

BEFORE THE RAILWAY CLAIMS TRIBUNAL**BHUBANESWAR BENCH****Case No. OA (IIIU)/35/2022**

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

Date of incident: 08/01/2020

Date of Registration: 26/07/2022

Date of Judgment: 11/01/2024

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

In the matter of

1. Smt. Kuni Nahak aged about 48 years

Applicants

W/o late Kelu Nahak

2. Maguni Nahak aged about 23 years

S/o late Kelu Nahak

3. Prabhakar Nahak aged about 22 years

S/o late Kelu Nahak

All are belong to village : Odiaalapur, Pathara,

PS: Khallikote, Distt: Ganjam-761029

Odisha

- Versus -

Union of India represented through

Respondent

It's General Manager, South Central Railway ,

Secunderabad

Appearance:

For the Applicants : Sri D.P.C.Acharya, Advocate.

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

JUDGEMENT

1. This present claim application has been filed by the Applicants (wife and children of the deceased) under section 16 of the Railway Claims Tribunal's Act, 1987, claiming compensation of Rs. 8,00,000/- (Rupees Eight Lakhs) along with interest from the Respondent Railway Administration for death of one Kelu Nahak,



husband of Applicant No.1, allegedly in an Untoward Incident involving fall from a running train.

2. **Brief facts of the case:** - The pleading of the Applicants is that the deceased Kelu Nahak, was a labourer by profession and had gone to Chennai for search of work and on the date of incident, he was travelling by the train No. 12840 from Chennai to Balugaon railway station, and during course of his journey in the said train, he accidentally fell down near Tuni railway station and died on the spot. It is stated that on the date of incident, the deceased Kelu Nahak was travelling vide railway ticket bearing No.19563399 dated 07/01/2020 and during inquest the said ticket was recovered by police from the pocket of the deceased.

3. **Respondent's reply:** -On receipt of notice, the Respondent Railway appeared and filed its written statement wherein they have denied all the allegations and averments made in the claim application. It is stated that the present case in no manner falls within the scope of section 123 (c) (2) read with section 124 A of the Railways Act for compensation. It is further stated that there is no eye witness to the purchase of ticket, boarding into the alleged train by the deceased and falling down from it. The Respondent have denied that the deceased was a bona fide passenger of train No. 12840 and have put the Applicants to strict proof of the same. As per the statutory DRM's investigation report, there is absolutely no cogent evidence to establish that the deceased died out of an accidental fall from running train. It is stated that the train no. 1280 passed through Reguipalem and Elamanchili station in between 11.21 to 11.26 hours in the broad day light hours and if any person had really fallen from the running train, the fall would not have gone unnoticed by any passenger and some passenger would have surely pulled the alarm chain or informed the train's crew members about it. But no such report about the untoward incident was received from any corner. Hence under this facts and circumstances, the Respondent have emphasized that the alleged death of the deceased due to fall from train is suspicious and may be on account of some other reason for which Respondent railway is no way responsible and is not liable to pay compensation.

4. **Applicant's Evidence:** - In the evidence, the Applicants have filed the certified copy of FIR, case diary part 1, spot map, case diary, final report, inquest report, post mortem examination report, aadhar card, bank details, photograph at the incident spot and AW 1, wife of the deceased has been examined before the bench as AW 1

and another witness namely Narayan Nahak, has been examined as AW 2. Both the witnesses were cross examined by the Ld. Counsel for the Respondent.

5. **Respondent's Evidence:** - The Respondent Railway on the other hand have filed DRM's investigation report along with enquiry report of ASI/RPF/Tuni, memo of information to RPF and GRP from SS/SM, Photograph at the spot, rough sketch of the site, security control message, extract of diary entry, FIR, inquest report, case diary, final report, DAR from GRP, ticket particulars, jolt /jerk certificate, statement of SS/SM, Key man , RPF staff and train manager in connection with the alleged incident. The Respondent railway did not adduce any oral evidence in this case.

