

**BEFORE THE RAILWAY CLAIMS TRIBUNAL, CHANDIGARH BENCH,
CHANDIGARH**

CORAM: HON'BLE MEMBER (JUDICIAL) SHRI LABH SINGH

Case No. OA-II-u/CDG/57/2019

Date of Institution: 26.02.2019

Reserved on: 17.11.2023

Date of decision: 27.12.2023

1. Jai Bhagwan, aged 44 years, s/o Sh. Pratap,
 2. Manjeet, aged 43 years, w/o Sh. Jai Bhagwan
- Both residents of Village Gadwali, P.S Julana, Tehsil
Julana, District Jind, Haryana.

----Applicants

Versus

Union of India through General Manager, Northern
Railway, Baroda House, New Delhi.

----Respondent

CLAIM FOR AMOUNT OF RS. 10,00,000/-

Present:

For the applicant: Ms. Ashima Sood, Learned Advocate

For the respondent: Ms. Savita Saxena Learned Advocate

JUDGMENT

1. The present claim application has been filed by the applicants under Section 16 of The Railway Claims Tribunal Act, 1987 read with Section 124-A of the Railways Act, 1989 seeking compensation to the tune of Rs. 10,00,000/- (Rupees Ten lakhs only) from the respondent railway on account of the death of one Shri Vishal (hereinafter to be referred as 'the deceased')

in an untoward incident, which occurred while travelling by the train.

2. Briefly stated, the facts of the case are that on 25.3.2018, the Station Master, Railway Station, Jind issued a memo to the SHO/GRP Jind, mentioning therein that as reported by Pointsman Shri Baljit Kumar, one dead body lying on Up Line of Jai Jai Wanti Railway Station yard near Up starter 1 & 2 out of track and requested to take necessary action. The GRP personnel, on receipt of information, reached the place of incident and initiated the proceedings under Section 174 Cr.P.C. On completion of the inquest proceedings, the dead body was sent to the Civil Hospital, Jind for post-mortem examination and thereafter, the same was handed over to the family members for performing last rites of the deceased.
3. The case of the applicants is that on 24.3.2018, the deceased, aged 15 years and a student, had gone to meet his aunt (Mausi) at Rohtak after purchasing the journey ticket from J.J.Wanti railway station for Rohtak. After meeting his aunt, in the evening, he was returning from Rohtak to his village for which he was having a valid journey ticket to travel from Rohtak to J.J.Wanti railway station. The deceased had telephonically informed his father that he had been dropped at the railway station Rohtak by Kuldeep, son of his aunt and he had boarded Delhi Jind passenger train which was

running late by three hours. Accordingly, the father of the deceased was waiting for him at railway station J.J.Wanti. It is further in the claim application that at about 11.00 p.m., the said train passed through J.J.Wanti railway station after dropping the passengers, but when the deceased did not de-board the train, his father tried to call at the mobile number of the deceased but there was no response. Thereafter, the father of the deceased called his relatives and they searched for him at railway station Jind, but in vain. Thereafter, they came to J.J.Wanti railway station and came to know from the railway employees that a dead body was lying at J.J.Wanti railway station. On seeing the dead body, they identified the same to be that of the deceased Vishal. It is further in the claim application that during the police proceedings, the railway journey ticket and other articles were recovered from the person of the deceased. Thus, terming the incident as an untoward incident, the applicants, who are parents of the deceased, are before the Tribunal seeking compensation for the death of the deceased in the said untoward incident.

4. Respondent Railway appeared in pursuance of the notice issued by this Tribunal and filed its written statement along with the statutory report of DRM. In the written statement filed, by way of preliminary objections, it is replied that the present claim application is not

maintainable and deserves to be dismissed as no such alleged incident within the meaning of Section 124-A of the Railways Act 1989 causing death of the deceased took place on the alleged date at alleged place of railway station. It is further replied that the deceased was not a bonafide passenger of any train and the information about lying of a dead body at the place of incident was received by the Station Master, J.J.Wanti railway station from the 'on duty' Kantewala around 03:00 hours on 24/25.3.2018.

