

BEFORE THE RAILWAY CLAIMS TRIBUNAL**BHUBANESWAR BENCH**

Case No. OA 44 /2019

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

Date of incident: 16/08/2018

Date of Registration : 25/04/2019

Date of Judgment: 15 /03/2024

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

In the matter of

Subrat Chatar aged about 29 years**Applicant**

S/o Bishnu Chatar

Village : Bahuda

PO: Harianta, PS: Tangi,

Distt: Cuttack, Odisha

PIN: 754 025

Versus

Union of India represented through

Respondent

It's General Manager, East Coast Railway,

Bhubaneswar

Appearance for the Applicant : Sri K.K.Mohanty, Advocate

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

JUDGEMENT

01. This present claim application has been filed by the injured Applicant **Subrat Chatar** 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 incident from the Railway Administration on account of injury sustained by him allegedly in an untoward incident, involving fall from running train.

02. **Brief facts of the case:** The brief fact of the case is that on the date of incident i.e. on 16/08/2018, the injured Applicant namely Subrat Chatar in course of journey by YPR-HWH Superfast express train from Cuttack to Howrah railway station, accidentally fell down from the said train at Kapilas

road railway station due to heavy jerk and push and pull of co-passengers. It is stated that on account of the fall, he sustained grievous injuries on his left hand, right foot and leg along with other multiple injuries all over the body. It is stated that just after the incident, the injured was immediately shifted to SCB medical college, Cuttack with the help of local people by 108 Ambulance where he was treated as an in-door patient at Male Accident Ward in Department of Orthopedic from 17/08/2018 to 03/10/2018. It is stated that on account of the said incident, he became permanently disabled and suffered from an irreparable loss for all time to come. With regard to the ticket, it is stated that general class railway ticket valid from Cuttack to HWH railway station had been purchased by the Applicant which has been lost in the said incident.

03. **Respondent's Reply:** On receipt of notice, the Respondent railway appeared before the bench and filed written statement wherein they have denied the averments made in the claim application. It is stated that the incident as alleged does not fall under section 123 (c) (2) of the Railway Act as such Applicant is put to strict proof of the same. It is further stated that if at all the incident was an untoward incident, then the same might have been caused due to the sheer negligence on the part of the injured, hence Railway administration is no way responsible in this case and the Applicant is not entitled to get any compensation under section 124 A of the Railway Act. As per statutory DRM's investigation report, the injured Applicant was not a bona fide passenger and no valid railway ticket or travel document has been produced by him to establish that he was a genuine passenger. It is further stated that there is no eye witness to the alleged incident and no information of fall available with the on duty station master, RPF and on duty train guard. Moreover, it is stated that injured in his statement has disclosed that he fell down from the train due to his own negligence. With these facts and circumstances, the Respondent railway have sought for dismissal of the claim application.

04. **Applicant's Evidence:** The injured Applicant in support of his has filed the original discharge certificate, copy of bed head ticket, ticket for outdoor patient, aadhar card, bank details, photograph and has been examined before the bench as AW1 and he was cross examined by the Id. Counsel for the Respondent.

05. **Respondent's Evidence:** The Respondent Railway on the other hand has filed the statutory DRM's investigation report along with enquiry report, statement of railway personnel and other enquiry related documents in connection with the case. The Respondent railway did not produce any witness in this case.

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 Cuttack to Howrah by YPR-HWH superfast express on 16/08/2018 ?
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 and 3 :** These issues being inter-related are taken up together for discussion and decision.