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 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 i.e. on 08/01/2020 deceased Kelu Nahak was travelling from Chennai to Balugaon railway station on the strength of railway ticket bearing No.19563399 dated 07/01/2020 and during inquest the said ticket was recovered by police from the pocket of the deceased. The Applicants in support of such plea have filed the copy of said ticket along with the claim application. The Respondent railway has not disputed the ticket nor have they adduced any evidence to prove anything otherwise. As per statutory DRM's investigation report, the IO/RPF during course

of enquiry has verified the said ticket in the office of CCM/PM, Southern Railway, Chennai and found that it was issued at 20.12 hours on 07/01/2020 at Terminal 1 of MAS railway station. Thus in view of undisputed documentary evidence, 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. 2 & 3: These issues are taken up together for convenience being interconnected.

The pleadings of the Applicants is that the deceased Kelu Nahak in course of journey by train No. 12840 from Chennai to Balugaon railway station, accidentally fell down in between Regupalem and Elamanchili railway station near Tuni railway station at KM No. 717/28-26 and died on the spot. In this connection AW 1, wife of the deceased has filed affidavit in evidence wherein she reiterated the same facts as stated in the claim petition. The Ld. Counsel for the Applicants, during his arguments submitted that, the deceased is a victim of an untoward incident that occurred during course of the journey as a bona fide passenger and the on duty Key man had first noticed the deceased lying beside the railway track at KM No. 717/28-16, which establishes that the death of the deceased occurred due to accidental fall from running train. He further stated that Respondent railway has not produced any evidence to prove that the death of the deceased had been caused otherwise and the plea taken in the DRM investigation report is general in nature and have no grounds for dismissal of the Applicants pleadings.

7.3. The Respondent Railway has submitted that there is no direct witness to the purchase of ticket, boarding of train and falling down from it. It is also stated that there is no cogent evidence on the case record to establish that the deceased died out of an accidental fall from running train. It is stated that the train No. 12840, from which the deceased had allegedly fallen down, had passed through Regupalem at 11.21 hours and Elamanchili station at 11.26 hours in broad day light and if any person had really fallen from the running train, the fall would have definitely been noticed by some passenger and at least pulling of the alarm chain been resorted to by somebody or information about the incident would have been available with the train's crew members. But no such report about the untoward incident was received from any corner and this casts a major doubt about the incident having occurred in the first place as alleged. The Ld. Counsel for the Respondent during his

argument submitted that the death of the deceased as alleged is not due to any accidental falling down from the running train. He further pointed out that the opinion of doctor in the post mortem examination report reveals that the cause of death is due to cardiac pulmonary arrest due to ploy trauma. He submitted that mere finding a person by side of the railway track does not exclusively establish that the said person had died out of a fall from running train. He accordingly sought for dismissal of the claim petition.

7.4. The fact remains that an UD case No. 05/ 2020 under section 174 of Cr.PC has been made based on the report of the Station Master, Tuni railway station to the effect that the on duty Key Man Sri Danimin Reddy, while performing his duty, had noticed the deceased lying at Km No. 717/28-26 in between Regupalem and Elamanchili railway station and during inquest one valid railway ticket was recovered in possession with him, which prima facie establishes that the death of the deceased occurred during course of his journey by train as a bona fide passenger, and this basic fact cannot be ruled out. Although the Respondent railway has come up with the defence that there is no direct witness to the alleged incident and no information with the on duty train guard or any co-passenger regarding the alleged falling down incident, but in support of such plea, they have not produced any cogent or tangible evidence to prove that the deceased had died due to any other reason other than fall from train. It is very clear that the body of the deceased was recovered by the side of the railway track, the place of occurrence was far away from both the place of residence and the destination station of the deceased and during physical verification a valid journey ticket was recovered. Once the journey ticket is recovered from the deceased, no other inference can be drawn. All these facts and evidences, clearly point to a preponderance of probability that the deceased had died out of an accidental fall during course of his journey as a bona fide passenger.

7.5. In view of the above 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 to the Applicants for such



death as defined under Section 124-A of the Railways Act, 1989. Therefore, these issues are decided in favour of the Applicants.

8. **Issue No. 4 & 5:** This claim application has been filed by the Applicants (wife and sons of the deceased) and they have filed their respective Aadhaar cards in support of their identity and relationship with the deceased. The Respondent has not adduced any evidence to prove anything otherwise. Thus in view of above, we hold that the Applicants being the wife and sons 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 to 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 condonation of delay i.e. 26/07/2022 till the date of payment. Both these issues are decided accordingly. Hence ordered.