5. It has further been replied that as per the claimants, the deceased was aged about 15 years and was a student of 9th standard, but the reason for going to aunt's place after his exam is not understood and the claimants have not placed on record any cogent reason for the deceased to have fallen down from the train and also, there is no independent eye witness to the alleged incident.
6. It has also been replied that as per the DRM report, as per the enquiry conducted by the Inspector In charge, RPF, Post Jind, Shri Baljit Singh, Kantewala stated that during his duty hours on 24/25.3.2018 at about 03:00 hours, he saw some baggage type bundle lying in Upside Loop line and Main Line under the light of Goods train engine coming from Up side and when seen with the light of torch, the same was found to be that of a boy aged around 14-15 years with his bag on his back. The

Jamatalashi on the dead body of the deceased was conducted by the ASI/GRP/Jind Naresh Kumar in the presence of the deceased's father, wherein, one Mobile phone, cash amount of Rs. 20/- and one railway ticket bearing No. UA07165543 ex-Rohtak to Jind dated 24.3.2018 were found.

7. On merits, while reiterating the averments as made in the preliminary objections and denying those of the applicants as made in the claim application either being wrong or for want of knowledge, a prayer is made for the dismissal of the claim application with costs.
8. No replication was filed by the applicants and based upon the pleadings of the parties; the following issues were settled by the Tribunal on 23.1.2020 for adjudication: -
 - (i) Whether the deceased was a bonafide passenger of train at the time of incident?
 - (ii) Whether the alleged incident is covered within the ambit of Sec. 123(c)(2) read with Section 124-A of the Railways Act 1989?
 - (iii) Whether the applicants are the only dependents of the deceased?
 - (iv) Relief?
9. The applicants, in order to prove their case, examined Sh. Jai Bhagwan applicant no. 1 as AW/01 by filing his affidavit-in-evidence Exh. AW.1/1 in his examination in chief, wherein, he reiterated the facts pleaded in the original claim application and was cross-examined

thereon. He also tendered in evidence documents Exh. A/01 to A/18 in support of the claim application.

10. The respondent Railway has not adduced any oral evidence and has filed its certified DRM report Exh. R/01 along with the annexure, which is already placed on record. The respondent-railway has also filed along with its DRM report, the Investigation Report of Inspector In charge, RPF, Jind along with the annexure.

11. The Tribunal, in order to arrive at the just decision of the case and ambiguity regarding date of railway journey ticket in verification report, summoned Smt. Sushma Devi Chief Commercial Supervisor as court witness and she was examined as CW/01.

12. I have gone through the case file carefully and perused the pleadings of the parties and the documents placed on record by the parties and heard the arguments put forth by the learned counsel for both the parties and after hearing learned counsel for the parties, I shall now proceed to consider the claim application on its merits, specifically within the ambit of the issues framed in this case.

ISSUES No. 1 & 2

13. Both these issues being inter-connected, are taken up together for decision.

14. Insofar as both the issues are concerned, the case of the applicants is that on 24.3.2018, the deceased had gone to meet his aunt at Rohtak and after meeting his

aunt, in the evening, he was returning from Rohtak to his village for which, he was having a valid journey ticket to travel from Rohtak to J.J.Wanti railway station. He had telephonically informed his father that he had been dropped at railway station Rohtak by Kuldeep, son of his aunt. The deceased's dead body was found lying at J.J.Wanti(Jai Jai Wanti) Railway Station as reported by Kantewala.

