

BEFORE THE RAILWAY CLAIMS TRIBUNAL

BHUBANESWAR BENCH

Case No. OA (IIU)/88 /2019

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

Date of incident: 01/08/2018

Date of Registration: 19/07/2019

Date of Judgment: 21/03/2024

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

In the matter of

Sunil Hati aged about 26 years

Applicant

S/o Baibasut Hati

At: Gaudachandia, PS: Junagarh

Distt: Kalahandi

Odisha

Versus

Union of India represented through

Respondent

It's General Manager, East Coast Railway,

Bhubaneswar

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

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

JUDGEMENT

01. This present claim application has been filed by the injured Applicant **Sunil Hati** under section 16 of the Railway Claims Tribunal's Act, 1987, claiming compensation of Rs.8,00,000/- (Rupees Eight Lakhs) along with 12% interest from the date of filing of the claim application 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:** In the original claim Application on 01/08/2018, while the injured Sunil Hati was travelling by Harakhanda Express train from Berhampur to Bhubaneswar railway station, on the way just before Bhubaneswar railway station, due to jerk of the train supported by push and pull of co-passengers inside the compartment, he accidentally fell down from the said running train and sustained injuries on both legs. It is stated that after the fall, he was immediately shifted to Capital Hospital, Bhubaneswar and thereafter referred to SCB medical college, Cuttack. It is further stated that during

course of his treatment at SCB medical college, the doctor amputated both his legs below knee. With regard to the journey ticket, it is stated that on the date of incident, he was travelling as a bona fide passenger but the journey ticket was lost while shifting from the spot to hospital.

03. **Respondent's Reply:** On receipt of notice Respondent Railway appeared and have filed written reply to the claim application along with DRM's investigation report and submitted that the averments made in the claim petition is completely false, fabricated and not within the relevant provision of section 123 (c) and 124 (A) of the Railways Act. It is stated that there is no eye witness to the alleged incident and the on-duty train guard neither noticed nor received any information regarding any fallen down passenger during his duty period. With regard to the journey ticket, it is stated that the injured is not a bona fide passenger and during course of enquiry he could not produce the journey ticket and could not say anything about the cost of the said ticket. With these facts and circumstances, the Respondent railway sought for dismissal of the claim application.

04. **Applicant's Evidence:** The injured Applicant in support of his plea has filed the copy of discharge certificate and bed head ticket of SCB medical college, Cuttack, disability certificate, information of GRP, aadhar card, bank details, photograph in support of injury and got himself examined before the bench as AW 1 and he was cross examined by the Ld. Counsel for the Respondent.

05. **Respondent's Evidence:** The Respondent Railway on the other hand have filed DRM's investigation report along with the enquiry report of SI/RPF/BBS, statement of railway personnel and other enquiry related documents in connection with the alleged incident. The Respondent railway did not produce any witnesses before the bench in connection with the alleged incident.

06. **Issues:** From the pleadings of the parties, the following issues were framed for determination:-

1. Whether the Applicant as a bona fide passenger for his journey from Berhampur to Bhubaneswar railway station by Hirakhand Express on 01/08/2018?
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:** 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 of both the counsels. My findings on the aforesaid issues are as under: -

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

The pleading of the injured Applicant is that during course of his journey by the Hirakhand express train from Berhampur to Bhubaneswar railway station, he accidentally fell down from the said train and sustained injury on both legs. It is stated that during course of treatment at SCB medical college, the doctor amputated both his legs below the knee. In this connection he has filed an affidavit in evidence wherein he deposed that during course of journey from Berhampur to Bhubaneswar railway, just before Bhubaneswar railway station, the said Hirakhand express train experience a sudden jerk, for which he became imbalanced and accidentally fell down and sustained severe injury on his person. He further deposed that just after the incident, he was immediately shifted to Capital Hospital, Bhubaneswar by local people in an auto Rickshaw. With regard to journey ticket, it is stated that ~~for~~ boarding the train he had purchased journey ticket which was lost along with the loss of bag in which the said ticket was kept. The Ld. Counsel for the Applicant during his argument submitted that it is a clear case of accidental fall that occurred within the railway premises at Bhubaneswar railway station and the said incident comes within the scope of an untoward incident as mentioned under section 123 (c) (2) of the Railways Act 1989 for which Respondent railway is responsible and liable to pay compensation.