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

- | | |
|--|------------------------|
| 1. Smt. Kuni Nahak, wife of the deceased | : Rs.4,00,000/- |
| 2. Maguni Nahak son of the deceased | : Rs.2,00,000/- |
| 3. Prabhakar Nahak, son of the deceased | : <u>Rs.2,00,000/-</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 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 Applicants are 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 26/07/2022 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 (wife of the deceased) is permitted to withdraw only 10% of her awarded amount, i.e. Rs. 40,000/- (Rupees Forty Thousand only) along with proportionate share in interest, which will be deposited in her savings Bank A/c opened in any Nationalized Bank near her place of permanent residence. The Applicant No.1 seems illiterate who put her LTI on the OA therefore, for judicious use of the bulk funds as awarded to her out of the award, it is felt justified to disburse the amounts in a manner that can ensure that her interest will be best served and that the bulk funds available to her out of the award are not weaned away due to intervention of possible middlemen or touts. Accordingly, it is ordered

that the balance amount of Rs.3,60,000/- (Rupees Three Lakh and Sixty Thousand) shall be split into 36 fixed deposits of Rs.10,000/- (Rupees Ten Thousand), which will be invested for a period of 1 to 36 months in the ascending order. The bank shall release the amount with accumulated interest upon maturity of the fixed deposit to the credit of the bank account of Applicant No.1. 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 she will have to apply specifically citing reasons and the Tribunal may consider modifications in the manner of disbursements under clause 5.3 of the Gazette of India Notification dated 03.06.2020.

9.3 Out of compensation amount of Rs.2,00,000/- (Rupees Two lakhs) each as awarded in favour of Applicant No.2 and 3 sons of the deceased, they shall be permitted to withdraw 10%, of the awarded amount i.e. Rs.20,000/- (Rupees Twenty Thousand only) each along with proportionate share of interest which shall be deposited in their savings bank account opened in any nationalized bank near the place of their permanent residence and the balance amount of Rs. 1,80,000/- (Rupees One Lakh Eighty Thousand) each shall be invested in the shape of a fixed deposit in the said bank for a period of 2 (Two) 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.2 and 3 sons of the deceased. The Applicants will be at liberty to seek withdrawal of the funds held in the fixed deposit 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.

9.4 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 condonation of delay i.e. (26/07/2022) till the date of actual deposit of the awarded amount with the Registry of this Bench.

9.6. 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.



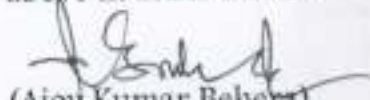
9.7. The concerned bank is directed not to issue any cheque book (s) and /or debit card (s) to the claimants. If the same have already been issued, the bank is directed to cancel the same before the disbursement of the award amount and the bank shall freeze the account of the claimant so that no debit 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.

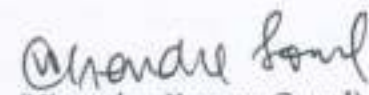
9.8. The original fixed deposit shall be retained by the bank in safe custody. However, the statement containing FDR number, FDR amount, date of maturity and maturity amount shall be furnished by the bank to the claimants. The monthly interest to be credited by ECS in the saving bank account of the claimants 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 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 11/01/2024.

Fix. 27/03/2024 for compliance on the points as mentioned in the judgment above in order No. 14


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

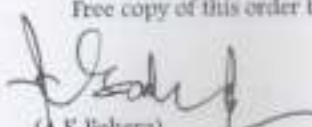
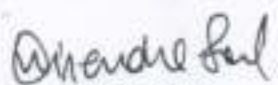

(Virendra Kumar Goyal)
Member (Judicial)
Date: 11/01/2024

RAILWAY CLAIMS TRIBUNAL

BHUBANESWAR BENCH

ORDER SHEET

Nature of application _____ Number OA No. 35 of 2022 Smt Kuni Nahak and Others -versus-
UOI /GM / South Central Railway, Secunderabad.

Date	Proceeding of the Bench	Notes of the Registrar
14 11/01/24	Judgment pronounced vide separate sheet attached to the record. The O.A. is allowed, on contest, on its merit for Rs 8,00,000/- (Rupees Eight Lakhs only) in favour of the Applicants along with @9% per annum from the date of condonation of delay i.e. 26/07/2022 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 27/03/2024 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 ECT." 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	