

BEFORE THE RAILWAY CLAIMS TRIBUNAL

BHUBANESWAR BENCH

Case No. OA (IU) 18 /2021

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

Date of incident: 23/09/2018

Date of Registration: 16/02/2021

Date of Judgment: 11/01/2024

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

In the matter of

1. Sidha Munda aged about 58 years (died during pendency) Applicants

S/o Late Bhima Munda

1/1. Kisan Munda aged about 30 years

S/o late Sidha Munda

1/2. Kanhu Munda aged 18 years

S/o late Sidha Munda

1/3. Bhima Munda aged about 32 years

S/o late Sidha Munda

All are belong to At: Amrutia, Daidasha Patana,

Barundai, PS: Korei, Distt: Jajpur,

Odisha-755 025

Versus

Union of India represented through

It's General Manager, East Coast Railway,

Bhubaneswar

Respondent

Appearance : for the Applicant : Sri B.Beura, Advocate

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

JUDGEMENT

01. This present original claim application had been filed by the injured Applicant Sidha Munda 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 from the Railway Administration on account

of injury sustained by him allegedly in an untoward incident, involving fall from running train. It is pertinent to note here that during pendency of the claim, the injured Sidha Munda died and his three sons namely Kisan Munda, Kanhu Munda and Bhima Munda are filed petition for substituting their names as legal heir of their deceased father and this Tribunal vide order 22/09/23 impleaded them as party the claim petition as Applicants No.1/1, 1/2 and 1/3 respectively.

02. **Brief facts of the case:** As per original claim Application that on 22-23/09/2018, the injured Sidha Munda, while travelling by HWH-PURI Express train from Baleswar to Jaipur Road railway station on the way near Bhadrak railway station due to jerk of the said train supported by push and pull of co-passengers in the compartment, he accidentally fell down from the running train and sustained injury on his right. It is stated that after the incident, he was immediately shifted to DHH, Bhadrak, then taken to SCB medical college, Cuttack where during course of treatment, doctor amputated his right leg below knee. With regard to ticket, it is stated that on the date of incident, he was travelling after purchasing journey ticket but the said ticket which was lost while shifting to hospital.

03. **Respondent's Reply:** On receipt of notice Respondent Railway appeared and filed written reply along with DRM's investigation report wherein it is stated that the allegation made in the claim petition is false, fabricated and not within the scope of section 123 (c) (2) of the Railway Act read with section 124 A of the Act to claim compensation. It is stated that there is no eye witness to prove that the injured had actually travelled in the train, fell down from it and sustained injury. It is further stated that the injured during course of enquiry has stated before the EO that on the date of incident he had under drunken state by taking alcohol and did not say in which train he was travelling. The statement of injured before EO indicate that the injury might have caused other than fall from running train. With regard to ticket, the injured failed to produce any journey ticket to prove that on the date of incident, he was travelling in the train. Under the above facts and circumstances, the Respondent railway sought for dismissal of claim petition.

04. **Applicant's Evidence:** The injured Applicant in support of claim had filed aadhar card, bank details, station diary made by GRPS, discharge certificate of SCB



medical college, Cuttack, discharge certificate of DHH, Bhadrak and disability certificate. After the death of the injured Applicant during pendency of the claim petition, his one of the legal heirs, who substituted to the party to the claim namely Kishan Munda, Applicant No.1/1 examined himself before the bench as AW 1 and another witness namely Biswanath Sahu has been examined as AW 2. Both AW 1 and AW 2 were cross examined by the Ld. Counsel for the Respondent Railway.

05. **Respondent's Evidence:** The Respondent Railway on the other hand have filed DRM's investigation report along with the enquiry report of SI/RPF/Bhadrak, station master diary, statement of railway personnel in connection with the alleged incident, disability certificate, aadhar card, bank details but did not examine any witnesses.

06. **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 Baleswar to Jajpur road railway station by HWH-PURI express train on 23/09/2018?
2. Whether the injured Applicant sustained injury is an untoward incident as defined U/s 123 (c) (2) 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?

