

BEFORE THE RAILWAY CLAIMS TRIBUNAL

BHUBANESWAR BENCH

Case No. OA (IIU)/64/2020

Coram : Shri Sanjay Singh Gehlot, Hon'ble Vice-Chairman at RCT/BBS
Sri Virendra Kumar Goyal, Hon'ble Member (Judicial), RCT/BBS

Date of incident: 21/09/2018

Date of Registration: 12/09/2019

Date of Judgment: 06/09/2024

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

In the matter of
Gita Sau aged about 50 years Applicant
W/o late Anil Sau,
Resident of Village: Daulatpur, PS: Contai,
Distt: Purba Medinapur,
West Bengal

- Versus -

Union of India represented through Respondent
It's General Manager, South East Central Railway,
Bilaspur

Appearance:

For the Applicants : Sri S.C.Mohanty, Advocate

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

J U D G M E N T

1. This present claim application has been filed by the Applicant (mother of the unmarried deceased son) under section 16 of the Railway Claims Tribunal Act, 1987, claiming compensation of Rs.8,00,000/- (Rupees Eight Lakhs) along with bank interest from the date of incident from the

Respondent Railway Administration for death of her son namely Sambhu Sau, allegedly in an Untoward Incident involving fall from a running train.

2. Brief facts of the case: - As per original claim petition, on 20/09/2018, the deceased Sambhu Sau along with his co-worker Sukumar Sahoo boarded train No.12809 Express at Dadar railway station for their journey from Dadar to Kharagpur railway station and during course of their journey in the said train, on 21/09/2018, the deceased Sambhu Sau, accidentally fell down at KM No. 528/26 in between Lajkura and Brajrajnagar railway station, sustained injuries and died on the spot. In this connection GRPS, Jharsuguda has registered an UD case No. 42 dated 22/09/2018 and took up investigation. With regard to the journey ticket, it is stated that on the date of incident, the deceased was travelling as a bona fide passenger having PNR ticket No. 871-0147418 dated 20/09/2018 valid from Dadar to Kharagpur railway station.

3. Respondent's reply: On receipt of notice, the Respondent railway appeared and filed a written statement to the claim application along with the statutory DRM investigation report. In the written reply, it is stated the averments made by the Applicant in the claim petition are false, fabricated and not within the relevant provision of section 123 (c) (2) of the Railway Act 1989. As per statutory DRM's investigation report, the on duty train guard and loco pilot of train No. 12809 have information about the alleged incident and there is no proof of evidence on record to establish that the deceased died out of fall from running train. It is further stated that the deceased did not follow safety rules and during the course of journey, he travelled by sitting near the door of the train compartment and as a result of which he fell down and died. With regard to journey ticket, it is admitted that a journey ticket bearing No. PNR No. 871-0147418 dated 20/09/2018 valid from Dadar to Kharagpur railway station was found in possession with the deceased.

With these facts and circumstances, the Respondent railway has prayed for dismissal of the claim petition.

4. Applicant's Evidence: The Applicant in support of her plea have filed the copy of FIR, inquest report with its translation, dead body challan, post mortem examination, journey ticket, final report, bank passbook and examined herself before the bench as AW 1 and she was cross examined by the Ld. counsel for the Respondent railway administration.

5. Respondent's Evidence: - The Respondent Railway on the other hand have filed DRM's investigation report along with the enquiry report of ASI/RPF/Post/BRJN, diary entry of Station Master, Brajrajnagar, statement of railway personnel and other documents in connection with the enquiry of the alleged incident. The Respondent railway did not produce any witness to examine before the bench in this case.

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

1. Whether the death of the 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 Applicant is entitled to get compensation U/s 124 A of the Railway Act 1989?
4. Whether the Applicant is the dependents of the deceased to receive the compensation as claimed?
5. To what relief the Applicant is 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 Applicant has filed the copy of journey ticket bearing PNR No.871-01474418 dated 29/09/2018 in support of the plea that on the date of incident, her deceased son was a bona fide passenger and he was travelling with his co-passenger on the strength of that joint ticket only. In this connection, the Applicant has filed the copy of the inquest report along with the claim petition, which reveals that during the inquest, the police have recovered the said ticket in possession of the deceased. The Respondent railway in the statutory DRM's investigation report, admitted that the ticket bearing PNR No.871-01474418 dated 29/09/2018 valid from Dadar to Kharagpur railway station was recovered in possession with the deceased and during verification at Chief Commercial Manager (PM), it was found that the said ticket was genuine and it was issued in the name of deceased Sambhu Sahoo and along with his co-passenger, Sukumar Sahoo. Thus in view of undisputed documentary evidence, we are of the opinion that the deceased was a bona fide passenger at the time of occurrence. This issue is decided in favour of the Applicant.