15.The applicants, in order to prove the deceased as bonafide passengers of the train in question, have placed on record railway journey tickets Exh. A/07 to travel from Rohtak Junction to Jai Jai Wanti Junction dated 24.03.2018 and the railway journey ticket Exh. A/08 to travel from Jai Jai Wanti to Rohtak dated 24.03.2018. The Police conducted a search of the dead body, and during the search, one mobile, cash amount of Rs. 20/-, one bag containing clothes and two railway journey tickets were found as per Search Memo Exh. A/06 in presence of witnesses. The mobile phone, cash amount of Rs. 20/-, and bag were handed over to the family members vide Handing Over(Fard Havalgi) Memo prepared on the same Exh. A/06.

16.Now a perusal of railway journey ticket Exh. A/07 reveals that the ticket is ordinary 2nd class which had been issued for one adult passenger on 24.03.2018 at 19:10 hours from window no. 10 of Railway Station Rohtak to travel from Rohtak Junction to Jai Jai Wanti

Junction within next three hours or first available train after its issuance. The enquiry officer obtained a verification report of the ticket from the office of Chief Ticket Supervisor and the same was reported to have been issued on 25.03.2019. Therefore, the Chief Ticket Supervisor was called as CW/01 and she clarified that the ticket was issued on 24.03.2018 instead of 25.03.2019. She further clarified the date of issuance of ticket has inadvertently been mentioned as 25.03.2019 due to clerical error. Thus, it is an undisputed fact that the ticket Exh. A/07 was issued on the date of journey from Railway Station Rohtak on 24.03.2018 at 07:10 pm to travel up to Railway Station Jai Jai Wanti.

17. It has been concluded in the DRM report that though one Mobile phone, cash amount of Rs. 20/- and the railway ticket bearing No. UA07165543 ex-Rohtak to Jind dated 24.3.2018 and the onward journey ticket were recovered by the GRP Police during search of the dead body but there is no evidence or eyewitness to prove that how the death of the deceased happened on the date of incident.

18. The applicant no. 1 while appearing as AW/01 deposed on oath that on 24.03.2018, the deceased had gone to meet his aunt (Mausi) at Rohtak after purchasing the journey ticket from Jai Jai Wanti railway station for Rohtak. After meeting his Aunt, in the evening, he was

returning from Rohtak to his village for which, he was having a valid journey ticket Ex. Rohtak to J.J.Wanti railway station. The deceased had telephonically informed him that he has been dropped at the railway station Rohtak by Kuldeep, son of his aunt and he had boarded Delhi-Jind passenger train which was running late by three hours. Accordingly, he was waiting for him at the railway station Jai Jai Wanti. He has further stated that at about 11.00 p.m., the said train passed through Jai Jai Wanti railway station after dropping the passengers, but when the deceased did not de-board the train, he tried to call at the mobile number of the deceased but there was no response. Thereafter, he called his relative and they searched for him at railway station Jind, but in vain. Thereafter, they came to Jai Jai Wanti railway station and came to know from the railway employees that a dead body was lying at Jai Jai Wanti railway station. On seeing the dead body, he identified the deceased to be his son.

19.Sh. Jai Bhagwan AW//01 has been cross-examined at length and during cross examination, he stated that he was not present at the time of search of the dead body but the ticket and other articles were handed over to him by the police. He further stated that the Police has not obtained his signature on any paper/document at the Station. The Police also did not record his

statement. It is pertinent to note here that he is witness to the search as per Search Memo Exh.A/06. The Police obtained his signature on search Memo(Fard Jamatalshi) and Handing Over Memo(Fard Havalgi) Exh. A/06 on 25.03.2018. The Police has further recorded his statement Exh. A/10 under Section 175 CrPC 1973 on 25.03.2018 and the same is duly signed by him. During cross-examination, the statement Exh. A/10 and Search-cum-Handing Over Memo Exh. A/06 have not been shown to him. The attention of the witness should have been drawn towards his statement Exh. A/10 and Search Memo-cum- Handing Over Memo(Fard Jamatalashi and Fard Havalgi) Exh. A/06; however, his attention has not been drawn towards her cross-examination. The applicant no. 1 is not much educated having studied only up to 3rd class. Had the attention of the witness been drawn toward his statement Exh. A/10 and Search-cum-Handing Over Memo Exh. A/06 then he would have refreshed his memory and clarified the said contradiction. Therefore, this is not a material contradiction to disbelieve his evidence in entirety.

