

BEFORE THE RAILWAY CLAIMS TRIBUNAL
BHUBANESWAR BENCH

Case No. OA (IIU)/19/2021

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

Date of incident: 12/09/2018

Date of Registration: 18/02/2021

Date of Judgment: 27/05/2024

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

In the matter of

KUNJIA MALIK, aged about 53 years,

Applicant

S/o. Late Kalua Malik

Residence of At: Bijayanagar,

PO: Belapadapatna, PS: Gania

Dist. Nayagarh-752085, Odisha.

-Versus-

Union of India represented through

Respondent

It's GENERAL MANAGER, EAST COAST RAILWAY

Chandrasekharapur, Bhubaneswar, Odisha.

Appearance:

For the Applicant : Sri B. Beura, Advocate

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

JUDGEMENT

1. This present claim application has been filed by father of the deceased under section 16 of the Railway Claims Tribunal Act, 1987, claiming compensation of Rs.8,00,000/-(Rupees Eight Lakhs) along with 12% interest from the date of filing from the Railway Administration on account of death of his unmarried son namely Raj Kishore Malik, allegedly in an untoward incident involving fall from a running train.

2. **Brief facts of the case:** In the original claim application it has been averred by the Applicant that on the date of incident i.e. on 12/09/2018, the deceased namely Raj Kishore Malik was travelling from Bhadrak to Cuttack railway station by Bhadrak-Bhubaneswar DMU passenger train as a bona fide passenger. It is averred that during course of the journey on the way near Jajpur road railway station, he

accidentally fell down from the running train and sustained injuries on his person. It is submitted that just after the incident the injured was rescued by the Railway personnel and he was shifted to Jajpur Hospital and thereafter he was referred to SCBMCH, Cuttack for better treatment and during course of treatment in the said hospital he died on 17/09/2018. Based upon the information of Medical Superintendent of SCBMCH, Cuttack, the Mangalabag Police Station has registered a UD case No. 1677/2018 dated 17/09/2018 and conducted enquiry in the matter. With regard to the ticket, it is submitted by the Applicant that on the date of incident his deceased son was travelling from Bhadrak to Cuttack railway station with a valid journey ticket but the same was lost in the incident.

3. Respondent's Reply: On receipt of the notice, the Respondent Railway appeared and filed its written statement to the claim application along with DRM's statutory investigation report, wherein they have denied the allegations of the Applicant made in the original claim application. It is submitted that the incident as alleged by the Applicant does not fall within the ambit of Section 123 (C) & 124-A of the Railways Act. It is also contended that during course of enquiry it came to the light that just after departure of BHC-BBS passenger train at Jajpur Road railway station, the train suddenly stopped and some passengers shouted that one transgender fell down from the running train while he/she was trying to board from off side of the train, when it was in running motion. It is submitted that the incident had occurred due to his/her own negligence and the Respondent Railway is no way responsible for such death and have prayed accordingly for dismissal of the claim application and that no compensation shall be granted to the dependent of the deceased.

4. Applicant's Evidence: In the evidence, the AW/ 1 i.e. Applicant, Kunjia Malik, father of the deceased, has filed his own examination in chief on affidavit. A copy of FIR, memo of Dr. Swapna Sahu of SCBMCH, inquest report, dead body challan, death certificate of the deceased, Aadhaar of the Applicant as well as that the deceased and bank pass book has been filed along with the original claim application. Another witness namely Bijay Kumar Malik, has been examined by way of affidavit in evidence as AW2 and both the witnesses were cross examined by the Ld. Counsel for the Respondent Railway Administration.

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

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 Applicant 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 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 Applicant 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.

According to the original claim application the case of the Applicant is that while the deceased was travelling from Bhadrak to Cuttack railway station by Bhadrak-Bhubaneswar DMU passenger train (58407), on the way near Jajpur Road railway station, he accidentally fell down from the running train, sustained multiple injuries on his person and during course of treatment he died i.e. on 17/09/2018. The Ld. Counsel for the Applicant during course of his argument submitted that in the DRM's investigation report, the Respondent Railway has clearly admitted to the fall of the deceased and the on duty train guard has clearly deposed before the enquiry officer that during duty period just after departure of the train from Jajpur Road railway station, the train suddenly stopped and he heard from some passengers that one transgender fell down from the running train. It is also submitted that immediately the on duty RPF staff rescued the injured and he was shifted to the

nearest Jajpur Hospital, and thereafter the doctor has referred him to SCBMCH, Cuttack, for better treatment and during course of his treatment, he died on 17/09/2018, which clearly establishes that the incident had occurred during course of journey. He lastly submitted that it is a clear case of an accidental fall, that occurred during the course of the journey of the deceased in the train as a bona fide passenger and the said incident is an untoward incident which is well within the ambit of section 123 (c) (2) of the Railways Act and the Respondent Railway is accordingly, liable to pay compensation to the Applicant for such death.