7.2. **Issue Nos. 1 & 3:-** Both the issues are taken up together for convenience being interconnected.

AW 1, wife of the deceased has deposed in the affidavit in evidence that prior to the date of incident, her deceased son was working at Malad, Mumbai in a imitation ornament making factory along with other youths of their locality and during course of journey by train No. 12809 from Malad to Kharagpur railway station, her deceased son, accidentally fell down from the said train and died. The Ld. Counsel for the Applicant during argument submitted that the incident of death was within the scope of section 123 (c) (2) of the Railway Act ,1989 wherein deceased during course of journey accidentally fell down and died. He further submitted that the documentary

evidence such inquest report and final report submitted in this case reveals that the deceased died in a fall from running train. He further submitted that the Respondent railway in the statutory DRM investigation took the stand that the deceased travelled by sitting or standing near the door of the train compartment but in support of such plea, they have not produced any substantial evidence in form of direct witness to establish anything otherwise. He accordingly sought compensation under the extant provisions.

7.3. The Respondent railway in the statutory DRM's investigation report submitted that there is no evidence on record to establish that the deceased died of a fall from a running train. It is stated that the on the duty train guard and loco pilot of the alleged train No.12809 during enquiry stated that they have no information about the alleged incident. The investigation reports further reveal that the deceased during the course of journey travelled by sitting or standing near the door of the train compartment and as a result, he fell down and died. The Ld. Counsel for the Respondent during argument submitted that the Railway Administration regularly makes announcements on public address systems at stations to inform passengers against the hazards of boarding or alighting or leaning out of moving trains or travelling on footboard/roof of the train, which is an offence under section 156 of the Railways Act 1989. The Ld. Counsel for the Respondent argued that on the date of the incident, the deceased did not take safety precautionary measures and travelled by sitting on the footboard of the train compartment resulting in his fall and death thereafter. She added that the deceased died out of his own negligence and the incident cannot be considered as an untoward incident as stipulated under section 123(c) (2) of the Railways Act. She further submitted that as per section 124 A sub clause (b) of the Railways Act 1989, if a passenger dies or suffers injury due to a self-inflicted Act, railway administration will not provide any compensation and accordingly she prayed for dismissal of the claim application.

7.4. It is a fact that a station diary entry No.397 dated 21/09/2018 has been made at station manager, Brajrajnagar based on the written memo of on duty Loco Pilot of train No. N/MALL Sri P .Minj/BRJN to the effect that he found one male dead body (deceased) at KM No.528/26 by the side of DN line track and during course of enquiry of the UD case, police, submitted final report with the remarks that cause of death of the deceased is due to accidental fall from running train. Although the Respondent Railway has come up with a defence that that deceased during course of journey did not take safety rule and travelled by sitting or standing near the door of the train compartment and died out of his own negligence but in support of such plea, no direct evidence produced in this case to establish that there was an element of criminal negligence or the deceased died out of self-inflicted injuries so as to attract proviso clauses to Section 124 A of the Railway Act, 1989. Looking at the circumstances wherein the deceased fell down from the train, sustained injuries and died thereafter, we are of the view that it is not a deliberate / self-inflicted act to cause harm to himself which ultimately lost his life. The Respondent railway failed to discharge the burden laying upon them to establish the death of the deceased caused otherwise rather than fall from the train.

7.5 Also, as regards the point regarding deceased travelled by sitting near the door train compartment and died out of his own negligence, which the Respondent has made, it is well settled 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. We would rely upon the observations 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. There is no evidence available on record to show that the alleged case is coming under any of the exceptions specified in the proviso to Section 124 A of the Railways Act, 1989. Relevant Inquest Report, Final Report in one voice concludes that the cause of death of the deceased is due to fall from the running train without any foul play. These material reports have neither been challenged by the respondent by adducing contra evidence or to falsify the statement contained in the aforesaid police documents.