20. Respondent Railway has fairly admitted in its DRM report and written statement that the search of the dead body of the deceased was conducted by Sh. Naresh Kumar ASI, GRP Police, Jind in the presence of deceased's father, wherein, one Mobile phone, cash amount of Rs. 20/- and one railway ticket bearing No.

UA07165543 Ex-Rohtak to Jind dated 24.3.2018 were found. The train no. 54033 arrived at Railway Station Jai Jai Wanti at 23:53 hours instead of its scheduled time of 21.09 hours. This fact has been established on record from enquiry conducted by respondent railway and respondent railway has not disputed the said facts.

21. The SHO, GRP has verified from the facts that the deceased had died due to falling down from the train while travelling from Rohtak to Jai Jai Wanti by train. It has also been proved on record from the final report Exh. A/08 wherein it has been concluded that the deceased had died in the railway incident. The injuries present on the body were multiple lacerated wounds and multiple abrasions over the right side of the scalp and face. There were fractures underlying the bones. The brain was lacerated and haemocranium was present. The multiple abrasions of variable sizes were present over the right forearm. The cause of death as per postmortem report Exh. A/14 is shock and hemorrhage due to injuries described as a result of railway accident as all the injuries and clothes were stained with some blackish and greasy material.

22. It is not case of respondent railway that it was a case of suicide or the deceased was roaming over the railway track. It is also not the case of respondent railway that the deceased was crossing the railway track on the place of incident. Therefore, mere facts that there is

no eyewitness to the incident, it could not be termed as an incident other than by falling down from the train.

23. The applicants have discharged the burden placed on them to prove the deceased as a bonafide passenger and the incident as an untoward incident. Respondent Railway has failed to disprove the case of the applicants by any cogent oral or documentary evidence to the contrary, rather, it is fairly concluded in the enquiry report that the deceased was having railway journey ticket at the time of incident which was recovered by the GRP Police during search of the dead body.

24. Therefore, in view of the above discussion, it has been proved on record by circumstantial evidence of this particular case that the deceased was a bonafide passenger of the train on the date of incident while travelling from Rohtak to Jai Jai Wanti by train, as defined in Section 2(29) read with explanation attached to Section 124-A of the Railways Act, 1989 and died due to the injuries received as a result of accidental fall from the train which is untoward incident as defined in Section 123(c)(2) read with Section 124-A of the Railways Act, 1989. The incident in question does not fall within any of the exemption clauses to Section 124-A of the Railways Act, 1989. Accordingly, both the

issues no. (i) and (ii) are decided in favour of the applicant and against the respondent railway.

Issue No. (iii)

25. The applicants, in order to prove their identity, status, and relation with the deceased, have relied upon the Aadhar Card of the deceased Exh. A/21, wherein, it has been shown that the deceased was the son of Sh. Jai Bhagwan is a resident of Garhwali, Jind, Haryana. The applicants have further placed on record their Aadhar Cards Exh. A/1 and Exh. A/02 to prove her identity, status and relation with the deceased. The applicant No. 1, while appearing as AW/01, has stated that they are the only dependent of the deceased. The deceased was unmarried at the time of incident in question. There is nothing on record to disbelieve the said evidence of the applicant. Therefore, the applicants being father and mother of the deceased, are held to be only dependent as defined in Section 123(b) of the Railways Act, 1989. Therefore, this issue is answered in favour of the applicants and against the respondent railway.