7.2. Whereas on the other hand, the Ld. Counsel for the Respondent Railway submitted that they have admitted the fall but have attributed the cause of such fall due to negligence on part of the deceased, as he/she trying to board off side of the train, while it was in running motion and as a consequence of such negligence, he/she fell down and died in course of treatment. He also argued that there is no evidence on record to establish that the deceased before boarding the train had purchased the journey ticket and the plea of loss of ticket as alleged in the OA is completely false and fabricated. Lastly he concluded his argument by mentioning that it is a case of self-inflicted injury on the part of the victim arising out of his/her own criminal act, which is within the exception of section 124-A of the Railways Act and the Respondent Railway is not liable to pay compensation to the Applicant.

7.3. In his rebuttal, the Ld. Counsel for the Applicant submitted that the stand taken by the Respondent Railway in his argument as well as DRM's investigation report that, the deceased died out of his/her own negligence, as he/she was trying to board off sided the train, while it was in running motion is not sufficient ground to discard the pleadings of the Applicant, as there is no cogent or concrete evidence available to establish the same and this is based purely only an assumption and therefore this cannot be accepted in any manner.

7.4. The fact remains that a Station Diary Entry No. 2248/Q dated 12/09/2018 has been made by the SMR/JJKR railway station based upon the report of on duty guard of 58407 BHC-BBS passenger train. It is an admitted fact that the on duty train guard has clearly deposed before the enquiry officer that during his duty period just after departure of the said train at JJKR railway station suddenly the train stopped and he heard from some passengers that one transgender fell down from the running train, as he/she was trying to board into the train from the off side at JJKR railway

station, while it was in running motion. The injured was lying outside the railway track and both legs were cut and his/her condition is severe and immediately by the help of railway personnel the injured was shifted to nearest Jajpur Hospital and thereafter shifted to SCBMCH, Cuttack and during course of treatment the doctor declared him as dead. The treating doctor has also issued a memo to Mangalbag PS mentioning the cause of death of the deceased is due to RTA (Railway Traffic Accident) and also crush injury in both legs below knee amputated and cause of death is cardiopulmonary arrest, which cannot be ruled out. In the post mortem report, the doctor has opined that the cause of death is due to several injuries and its related complication and time of death is within 06 hours of post mortem. The Inquest report prepared by ASI of Medical OP, Mangalbag PS, indicates the cause of death is due to fall from train. Moreover, all the documents available in the record are in one voice indicating that, it is a case of accidental fall, which cannot be ruled out.

7.5. Although the Respondent Railway in the DRM's investigation report has come up with a defence that the deceased was not a bona fide passenger, as no journey ticket or any authority was found with the deceased and the deceased died out of his/her own negligence, as he/she was tried to board off side of the train while it was in running motion and as a consequence of such negligence, he/she fell down and died thereafter. But this is found to be a complete assumption only, as there is no direct witness to the circumstances of the fall and they have not produced any cogent or concrete evidence in support of this inference. The Respondent railway has not adduced any evidence to prove that the death of the deceased was caused otherwise. Also, as regards the point regarding own negligence on the part of the deceased, which the Respondent has made, it is well settled in law that even if there is negligence on the part of any passenger in course of the journey, where there is no deliberate or criminal negligence to cause self-harm, the Railways are still liable to pay compensation under the principles of strict liability, which in essence is the guiding spirit in the concept of beneficial legislation. 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.

7.6. In the absence of any other evidence to the contrary and taking into account the attending circumstances to the case, the possibility of the deceased falling down from train as alleged cannot be ruled out keeping in view the beneficial legislation aspect in this case. In fact, I find no substantial evidence available on case record to establish that the deceased died out of any of the exceptions mentioned under the clause (a) to (e) of the proviso to section 124 A of the Railways Act.

7.7. So far as the ticket is concerned, it is averred by the Applicant that the deceased before boarding the train at Bhadrak railway station on 12/09/2018, had purchased a train journey ticket for himself in presence of AW2 namely Bijay Kumar Malik, for his outward journey to Cuttack railway station, which was lost in the alleged incident. As per Respondent Railway the deceased was not a bona fide passenger as defined under section 2 (29) read with 124-A of the Railways Act, 1989, as no journey ticket or any travelling authority was recovered from the possession of the deceased during preparation of inquest report.

7.8. The position of law is very clear as it has been held in the case of Union of India vs. Rina Devi 2018 ACJ 1441 (SC) that.

17.4. "Mere presence of a body on the railway premises will not be conclusive to hold that the injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found".

