

RAILWAY CLAIMS TRIBUNAL:: BHOPAL BENCH**HON'BLE SHRI ALOK KUMAR SHUKLA, MEMBER (TECHNICAL)**

Claim Application No. :OA/IIu/BPL/022/2020

Date of Institution : 27.01.2020

Date of Argument : 03.04.2024

Date of Decision : 14.04.2024

Rammkumar Jagde
s/o late Parasram
R/o Gram Ghogra
Post Ghogra
Distt Bemetra (C.G.)

Claim for Rs. 8,00,000/-

Smt. Farzana Aziz, Counsel for the Applicant
Shri S.N. Saxena, Ld. Counsel for Respondent

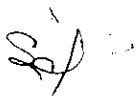
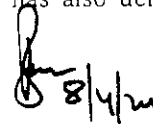
JUDGMENT**BY SHRI ALOK KUMAR SHUKLA, MEMBER (TECHNICAL):**

1. The applicant who is widowed father of deceased Raja Jagde, s/o Ramkumar Jagde, aged about 26 years have filed the present claim application claiming Rs 8,00,000 lakh under section 16 of the Railway Claims Tribunal Act, 1989, for the death of their son in an untoward incident on 09.10.20219.

2. Applicant in the claim petition has averred that "यहकि मेरा अविवाहित पुत्र राजा जॉगडे और संजय दाहिरे रंजीत दाहिरे, जगमोहन दाहिरे आजूराम दिनांक 8.10.2019 को हजरत निजामुद्दीनरेलवे स्टेशन से द्वितीय श्रेणी यात्रा का टिकट क्रय कर सम्पर्क कान्ति एक्सप्रेस ट्रेन से हजरत निजामुद्दीन से बिलासपुर तक जा रहे थे। यात्रा के दौरान छौदा-बुढार स्टेशन के मध्य ग्राम पिपरतरा के खम्बा क0 894/30-28 पर मेरे पुत्र राजा जॉगडे की ट्रेन से गिरने से आई चोटों के कारण मृत्यू हो गई थी। उपरोक्त दुर्घटना की सूचना जरिये तहरीर स्टेशन प्रबंधक द० पू० म० रेलवे बुढार के द्वारा थाना बुढार को दी गई जिस पर थाना बुढार के द्वारा मर्ग क0 82/19 पर कायमी की जाकर शासकीय अस्पताल बुढार से शव का शव-क्लिछेदन कराया जाकर शव को अंतिम संस्कार के लिये परिजनों के सुपुर्द किया जाकर जॉच कार्यवाही की गई थी। थाना बुढार पुलिस द्वारा की गई जॉच कार्यवाही के अनुसार मेरे पुत्र राजा जॉगडे की मृत्यू यात्रा के दौरान चलती ट्रेन से गिरने से आई चोटों के कारण हुई है।

यात्रा की श्रेणी और टिकट: द्वितीय श्रेणी यात्रा का टिकट क.25103643 & 25103644"

3. In the Written Statement filed on behalf of Respondent Railway, contents of the O.A. have been controverted and denied. Respondent in its written statement has denied the incident to fall within the ambit of an untoward incident as defined in section 123 © (2) of the Railways Act, 1989. Respondent has also denied the bonafides of the deceased.

4. On the basis of pleadings of the parties, the Tribunal has framed the following issues for adjudication on 19.02.2021.

1. Whether the deceased was a bonafide passenger of the Train in question at the time of incident ?
2. Whether the death of the deceased was due to the said alleged untoward incident as defined u/s 123© (2) of the Railways Act, 1989.
3. Whether the respondent railway is protected under the section 124-A of the Railways Act, 1989 and is not liable to pay any compensation to the applicants?
4. Whether the applicants are the legal dependants of the deceased to claim/receive the compensation, if any, granted? Who else are the dependents??
5. Relief and cost?

5. Applicant Ramkumar Jagde, s/o late Parasram and Sanjay Dahire, s/o Sanat Dahire stepped into the witness box on 31.05.2022 as Applicant Witnesses after filing their respective affidavits towards examination-in-chief. Applicant witnesses were cross-examined as AW-1/A & AW/2-A respectively by Counsel for Respondent.