Issue No. (iv)

26. This case pertains to the untoward incident occurred after amendment of the Railway Accidents and Untoward Incidents (Compensation) Rules 1990 vide G.S.R No. 1165(E) dated 22.12.2016 which is applicable with effect from 01.01.2017 and hence the applicant is

entitled for an amount of Rs. 8,00,000/-(Rupees Eight Lakhs Only) with interest @ 9% per annum from the date of incident i.e 24.03.2018 till the date of this judgment.

27. Therefore, in view of the above, the original application deserves to be allowed for an amount of Rs. 8,00,000/- and as such the original claim application is allowed for Rs.8,00,000/-(Rs. Eight Lakhs Only) with interest @ 9% per annum from date of the incident i.e from 24.03.2018 till the date of this judgment with no order as to costs.

O R D E R

a) The applicants being father and mother of the deceased, are entitled to share the amount equally i.e Rs. 4,00,000/-(Rupees Four Lakhs only) each with proportionate interest thereon from the total awarded amount of Rs. 8,00,000/-(Rupees Eight Lakhs Only) with interest @ 9% per annum from the date of incident i.e 24.03.2018 till the date of this judgment.

b) The applicants are permitted to withdraw 10% amount from their respective share awarded as above i.e Rs. 40,000/- with proportionate interest accrued on withdrawal amount of Rs. 40,000/- of their respective share.

c) The remaining 90% of their respective shares i.e. Rs.3,60,000/-(Rupees Three Lakhs Sixty Thousands only) with proportionate interest payable to each of the

applicants will be invested in the Fixed Deposits for three years in their respective names in a Nationalized Bank with monthly interest being paid into their accounts. At the end of the period of three years, the principal amount along with accrued interest, if any, will be paid to them through ECS/NEFT.

d)The respondent Administration is hereby directed to deposit the amount awarded with the Additional Registrar of this Tribunal within a period of 30 days from the date of communication of the award failing which applicants shall be entitled to receive interest @ 9% per annum from the date of award till the actual date of depositing of the decretal amount with the Additional Registrar.

e)The applicants are hereby directed to submit the details of their Aadhar linked Bank accounts of a Nationalized Bank situated nearest to their place of residence to the Additional Registrar of this Tribunal. The Bank shall not permit any joint name(s) to be added in their saving bank account or fixed deposit account i.e. their Saving Bank Account shall be an individual Saving Bank Account and not a Joint Account.

f)The maturity amounts of the FDRs be credited by Electronic Clearing System (ECS) in the respective said Saving Bank Account of the applicants without recourse to this Tribunal.

- g) No loan, advance, withdrawal, or pre-mature discharge be allowed on the fixed deposit without permission of the Tribunal.
- h) The concerned Bank shall not issue any cheque book and/or debit card to applicants. However, in case the debit card and/or cheque book have already been issued, Bank shall cancel the same before the disbursement of award amount. The Bank shall freeze the account of the applicants so that no debit card be issued in respect of the account of the applicants from any other Branch of the Bank.
- i) The Bank shall make an endorsement on the passbook of each the applicants to the effect that no cheque book and/or debit card have been issued or will be issued without the permission of the Tribunal and the applicants shall produce the passbook with the necessary endorsement duly signed and stamped by the Bank before the Additional Registrar of this Tribunal. The Bank is further directed to permit each of the applicant to withdraw money from his Saving Bank Account by means of a withdrawal form only.
- j) The Respondent Railway Administration is further directed to place on record the proof of deposit of the award amount with up to date interest alongwith a calculation sheet and the same shall be filed with the Additional Registrar.

k)Registry is directed to send a free certified copy of this judgment directly to the applicants at their address mentioned in the claim application by Speed Post in compliance with Rule 34 (3) of the Railway Claims Tribunal (Procedure) Rules, 1989.

Pronounced in open Court.

December 27th, 2023

(LABH SINGH)
MEMBER (JUDICIAL)

(The judgment has been dictated in the open Court and consists of seventeen pages and each page has been checked and signed by me)

(LABH SINGH)
MEMBER (JUDICIAL)