The injured Applicant Subrat Chatar has filed an affidavit in evidence wherein he has deposed before the bench that on 16/08/2018 night he purchased a general class railway ticket from Cuttack railway station and boarded YPR-HWH superfast express train for journey from Cuttack to HWH railway station and due to heavy rush, he was travelling by standing near the gate. It is stated that during course of his journey, due to jerk of the train supported by push and pull of co-passengers, on the way at Kapilash road railway station, he accidentally fell down from the said train and sustained grievous injuries on his left hand, right foot and leg with multiple bleeding injuries all over the body. The Ld. Counsel for the Applicant during argument submitted that the injured is a bona fide passenger and a victim of untoward

incident. He submitted that the injured before boarding the train at Cuttack railway station had purchased journey ticket and the medical documents such as ticket for outdoor patient, bed head tickets filed along with the claim application clearly reveals that it is a case of fall from running train which cannot be denied. He pointed out that the Respondent have nothing to dispute other than general pleading that the victim is not a bona fide passenger and there is no eye witness to the alleged incident. He further stated that the incident of fall occurred during night time and immediately after the incident, the injured was shifted to hospital by 108 ambulance, therefore, the possible loss of ticket cannot be denied. 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, Railway administration is liable to pay compensation.

7.2 The Respondent Railway in the statutory DRM's investigation report have submitted that the injured applicant is not a bona fide passenger and that, there is no eye witness to the alleged incident. It is stated that the on duty station master, Kapilas road, on duty RPF staff and on duty train guard during their statement before the bench have clearly denied any report of falling down of any passenger from the running train. It is stated that the injured Applicant during course of enquiry disclosed that he fell down from the train due to his own negligence. The Ld. Counsel for the Respondent during argument submitted that mere finding a person by the side of railway track does not exclusively establish that the said person sustained injury due to fall from a running train. He prayed for dismissal of the claim application accordingly.

7.3 It is a fact that no station diary entry has been made at Kapilas road railway station with regard to alleged accidental fall but the medical documents available in the case record such as Outdoor ticket, bed head ticket and discharge summary of SCB medical college, Cuttack filed along with the original claim application clearly reveals it is a case of fall from running train that cannot be denied. The injured applicant may have been rushed immediately by first means to the hospital as an endeavour to save his precious life and therefore, the reporting of the matter to the Railway authorities may not have been a priority at all in this case, cannot be ruled out. The AW 1, the injured Applicant, during examination in chief has clearly deposed before the

bench that the incident took place 1 KM before Kapilas railway station at about 12.30 AM at night on 16-17/08/2018. He stated that on account of the fall, the lower part of left hand got detached from his hand and there is injury on little toe of right foot, injury on ankle and fracture injury on right foot. It is a fact that immediately after the incident, the injured was shifted to the nearest hospital by 108 ambulance and had undergone treatment for more than one month. Although the Respondent railway have taken the plea that there is no eye witness to the alleged incident, but in support of such plea, they have not adduced any evidence to establish that the injuries was sustained by the Applicant due to reasons otherwise. Going by the circumstantial evidences supported by medical documents, the possible fall from train as alleged cannot be ruled out and it cannot be inferred whatsoever, that the fall was a deliberate act of injury to cause himself irreparable damage. The Respondent railway on the other hand has not produced any documentary evidence to the contrary and have failed to produce any evidence that the case comes under the umbrella of exceptions of Sec 124 A of the Railways Act to be deemed as an act of criminal negligence.

7.4 With regard to journey ticket, the injured Applicant has stated that it was lost in the incident. Going by the timing of the incident, it is stated that the incident of fall occurred at 12.30 hours in the night and immediately after the incident, the injured was shifted to nearest hospital by 108 Ambulance, therefore, the plea of loss of ticket as alleged in the claim application cannot be denied. The Respondent railway has not produced any evidence to anything contrary to establish injured was not a bona fide passenger.

Thus, in view of above discussion, we are of the view that the injured Applicant 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, these issues are decided in favour of the claimant.