6. Respondent in its defence has relied upon document R-1 being the DRM Report and Annexures annexed to it.

7. I have perused the records made available on behalf of both the applicant and the respondent by their respective counsels, heard the argument advanced by them and have gone through the various submissions made by both Counsels and my findings on the issues are as under:-

Issue Nos. 1,2 &3:- The three Issues being inter-connected are being taken up together for discussion and disposal.

8. Applicant has averred that deceased alongwith co-travellers had undertaken journey on 08.10.2019 by Train Sampark Kranti Express on the strength of valid second class journey ticket bearing Nos. 25103643 & 25103644 ex Hazrat Nizamuddin to Bilaspur. The journey tickets in original are placed on record at Exhibit A/6. That, the two journey tickets were a combined ticket for 3 Adults and for 2 Adults respectively. As per the claim petition, they were five of them travelling including the deceased.

9. None of the documents mention recovery of journey ticket from the person of deceased. Although, all the four co-travellers are Panchas in the Naksha Panchayatnama at A/4, but recovery of tickets in question from the person of deceased has not come on record. Co-traveller Sanjay Dahire, s/o Sanat Dahire, in Para No. 1 of his affidavit stated as under;

*“यहकि मैं स्वयं एवं मेरे साथ राजा जोंगडे और रंजीत दाहिरे, जगमोहन दाहिरे आजूराम
दिनांक 8.10.2019 को हजरत निजामुद्दीन रेलवे स्टेशन से द्वितीय श्रेणी यात्रा का टिकट*




कय कर सम्पर्क कान्ति एक्सप्रेस ट्रेन से हजरत निजामुद्दीन से बिलासपुर तक आ रहे थे।"

10. In his cross-examination on oath, he has stated as under;

"मृतक राजा जांगड़े मेरे गांव का था, घटना 08-10-2019 की है, हम लोग निजामुद्दीन से बिलासपुर तक की यात्रा कर रहे थे, हम 5 लोग थे, घटना बुद्धार स्टेशन के पास हुई थी. हम जनरल कोच में थे, मैं सीट पर बैठा था, मैं लगेज के लिए जो जगह होती है, वहाँ था, मैंने घटना होते हुए नहीं देखी, घटना कैसे व किन परिस्थितियों में घटित हुई थी. मुझे नहीं मालूम, घटना की जानकारी मुझे बुद्धार स्टेशन पर आसपास वालों ने बोला कि कोई गिर गया है. कोई गिर गया है. तब पता चली, मैंने ट्रेन रोकने के लिए चैन खींची थी, हमारे पास 2 अलग-अलग टिकट थे, जिसमें से एक पर दो एवं एक में 3 यात्री थे, दोनों ही टिकट मृतक राजा के पास थे. यह बात सही है कि ए-6 पर पेश किये गये टिकट पुलिस को देने के सम्बन्ध में कोई आरपीएफ / जीआरपी की सील, प्रमाणित प्रति नहीं है, मैं अनुमान के साथ कह सकता हूँ कि टिकट मृतक के पास ही थे, मुझे पढ़ना-लिखना नहीं आता, किन्तु मैं साईन कर लेता हूँ, ए-1 नक्शा-पंचायतनामा में हस्ताक्षर दिखाये जाने पर कहा कि यह मेरे ही हस्ताक्षर हैं, नक्शा-पंचायतनामा में अन्य 3 गवाह मेरे ही गांव के हैं, हमारे सामने ही मृतक की तलाशी हुई थी, मुझे ध्यान नहीं आ रहा है कि तलाशी के समय टिकट नहीं मिला था, साक्षी ने स्वतः कहा कि टिकट मृतक राजा ने ही कटवाया था और उसी ने रख लिया था, टिकट उसी ने कटवाया था, अब मुझे यह ध्यान नहीं आ रहा है कि उसने रखा था या नहीं, उस समय टिकट पुलिस को मिले थे यह पूछने पर साक्षी ने कहा कि मुझे याद नहीं आ रहा है, मुझे यह नहीं पता कि ये टिकट मृतक व्यक्ति से लेकर कोर्ट के सम्मुख कैसे प्रस्तुत किये गये हैं, यह कहना गलत है कि हमने दूसरे के टिकट मुआवजा प्राप्त करने हेतु पेश किया है, हमने टिकट कटवाये थे, यह कहना भी गलत है कि मैं झूठी गवाही दे रहा हूँ."