7.7 Keeping all the above points in view, 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 Respondent 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, Both the issues are decided in favour of the Applicant.

8. Issue No. 4 & 5: This claim application had been filed by the Applicant (mother of the deceased). The Applicant, mother of the deceased has deposed in her affidavit in evidence that her deceased son was unmarried at the time of his death and she is the sole applicant in this case. The Applicant has filed her respective Aadhar and identity card in support of her identity and relationship with the deceased. The Respondent has not adduced any evidence to prove anything otherwise. Thus, in view of above, the Applicant being the mother is the sole 'dependents' of the deceased which is within the definition of section 123 (b) of the Railways Act, 1989 and accordingly, she is entitled to get compensation of Rs.8,00,000/- (Rupees 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 (as amended on 22/12/2016, applicable w.e.f 01/01/2017) along with the simple interest @ 9% per annum from the date of incident i.e. 21/09/2018 till the date of payment. Both these issues decided accordingly. Hence ordered.

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

Gita Sau, mother of the deceased	: <u>Rs.8,00,000/-</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 decisions 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 claimant 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 Judgement 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, mother of the deceased is permitted to withdraw 10 % of the awarded amount i.e. Rs. 80,000/- (Rupees Eighty Thousand) along with interest, which will be deposited in her savings Bank A/c opened in any Nationalized Bank near her place of permanent residence. For the judicious use of the bulk amount awarded in favour of the Applicant, we feel 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 and also, that she otherwise is not subjected to any kind of exploitation at the hands of unscrupulous elements who can target the bulk funds available with her out of the award. Accordingly, the balance amount of Rs.7,20,000/-(Rupees Seven Lakh Twenty Thousand) shall be split into 72 fixed deposits of Rs.10,000/-(Rupees Ten Thousand) each and invested for a period of 1 to 72 months in the ascending order at the bank near the place of her permanent residence. The bank shall release the amount with accumulated interest upon maturity of the deposits to the credit of the bank account of the Applicant unmarried son of the deceased.

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. Applicant is coerced into submission that she has shifted her 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 voter's 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 Applicant from any kind of exploitation at the hands of unscrupulous elements operating in the field, it is imperative that the bank account is operated close to the place of 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 incident i.e. (21/09/2018) 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 nationalised 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 claimant 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 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 her 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 claimant. 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 will 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 premature 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. Directions contained above are in conformity with the Ministry of Railways (Railway Board) notification dated 3rd June, 2020 under GSR 347 (E) which has come into effect on 1st day of January 2020.

9.9. Accordingly, the claim application filed by the Applicants stands disposed of. The Registry is directed to send the certified copy of this judgement directly to the Applicants in their residential address. Pronounced in the open tribunal today on 06/09/2024.

10. Fix. 04/11/2024 for compliance on the points as mentioned in the judgement above in order No.32

Virendra Kumar Goyal
Member (Judicial)
Date 06/09/2024

Sanjay Singh Gehlot
Vice-Chairman
Date 06/09/2024

RAILWAY CLAIMS TRIBUNAL
BHUBANESWAR BENCH

ORDER SHEET

Nature of application _____ Number OA (IIU) No. 64 of 2020 in the case of
Gita Sau versus- UOI /GM / South East Central Railway, Bilaspur.

Date	Proceeding of the Bench	Notes of the Registrar
32 06/09/24	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 Applicant along with interest @ 9% per annum from the date of incident i.e. 21/09/2018 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 04/11/2024 for compliance on the following points: - <u>For the Claimants: -</u> 1) Production of Bank Account details opened near her place of permanent residence. Passbook must contain the necessary endorsement by the Branch Manager of the concerned bank that "No cheque book and/or debit card has been issued." If it has already been issued, there should be endorsement that "cheque book and/or debit card has been cancelled and the same shall not be issued without the permission of the RCT." The endorsement must be signed and stamped by the bank official. 2) Production of Aadhaar Card and PAN Card or any other appropriate I.D.Card. 3) Two sets of photographs and specimen signatures of the 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> Virendra Kumar Goyal Member (Judicial) Date 06/09/2024 Sanjay Singh Gehlot Vice-Chairman Date 06/09/2024	