7.5 Issue No. 4 : So far as quantum of compensation is concerned, we have gone through the medical documents and Discharge Summary, bed head ticket and ticket for outdoor patient of SCB medical college, Cuttack. As per discharge

certificate of SCB medical college, Cuttack, there is below elbow amputation on the left hand and crush injury on right foot for which he had undergone treatment in the said hospital from 17/08/2018 to 03/10/2018. Considering the nature of injuries on the left hand we are of the view that that said injury comes under Sl. No.4 of Part III of schedule of injuries "for loss of a hand or the thumb and four fingers of one hand or amputation from 4 ½" below space tip of olecranon" for which a sum of Rs.4,80,000/- (Rupees Four Lakh Eighty Thousand only) is payable as prescribed under part I of the Schedule appended to Rule 3 (3) of the Railway Accidents and Untoward Incident (Compensation) Rules 1990. Moreover, discharge certificate reveals that there is a crush injury on the right foot for which there is spring extension fixation and SSG done on 18/09/2018. This is a non-schedule injury, hence we by exercising the discretionary power given under Rule 3 (3) of the said Rules and considering the nature of injuries along with trauma, pain suffering and period of hospitalization, we are of the view that a sum of Rs.1,20,000/- (Rupees One Lakhs Twenty thousand only) is provided as compensation to the injured. Hence, the injured Applicant is entitled to get total compensation of Rs 6,00,000/- (Rupees Six Lakhs only) along with the simple interest @ 9% per annum from the date of incident i.e. 16/08/2018 till the date of payment. Both these issues are decided accordingly. Hence ordered.

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 subserve 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 injured Applicant is entitled to get total compensation of Rs.6,00,000/- (Rupees Six lakh only) along with along with 9% interest from the date of incident i.e. 16/08/2018 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.

8.2 The injured Applicant is permitted to withdraw only 10% of his awarded amount, i.e. Rs. 60,000/- (Rupees Sixty Thousand only) along with the proportionate interest which will be deposited in his savings Bank A/c opened in any Nationalized Bank near his place of permanent residence. To ensure that the bulk funds available to him out of the award is not weaned away due to intervention of possible middlemen or touts, the balance amount of Rs.5,40,000/- (Rupees Five Lakhs Forty thousand only) shall be split into 54 fixed deposits of Rs.10,000/- (Rupees Ten Thousand) each, for a period of 1 to 54 months in the ascending order. Keeping particularly the disability in mind and also to safeguard the Claimant, it is felt that such mode of disbursement will enable the Claimant 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 54 fixed deposits to the credit of the Bank account of the Applicant. In the eventuality of the Applicant requiring release of additional funds for medical attention or any exigency by liquidation of the fixed deposits, he 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 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 Applicant normally resides and this is best proven by the address as depicted in documents such as the Aadhaar card, the voters' 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.

8.3 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 Claimant shall be entitled interest @ 9% from the date of incident i.e. 16/08/2018 till the date of actual deposit before the Bench.

8.4 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.

8.5 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.

8.6 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.

8.7 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 injured Applicant stands disposed of. The Registry is directed to send the certified copy of this judgment directly to the Applicants in his residential address. Pronounced in the open tribunal today on 15/03/2024.

Fix. 31/05/2024 for compliance on the points as mentioned in the judgment above in order No. 37

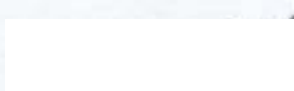
(Ajoy Kumar Behēra)
Member (Technical)
Date 15 /03/2024

(Virendra Kumar Goyal)
Member (Judicial)
Date 15 /03/2024

**RAILWAY CLAIMS TRIBUNAL
BHUBANESWAR BENCH**

ORDER SHEET

Nature of application _____ Number OA (JIL) No. 44 of 2019 in the case of Subrat Chatar
versus- UOI / GM / East Coast Railway, Bhubaneswar

Date	Proceeding of the Bench	Notes of the Registrar
37 15/03/24	Judgment pronounced vide separate sheet attached to the record. The O.A. is allowed on contest on its merit for Rs. 6,00,000/- (Rupees Six Lakhs only) in favour of the Applicant along with interest @ 9% per annum from the date of incident i.e. 16/08/2018 to till the date of actual 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 31/05/2024 for compliance on the following points: - <u>For the Claimants: -</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 Claimants. <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: 15/03/2024</u>  (V.K. Goyal) Member (Judicial) <u>Dt: 15/03/2024</u>	