11. Since, the deceased was accompanied by co-travellers, it is not necessary that the same would be in possession of deceased. Further, the journey tickets in question were got verified by the Respondent Railway and it was established that the tickets were sold on 08.10.2019 ex Nizamuddin to Bilaspur and the same were issued via Nizamuddin UTS. Further, the time of purchase of ticket co-relates with the time of occurrence of the untoward incident.




12. Respondent Railway in its final conclusion has accepted the bonafides of the deceased. Based on the documentary evidence on record i.e. journey tickets in original, statement of co-traveller Sanjay Dahire in his affidavit and cross-examination, which has not been rebutted by Respondent, I have no hesitation to hold that deceased was a bonafide passenger of Sampark Kranti Express on 08.10.2019 while travelling ex Nizamuddin to Bilaspur. Thus, Issue No. 1 is decided in favour of the Applicants.

13. As regards the alleged incident, the Inquest Panchnama has attributed death of deceased to fall from train. Further, the statement of co-traveller Sanjay Dahire, s/o Sanat Dahire has established that the deceased had suffered injuries owing to fall from train which resulted in his death on the spot.

14. DRM Report, based on its investigation, has although accepted the incident but has attributed the same to deceased's own act of negligence as he was found to be travelling by standing at the door of the coach, which tantamount to self-inflicted injury, for which Railway is not liable to pay compensation u/s 124 A of the Act.

15. Ld. Counsel for the applicants submitted that in case of accidental fall of any passenger from a train carrying passengers, in order to escape the liability to pay compensation, it is necessary for the railways to adduce evidence that the incident is of the kind described in proviso (a) to (e) of sec.124A. Here, Respondent has failed to prove, by bringing any evidence either oral or documentary, that the instant case does not come within the purview of an untoward incident as defined in section 123 (c) of the Railways Act, 1989. As far as negligence is concerned, the application of Principle of Strict Liability - Concept of Self-Inflicted Injury has been widely discussed in para no. 16.1 of Apex Court Judgement in Union of India Vs Rina Devi (Civil Appeal No. 4945 of 2018). The same is reproduced below:

"Sections 124 and Section 124A provide that compensation is payable whether or not there has been wrongful act, neglect or fault on the part of the railway administration in the case of an accident or in the case of an "untoward incident". Only exceptions are those provided under provision to Section 124A. In Prabhakaran Vijaya Kumar it was held that Section 124A lays down strict liability or no fault liability in case of railway accidents. Where principle of strict liability applies, proof of negligence is not required".

16. Here, I would also like to follow the mandate of Law as has been held in the case of **"Jameela & Ors. Vs. Union of India reported in 2010 INSC 665"** wherein it is held that *"The manner in which the accident is sought to be reconstructed by Railway, the deceased was standing at the open door of the train compartment from where he fell down is called by the railway itself as negligence. Now negligence of this kind which is not very uncommon on Indian trains is not the same thing as a criminal act mentioned in clause © to the proviso to section 124A. A criminal act envisaged under clause ©*




must have an element of malicious intent mensrea standing at the open doors of the compartment of a running train may be a negligence act, even a rash act, but, without anything else, it is certainly not a criminal act. Thus, the case of the railway must fall even after assuming everything in its favour".

17. Since there is a specific averment in the affidavit of AW-2/A, and based on the documentary evidence on record and above cited Judgement of Hon'ble Apex Court, it is held that the death of deceased has occurred owing to accidental fall from train in an untoward incident as defined in sec. 123 © of the Act while travelling as a bonafide passenger on 09.10.2019. Therefore, the respondent railway is not protected under the exemption clause to section 124-A of the Railways Act and is liable to pay compensation to the dependant of the victim. Thus, Issue nos. 1 & 2 are decided in affirmative and in favour of the Applicant and Issue No. 3 in negative against the Respondent.