07 **FINDINGS:** We have carefully gone through the pleadings of the parties, material made available on record, evidence adduced on behalf of the Applicant as well as Respondent and heard the arguments of both the counsels. Our findings on the aforesaid issues are as under: -

7.1 **Issue Nos. 1, 2 & 3:** These issues being inter-related are taken up together for discussion and decision.

The pleading of the injured Applicant was that during course of his journey by HWH-PURI Express train from Baleswar to Jajpur road railway station, he accidentally fell down near Bhadrak railway station and sustained injury on his



right leg. It is stated that on the date of incident, he was travelling on the strength of a journey ticket but the said ticket was lost at time of shifting to hospital. The Ld. Counsel for the Applicant during argument submitted that AW 2, Biswanath Sahu during examination in chief has stated that he was the co-passenger with the injured and seen the injured while purchasing ticket at Baleswar railway station as well as seen him falling down from train. He submitted that the station diary entry No. 3363 / B made at Bhadrak railway station reveals that the injured was noticed by an unknown person by the side of railway track and shifted to nearest hospital by 108 Ambulance which establishes that the incident of fall occurred during course of journey in the train. He further submitted that the injured was found beside platform No.1 of Bhadrak railway station, therefore, the possible fall and injury due to fall from train cannot be ruled out. He lastly submitted that the incident of fall and injury sustained by the victim comes under the scope of untoward incident as mentioned under section 123 (c) (2) of the Railways Act 1989 for which Respondent railway is responsible and liable to pay compensation.

Whereas the stand of the Respondent is that there is no direct witness to the alleged incident and no journey ticket was produced to establish that on the date of incident, the injured was travelling the train. There was no information of fall to the on duty train guard and Loco pilot of the said train. The LD. Counsel for the Respondent during argument submitted that AW 2 during course of examination in chief has stated before the bench he has witnessed the purchase of ticket as well as falling of the injured but he did not cause ACP nor reported anywhere about the alleged incident of fall which create suspicion over the statement of AW 2. He further stated that the injured on his own statement clearly admitted that the on date of incident, he was in drunken state and cannot say the name and number of train and non-recovery of journey ticket at any point of time creates suspicion over the injury that caused due to fall from running train. He sought for dismissal of the claim application accordingly.

7.4 The fact remains that a station diary entry No. 3363 dated 23/09/2018 has been made at SS/BHC railway station based on the report of one unknown person to the effect that the injured was found lying beside platform No.1 of Bhadrak railway station. It is a fact that the injured was first shifted to nearest

hospital by 108 Ambulance and thereafter shifted to SCB medical college, Cuttack for further treatment. The discharge / referral certificate of DHH, Bhadrak filed in the claim Application reveals that the injured has crush injury and amputation of right foot that occurred due to railway accident. Although the Respondent railway has taken the plea that there was no eye witness to the incident and the injured was in the drunken state on the date of incident and he was under the influence of alcohol but in support of such plea they have not produced any documentary proof to establish the same.

With regard to journey ticket, it is stated that before boarding the train, the injured and his co-passenger had purchased separate ticket but the said ticket was lost in the incident. The deposition of AW 2 with regard to purchase of ticket has not been challenged and un-rebutted. Keeping in view, the nature of injuries sustained by the injured in on his right leg and after the incident, he was first shifted to DHH, Bhadrak and then referred to SCB medical college, Cuttack, under such circumstances, the possible of loss of ticket was alleged in the OA cannot be ruled out.

Looking to the circumstances of the case, we observe that it would be worth mentioning the judgment of Hon'ble Supreme Court passed in the case (2008) 9 SCC 527 Union of India Vs. Prabhakarn Vijaya Kumar & Ors has 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 injured was a bona fide passenger and the 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 claimant.

7.6 Issue No. 4 : So far as quantum of compensation is concerned, we have gone through the medical documents such as discharge certificate of SCB medical College, which clearly shows that there auto amputation on the right foot and there was also revision of amputation done on 28/09/2018 and he was under

treatment in the said hospital from 23/09/2018 to 08/10.2018. Looking at the nature of injury sustained by the original applicant (injured) we feel that the said the injury comes under Sl. No.22 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 "for amputation below knee with stump exceeding 5" a sum of Rs. 3,20,000/- (Rupees Three Lakhs Twenty Thousand) has been provided. Hence, the Applicants being the legal heir of the deceased (injured died during pendency of the case) entitled to get total compensation of Rs.3,20,000/- (along with 9% interest from the date of registration of OA after condonation of delay i.e. (16/02/2021) till the date of payment. This issue is answered in favour of the Applicants. Hence ordered.

