thousand) along with along with 9% interest from the date of incident i.e. (09/08/2019) till the date of payment. This issue is answered in favour of the Injured Applicant. Hence ordered.

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.*

The injured Applicant is entitled to get total compensation of Rs.6,40,000/- (Rupees Six lakhs forty Thousand) along with along with 9% interest from the date of incident i.e. (09/08/2019) till the date of payment. 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 injured Applicant is permitted to withdraw Rs. 70,000/- (Rupees Seventy Thousand only) along with the proportionate share of interest, which will be deposited in her savings Bank A/c opened in any Nationalized Bank near her place of permanent residence. Although the Applicant seem to be literate, it is felt 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. Accordingly, the balance amount of Rs.5,70,000/- (Rupees Five Lakh Seventy- Thousand) shall be split into 57 fixed deposits of Rs. 10,000/- (Rupees Ten Thousand only) each and invested for a period of 1 to 57 months in the ascending order. The bank shall release the amount with accumulated interest upon maturity of the deposits to the credit of the bank account of the injured Applicant. Keeping particularly the disability in mind and also to safeguard the Applicant, it is felt that such mode of disbursement will enable the injured Applicant to get an assured liquidity every month out of the multiple fixed deposits as opposed to a single fixed deposit over a longer tenure. The bank shall release the amount with accumulated interest upon maturity of each of these 57 fixed deposits to the credit of the Bank account of the injured Applicant. In the eventuality of the injured Applicant requiring release of additional funds for medical attention or any exigency by liquidation of the fixed deposits, she is at liberty to approach the Tribunal citing reasons for seeking modifications of the order, which may be

considered under the aegis of clause 5.3 of the Gazette of India Notification dated 03.06.2020.

It is often seen that unscrupulous elements target the bulk funds available to poor Applicants out of the award and insist upon the Applicant to open her bank account near to the place of residence of such middlemen or touts, but not near to that of the Applicant herself. The Applicants are coerced into submission that they have shifted their place of residence to a place which is other than the place of the applicant's 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 voter identity card and ration card. The entire rationale for opening of the bank account in the place of the 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 Applicant 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 her residence and not opened at any location which is far away from the place of her residence while being near the place of residence of such persons intending to exploit them by targeting the bulk funds available with her out of the award.

9.3 The Respondent Railway is directed to deposit the amount awarded with the Registry of this Bench within a period of 30 days from the date of communication of this award. The injured Applicant shall be entitled interest @ 9% the date of incident i.e. (09/08/2019) till the actual deposit before the Bench.

9.4 The injured Applicant is 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 injured Applicant i.e. the saving bank account of the injured Applicant 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 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 claimant 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 pre-mature discharge on the fixed deposit without permission of the RCT.

9.7 If the injured Applicant is entitled to exemption of deduction of TDS, he 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 Injured 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 19/03/2024.

Fix. 29/05/2024 for compliance on the points as mentioned in the judgment above in order No. 26.

(Ajoy Kumar Behera)

Member (Technical)

Date 19/03/2024

**RAILWAY CLAIMS TRIBUNAL
BHUBANESWAR BENCH**

ORDER SHEET

Nature of application _____ Number OA (IIU) No. 155 of 2019, Susila Mangaraj, versus-
UOI /GM / East Coast Railway, Bhubaneswar, Odisha.

Date	Proceeding of the Bench	Notes of the Registrar
26 19.03.24	Judgment pronounced vide separate sheet attached to the record. The O.A. is allowed on contest on its merit for Rs. 6,40,000/- (Rupees Six Lakh Forty Thousand only) in favour of the Injured Applicant along with interest @ 9% per annum from the date of Incident i.e. on 09/08/2019 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. Fix 29/05/2024 for compliance on the following points: - <u>For the injured Applicant: -</u> 1) Production of Bank Account details opened near her 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 injured Applicant. <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>  (A.K. Behera) Member (Technical) Dt: 19/03/2024	