7.9. In this case the Applicant have discharged his burden by filing Affidavit and through deposition of AW 2, who had accompanied with the deceased to the railway station and had seen the deceased purchasing the journey ticket for himself for outward journey to Cuttack Railway Station and saw him off after the deceased boarded BHC-BBS passenger train. It is true that 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. It is an admitted fact that just after

the incident, the injured was rescued from the railway track having his/her both legs were cut and sustained severe injuries on his/her body and was shifted him to nearest Jajpur Hospital, by the help of railway personnel and thereafter the treating doctor referred to SCBMCH, Cuttack, and during course of treatment he died. Under such circumstances, losing a ticket, which is just a small piece of paper, in my considered opinion cannot be ruled out. Moreover, there is no reason to disbelieve the statement of Bijay Kumar Malik (AW2), who has deposed in evidence that he had accompanied with the deceased to Bhadrak railway station and had seen the deceased purchasing the journey ticket for himself to travel to Cuttack railway station and that he had witnessed the boarding into the train by the deceased. During his cross examination, nothing could be elicited otherwise. The Respondent Railway has not produced any cogent or concrete evidence to establish that the deceased was not a bona fide passenger at the time of incident. 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.

7.10. Thus, keeping in view of settled principles of law (*supra*) supported by accepted evidence available on record and the attending circumstances of the case, it is held that the deceased was a bona fide passenger at the time of the incident and under the facts and circumstances of this particular case, it is held that the death of the deceased 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 Applicant for such death. Therefore, all these issues are decided in favour of the Applicant.

8. Issue No. 4 & 5: The original claim application has been filed by father of the unmarried deceased and he has filed his Aadhaar Card in support of his identity and relationship with the deceased. In the original claim application as well as the deposition (AW1), the Applicant has mentioned that the mother of the deceased (wife of Applicant) is pre-deceased. The Respondent has not adduced any evidence to prove anything otherwise. Thus, in view of above the Applicant, being the father is the only sole 'dependent' of the deceased under section 123 (b) of the Railways Act, 1989 and accordingly, he is entitled to get compensation of Rs.8,00,000/- (Eight Lakhs) as prescribed under part I of the Schedule appended to Rule 3 (3) of the

Railway Accidents and Untoward Incident (Compensation) Rules 1990, along with simple interest @ 9% per annum from the date of condonation of delay i.e. 18/02/2021 till the date of payment. Both these issues are decided accordingly. Hence ordered.

KUNJIA MALIK, father of the unmarried deceased; Rs. 8,00,000/-

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 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.*

In view of the above, the Applicant is entitled to get compensation of Rs.8,00,000/- (Rupees Eight Lakhs only) along with simple interest @ 9% from the date of condonation of delay i.e. (18/02/2021) till 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, father of the unmarried deceased is permitted to withdraw of 10% of his awarded amount of Rs. 80,000/- (Rupees Eighty Thousand), along with proportionate share in interest which will be deposited in his savings Bank A/c opened in any nationalized bank near his 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, It is ordered that the balance amount of Rs.7,20,000/-(Rupees Seven Lakh Twenty Thousand only) shall be invested in 72 (seventy-two) fixed deposits of Rs. 10,000/- (Rupees Ten Thousand) each and invested for a period of 1 to 72 months in the ascending order. The bank shall release the amount with accumulated interest upon maturity of each of these deposits to the credit of the bank account of the Applicant, father of the deceased. 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.

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 Applicants 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 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 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 Applicant is eligible for interest @ 9% per annum from the date of condonation of delay i.e. (18/02/2021) till the date of actual deposit of the awarded amount with the Registry of this Bench.

9.4. The 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 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 claimants 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 claimants 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 his 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.

9.6. 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 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.

9.7. If the Claimant is 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.

9.8. 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 his residential address. Pronounced in the open tribunal today on 27/05/2024.

Fix. 06/08/2024 for compliance on the points as mentioned in the judgment above in order No. 31.

(Ajoy Kumar Behera)

Member (Technical)

Dt: 27/05/2024

**RAILWAY CLAIMS TRIBUNAL
BHUBANESWAR BENCH**

ORDER SHEET

Nature of application _____ Number OA (IIU) No. 19 of 2021, Kunjia Malik, versus-
UOI /GM / East Coast Railway, Bhubaneswar, Odisha.

Date	Proceeding of the Bench	Notes of the Registrar
<u>31</u> 27.05.24	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 Lakh only) in favour of the Applicant along with interest @ 9% per annum from the date of condonation of delay i.e. (18/02/2021) 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 06/08/2024 for compliance on the following points: - <u>For the Claimant: -</u> 1) Production of Bank Account details opened near his 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 Claimant. <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) <u>Dt: 27/05/2024</u>	