Issue No. 4:-

18. Applicant herein is widowed father of deceased Raja Jagde, It is come on record in para no. (6) of the claim petition that deceased was his unmarried son. In proof of his dependency, Applicant has filed documents at A/7. There is no other evidence, which may show that the deceased had any other dependant. Nobody else has come before the Tribunal, claiming himself/herself as dependent upon the deceased. Hence, u/s 123 (b) (i), only parents are entitled for award of compensation of an un-married son/daughter. In the instant case, since the deceased was unmarried and mother of deceased has expired, therefore, Applicant No. 1 Shri Ramkumar Jagde, s/o late Parasram is the sole and legal dependant of the deceased and Issue No. 4 is decided accordingly.

Issue No. 5:-

19. The applicant, under Part-I of the Schedule of the Railway Accidents & Untoward Incidents (Compensation) Rules, 1990, as amended in 1997 and 2016, is entitled to Rs 8,00,000/- as compensation on account of the death of the deceased in an untoward incident. I apportion the amount of compensation to the Applicant as under and Issue No.5 is decided accordingly;

SN	Name	Relationship with deceased	Amount in (Rs)
1.	Ramkumar Jagde	father	8,00,000/-
		Total	8,00,000/-

20. The claim application is allowed on contest without costs. The following order is passed :-

ORDER

[Signature]

[Signature]

21. Respondent Railway Administration is hereby directed to pay jointly Rs 8,00,000/- (Rupees eight lakhs) only alongwith interest @ 9% p.a. from the date of incident till the date of realization, to the aforesaid dependant of the deceased as compensation.
22. The aforesaid applicant is hereby directed to furnish his fresh Bank account particulars of a nationalised bank, situated nearest to his place of residence, to the Respondent Railway as well as to the Addl. Registrar of this Tribunal within a period 30 days from the date of receipt of this Order.
23. The Respondent Railway shall endeavour to make payment as early as possible, but not beyond 60 days from the date of receipt of copy of the Award passed by Tribunal in compliance of the directions of Railway Board letter No. 2021/TC-III/2610 dated 29.09.2021.
24. **If the Respondent fails to deposit the compensation amount within 60 days from the date of receipt of copy of Award, the respondent shall pay further interest @ 12% from the date of receipt of copy of award till the date of actual payment.**
25. So far as disbursal of the amount of award is concerned, we have heard the learned counsel for the parties
26. We may notice that in **Geeta Devi Vs. Union of India, Delhi High Court** had 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 of 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. Earlier, this Court has involved 21 Nationalised Banks in dialogue to evolve a scheme of annuities for disbursement of claims. They have been ordered already to be implemented in this case, vide directions passed on 22nd February, 2019. This scheme as applied to motor accident claims has been approved by the Supreme Court in its order dated 05th March, 2019 in *Krishnamurthi versus New India Insurance Company*, SLP(C) No.31521-31522 of 2017. A statutory rule backing will therefore, best serve the interest of the litigant in the manner set out below:
 - 5.2 Insert following Rule 5 after Rule 4:-
Rule 5: Mode of payment—(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 direction. for disbursing the

Sd/-

[Signature]

award in terms of annuities, fixed deposits or other suitable mode shall sub-serve justice.

(2) If any of the claimants is a minor or person of unsound mind, the Tribunal may give liberty to the guardian ad item to use the interest accruals on the deposit that shall be made during the minority for maintenance.

(3) Nothing in this Rule shall limit the power of the Tribunal to make modifications of the mode of disbursal 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.