7.2 Whereas the stand of the Respondent is that the injured Applicant was not at all a bona fide passenger and there is no direct witness to the alleged accidental fall. It is stated that the on-duty train guard of Hirakhand express train during his duty hours did not notice or receive any information from any corner regarding falling down of any person. There was no ACP nor any extra detention of the said train on the date of incident as alleged. It is moreover, stated that no journey ticket was found in possession with the injured and the plea of loss of ticket as alleged in the OA is completely false. The Ld. counsel for the Respondent during his argument submitted that the injury sustained by the victim in which he lost both his legs has occurred due to his own criminal negligence

for which Respondent railway is protected under section 124 A of the Railway Act and not liable to pay compensation. He further stated that no station diary entry has been made and no journey ticket was recovered in possession with the injured, which clearly established that the injured was not at all travelling in the train and the injury as alleged in the OA was caused due to a reason which was other than fall from train, and this cannot be denied. He sought for dismissal of the claim application accordingly.

7.3 The averments of the Applicant is that the incident in which he lost both his legs had occurred during course of his journey from Berhampur to Bhubaneswar railway station by the Hirakhand express train and the medical documents available in the case, such as bed head ticket of SCB medical college, Cuttack clearly reveals that the injury sustained by the victim was caused due to a fall from train. Although there is no station diary entry with regard to the alleged incident made at Bhubaneswar railway station and no information was available with the on duty train guard, but the incident of fall and injury as per documents available in the case record of the capital hospital and the SCB Medical College Hospital clearly reveal that the case has a history of fall from running train on 01/8/18 at 10 AM and that the injury was the outcome of the fall from the train cannot be denied.

7.4 There is no evidence on record to establish that injury was caused due to an involvement while the injured Applicant was trespassing on the railway tracks, but going by the history of the case as depicted in the medical records of SCB medical College, Cuttack it is evident that this is a case of fall from a running train. While, the view of the Respondent is that there is absolutely no record of any incident such as this one occurring at the Bhubaneswar station, but I would like to correlate the timing as depicted in the SCB medical college's bed head ticket where it is indicated that the case has a history of fall from a train on 1.8.18 at 10 AM. The alleged train Hirakhand express had reached Bhubaneswar station on PF No.2 at 08.28 hrs and thereafter the victim had been allegedly shifted by local people immediately to the Capital Hospital. Although the timings of the incident does not exactly match with the 10 AM time as indicated in SCB Medical College's record, but given the fact that it was after the arrival of the Hirakhand express and the injured person was first taken to the Capital hospital before getting referred to SCB Medical College, there appears to be some gap in the communication in the exact timings of the incident. I feel a benefit of doubt can be given in this case that the incident could be the time of reaching the capital hospital in Bhubaneswar after the incident at Bhubaneswar station. Going purely by the attending circumstances of this

case, it does appear to have a preponderance of probability that the case was that of a fall from running train. In fact, it cannot be inferred that the injury sustained by the victim was a deliberate act of injury that caused the loss of both his legs and it would be absurd to presume that this was done deliberately for the sake of getting compensation from the Railway. Considering the fact and circumstances of the case, I am of the view that this was not a case of criminal act of negligence or an injury which was self-inflicted so as to bring it under the umbrella of exceptions of Sec 124 A of the Railways Act.

7.5 With regard to the ticket, it is pleaded by the injured applicant that before boarding the train, he had purchased the journey ticket which was lost in the alleged incident. Looking at the nature of injuries, in which the injured has lost in both legs, first shifted to nearest capital hospital and thereafter shifted to SCB medical college, Cuttack, possible loss of ticket as alleged in the OA in course of the shifting cannot be ruled out.