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

- | | |
|---|------------------|
| 1/1. Kisan Munda Son of the deceased | : Rs. 1,10,000/- |
| 1/2. Kanhu Munda, son of the deceased (minor) | : Rs. 1,00,000/- |
| 1/3. Bhima Mun son of the deceased | : Rs. 1,10,000/- |

Rs. 3,20,000/-

8. ORDER:

8.1 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:

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 disbursement for reasons to be stated in writing depending on the exigencies requiring liquidation of any corpus created for annuity or premature closure of fixed deposit, for the benefit of the claimant.*
- 5.4 The orders dated 21st April, 2017, 24th May, 2019 and 6th November, 2019 of Hon'ble High Court of Delhi in FAO No. 22/2015 and CM Application No. 4501/2015 in Geeta Devi Vs Union of India, relating to disbursement of compensation shall be read as part of this Rule.*

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.

- 8.2 The Applicant No.1/1 and 1/3 are permitted to withdraw only Rs.10,000/- (Rupees Ten Thousand only) each out of the awarded amount along with proportionate 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 1,00,000/- (Rupees One Lakh only) each shall be fixed in shape of FDR for a period 2 years in any nationalized bank near their place of permanent*

residence. The bank shall release the amount with accumulated interest upon maturity of the FDRs to the credit of the bank account of the Applicants, sons of the deceased. However, 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 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.

8.3 The compensation amount of Rs.1,00,000/- (Rupees One Lakh) as awarded in favour of Applicant No.1/2, minor son of the deceased shall be fixed in shape of FDR in any nationalized bank near his place of permanent residence till he attained the status of major. The bank shall release the amount with accumulated interest upon maturity of the FDR to the credit of the saving bank account of the Applicant No. 1/2 , son of the deceased upon his majority. However, 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 he 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.

8.4 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 Applicants will be eligible for interest @ 9% from the date of condonation i.e. 16/02/2021 till the actual deposit before the Bench.

8.5 The claimant is directed to open individual savings bank account in a Nationalized Bank near the place of his 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.

8.6 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 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.

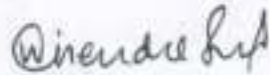
8.7 The original fixed deposit shall be retained by the bank in safe custody. However, the statement containing FDR number, FDR amount, date of maturity and maturity amount shall be furnished by the bank to the claimants. The monthly interest to be credited by ECS in the saving bank account of the claimants 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.

8.8 If the claimant 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. 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 11/01/2024.

Fix. 20/03/2024 for compliance on the points as mentioned in the judgment above in order No.35


(Ajoy Kumar Behera)
Member (Technical)
Date 11/01/2024

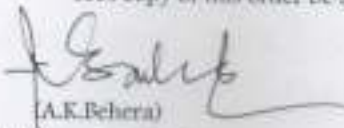
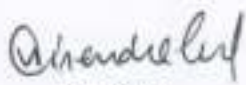

(Virendra Kumar Goyal)
Member (Judicial)
Date 11/01/2024

RAILWAY CLAIMS TRIBUNAL

BHUBANESWAR BENCH

ORDER SHEET

Nature of application _____ Number OA No. 18 of 2021 Sidha Munda / Kisan Munda and Others-versus- UOI / GM / East Coast Railway, Bhubaneswar

Date	Proceeding of the Bench	Notes of the Registrar
35 11/01/24	Judgment pronounced vide separate sheet attached to the record. The O.A. is allowed, on contest, on its merit for Rs 3,20,000/- (Rupees Three Lakhs Twenty Thousand only) in favour of the Applicants along with @9% per annum from the date of condonation of delay i.e. 16/02/2021 till the 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 default till the date of actual deposit of the amount with the Registry of this Bench. Fix 20/03/2024 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. 11/01/2024  (V.K. Goyal) Member (Judicial) Dt. 11/01/2024	