27. In pursuance of the above Orders passed by the Delhi High Court, Government of India has issued a Notification on 3rd of June, 2020, amending Railway Accidents & Untoward Incidents (Compensation) Amendment Rules, 2020, amending Rule 5, which reads as under:
28. The new bank a/c(s) shall be opened with following conditions;
 - i) **No ATM/Debit Card should be issued.**
 - ii) **No cheque book should be issued.**
 - iii) **Electronic transfer of funds shall be disabled.**
 - iv) **Mobile or Internet banking facility will also be disabled.**
29. The Bank shall not release any amount received by the bank, unless the governing conditions of payment framed by this Tribunal is conveyed to the Nodal Bank through Respondent Railway.
30. If the Claimant(s) are not willing to open fresh bank account(s), the concerned bank shall cancel cheque book and/or ATM/Debit Card (if issued), Electronic transfer and Mobile Internet banking facility, before the disbursement of the awarded amount and shall stamp the passbook to this effect.
28. Withdrawal by the Claimant (s) will be only through with-drawal form(s).
29. Registry shall take the following documents on record from the Applicant(s):
 - (a) Details of the Bank Account(s) of the Applicant(s) near the place of their residence with the necessary endorsement.
 - (b) Aadhaar Card and PAN Card or anyother appropriate ID card; and
 - (c) Two sets of photographs and specimen signatures of the Applicant(s).
30. Claimant(s) are entitled to exemption of deduction of TDS. The Claimant(s) shall submit Form 15G or Form 15H (for senior citizen) to the Presenting Officer of the Railways (as applicable under sub-section (2) of section 19 of the Railway Claims Tribunal Act, 1987) so that no TDS is deducted.
31. Transfer of Account(s) shall not be allowed, except with the permission of the Tribunal.
32. Respondent Railway, after receiving the particulars of the bank account of all the applicants shall verify and transmit all the details of the same to Additional Registrar, RCT/Bhopal, and thereafter,
33. Respondent will deposit the entire amount of awarded compensation and interest through RTGS in the **Suitors Account No. 10064520760 IFSC Code SBIN0005798** (State bank of India, Shivaji Nagar Branch, Bhopal, under advice to Additional Registrar within a period of 60 days from the date of communication of the Award.
34. It is further directed that the Respondent shall issue necessary instructions to the Suitors Bank to not to release any amount from the said fixed deposit amount till the order in original to this effect from this Tribunal, is received by the Suitors Bank.



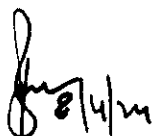

- passbook with the necessary endorsement as well as Aadhaar Card, PAN Card or any other appropriate ID Card before Respondent.
36. Before disbursement of the award amount, Respondent Railway shall satisfy himself that the savings bank account(s) of the Claimant(s) is nearest to the place of their permanent residence and an endorsement has been made by the bank on the passbook of the Claimant(s) to the effect that no cheque book(s) and/or debit card(s) shall be issued to the Claimant(s) without prior permission of Railway Claims Tribunal.
 37. In order to ensure safety of the amount so deposited, the bank shall not permit any addition in the individual saving bank account except where this is necessary i.e. in case of minor(s).
 38. To protect the amount from being frittered away, the amount shall be deposited/released in the following manner.
 39. Applicant Ramkumar, being widowed father of unmarried deceased, shall be permitted to withdraw 10% of his awarded compensation, alongwith interest, thus accrued and the remaining amount shall be split equally and kept in 60 fixed deposit account, in his name for the period of 01 month to 60 months payable on the specified date of every month alongwith cumulative interest. No loan or encumbrance shall be created on these Fixed Deposits.
 40. The original fixed deposit(s) Receipts 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 bank to the Claimant(s).
 41. The maturity amounts of the FDR(s) be credited by Electronic Clearing System (ECS) in the savings bank account of the Claimant(s) near the place of their residence.
 42. **No. loan, advance, withdrawal or pre-mature discharge be allowed on the fixed deposits without permission of the Court.**
 43. The copy of the Order be sent to the Nodal Officer/Branch Manager of the State Bank of India for complying with the above directions.
 44. Registry shall fix a date for reporting compliance, within 90 days of the award itself.
 45. Railway shall place on record the proof of deposit of the award amount with up to date interest alongwith a calculation sheet.
 46. Upon such proof being filed, Registry shall ensure that the interest up to the date of notice of deposit has been deposited by the Railways.
 47. The Original Claim Application stands disposed off accordingly.
 48. Registry is directed to send a copy of this judgement to the parties.
 49. Parties to bear their own costs.
 50. Registry will report compliance within 90 days of this Order.
 51. Let the case file be consigned to the record room after due compliance.

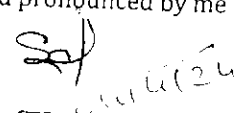


(ALOK KUMAR SHUKLA)
MEMBER (TECHNICAL)

RCT/BPL

Dictated to Steno, transcribed by her, corrected, signed and pronounced by me on this day of 01 April, 2024.




MEMBER (TECHNICAL)
RCT/BPL