Thus, in view of above discussion, I am of the view that the injured applicant is a bona fide passenger and the injury caused to the victim was on account of an accidental fall from the running train and the said incident is an "untoward incident" as defined under section 123(c) (2) of the Railways Act 1989 for which Railway Administration is liable to pay compensation u/s 124 A of the Railways Act 1989. Therefore, both these issues are decided in favour of the claimant.

7.6 Issue No. 4 : So far as quantum of compensation is concerned, I have gone through the medical documents such as bed head ticket and discharge certificate of SCB medical College, which clearly shows that there was auto amputation of both legs for which he had undergone treatment in the said hospital from 01/08/2018 to 21/08/2018. . Looking at the nature of injuries, sustained by the Applicant, I am of the view that the said injuries comes at Sl. No.3 of Part II of schedule for Compensation payable for death and injuries as prescribed in the Railway Accidents and Untoward Incidents (Compensation) Rules 1990 for "for double amputation through leg or thigh or amputation through leg or thigh on one side and loss of other foot' a sum of Rs. 8,00,000/- has been provided. Hence, the injured Applicant is entitled to get total compensation of Rs.8,00,000/- (Rupees Eight Lakh) along with 9% interest from the date of incident i.e. (01/08/2018) till the date of payment. This issue is answered in favour of the Applicant. 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 sub-serve justice.*
- 5.2 *If any of the claimants is a minor or person of unsound mind, the Tribunal may give liberty to the guardian ad litem to use the interest accruals on the deposit that shall be made during the minority for maintenance.*
- 5.3 *Nothing in this Rule shall limit the power of the Tribunal to make modifications of the mode of disbursement for reasons to be stated in writing depending on the exigencies requiring liquidation of any corpus created for annuity or premature closure of fixed deposit, for the benefit of the claimant.*
- 5.4 *The orders dated 21st April, 2017, 24th May, 2019 and 6th November, 2019 of Hon'ble High Court of Delhi in FAO No. 22/2015 and CM Application No. 4501/2015 in Geeta Devi Vs Union of India, relating to disbursement of compensation shall be read as part of this Rule.*

The disbursements will be made in the following manner, keeping in view the broad guidelines laid down as per the Judgment of Delhi High Court in FAO No. 22/2015 and CM Application No. 4501/2015 in Geeta Devi Vs Union of India.

8.2 The injured Applicant is permitted to withdraw 10% of the awarded amount i.e Rs.80,000/- (Rupees Eighty Thousand only) along with 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 Applicant is not subjected to any kind of exploitation at the hands of unscrupulous agents and touts operating in the field due to the availability of bulk funds available to him out of the award, the balance amount of Rs 7,20,000/- (Rupees Seven Lakh twenty thousand only) shall be split into 72 fixed deposits of Rs.10,000/- (Rupees Ten Thousand) and invested for a period of 1 to 72 months each in the ascending order. The bank shall release the amount with accumulated interest upon maturity of these deposits to the credit of the bank account of the injured Applicant. Such a mode of disbursement is felt justified keeping in view the advantage of a monthly return with interest out of such a scheme for the Applicant. 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 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 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 Applicant will be eligible for interest @ 9% from the date of incident i.e. (01/08/2018) till the 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 21/03/2019.

Fix. 29/05/2024 for compliance on the points as mentioned in the judgment above in order No. 32

(Ajoy Kumar Behēra)
Member (Technical)
Date 21/03/2024

**RAILWAY CLAIMS TRIBUNAL
BHUBANESWAR BENCH**

ORDER SHEET

Nature of application _____ Number OA (III) No. 88 of 2019 in the case of Sunil Hati
versus- UOI /GM / East Coast Railway, Bhubaneswar

Date	Proceeding of the Bench	Notes of the Registrar
32 21/03/24	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 incident i.e. on 01/08/2018 <u>till the date of payment</u> 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 29/05/2024 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: 21/03/2024</u>	