

RAILWAY CLAIMS TRIBUNAL, PRINCIPAL BENCH, DELHI

**Mr. JUSTICE KANWALJIT SINGH AHLUWALIA, HON'BLE
CHAIRMAN**

**Mr. MUKESH NIGAM, HON'BLE VICE CHAIRMAN
(TECHNICAL), ALLAHABAD (Circuit at Delhi)**

Case No. : OA/II(U)/DLI/100/2024
Date of filing : 07.02.2024
Date of Decision : 30.08.2024

1. Sh. Rakesh Chandra,
S/o Sh. Bhagwan Deen.
2. Smt. Manju Devi,
W/o Sh. Rakesh Chandra.

All are,
R/O Village Bhatpura, Airwa Kuili,
Distt-Auraiya, Uttar Pradesh - 206252.

... Applicants

Versus

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

...Respondent

Claim for Rs. 8,00,000/- (with interest)

Sh. B.S. Mahur, Counsel for the applicant.

Ms. Jatinder Kaur, Counsel for the respondent.

J U D G M E N T

Kanwaljit Singh Ahluwalia, Chairman (Oral):-

1. Rakesh Chandra and Manju Devi, being parents of Vishnu, aged 25 years, have filed the present claim application under Section 16 of the Railway Claims Tribunal Act praying that for the death of their son in an untoward incident while undertaking journey in a train, compensation be awarded. It is the case of the applicants that Vishnu (hereinafter called ‘*deceased*’), their son was unmarried and hence they are the only dependents as defined under Section 123 (i) (b) of the Railways Act, 1989. It is pleaded case of the applicants in the annexure to the claim application that on 14th September 2023, the deceased undertook journey from Okhla railway station to New Delhi railway station and between Okhla and Okhla Bypass Cabin railway stations, the deceased fell from the train and suffered fatal injuries. According to the applicants, his autopsy was got conducted on 15th September 2023 by the civil police of police station NFC, Delhi.
2. Notice of the claim application was issued. The respondent filed written statement along with the statutory report of DRM, Ex. R-1. The claim of

the applicant has been denied in the written statement and in Para 3 of the preliminary objections to the written statement, it has been specifically averred as under: -

“3. That as per the enquiry report, the information gathered that on dated 14.09.2023 an unknown person has informed to on duty station master of Okhla through phone that one dead body is lying near KM no. 15/27/19-20 b/w UP & DN ML, the body is lying out of track Moreover no journey ticket/pass has been recovered from the deceased, even the cause of this fatal incident is not clear, looking into the information gathered the deceased was not a bonafide passenger and there is no record of any fall and run over in Railway record. Even there was no eye witness of the incident. So here Railway is not liable and responsible. Hence, the claim petition is liable to be dismissed.”

3. In the DRM Report, Ex. R-1, it has also been concluded as under: -

“निष्कर्ष: समस्त साक्ष्यों व गवाहों के बयानों के अनुसार दिनांक 14.09.2023 को कि.मी.सं. 1527/19-20 b/w UP & DN ML Out side the track मृतक की डेड बॉडी पड़ी होने की सूचना अज्ञात व्यक्ति द्वारा ऑन ड्यूटी स्टेशन मास्टर ओखला को दी गई। मौके पर रे.सु.ब. सिविल पुलिस/रा.रै. पु. भी पहुंची। सिविल पुलिस के रिकार्ड अनुसार घायल व्यक्ति एम्बुलेंस में उसके परिजनों के साथ मिला जिन्होंने बताया कि विष्णु (मृतक) ट्रेन दुर्घटना में घायल हुआ है। बाद घायल को AIIMS Trauma Center में MLC No.500395430/23 पर दाखिल कराया बाद डा. साहब ने Declared brought dead तहरीर फरमाया था। सिविल पुलिस रिपोर्ट अनुसार घायल विष्णु की मृत्यु ट्रेन दुर्घटना में बताई गई है। मृतक से यात्रा सम्बन्धी कोई रेल टिकट मौके पर नहीं मिली और न ही बाद में प्रस्तुत की गई अतः घटना का प्रत्यक्षदर्शी न होने के कारण उक्त घटनाक्रम अस्पष्ट है।”

4. The Tribunal on 30.05.2024 formulated the following issues for adjudication: -

- 1) Whether the deceased was a bona fide passenger of the train in question at the time of incident?*
- 2) Whether there was any untoward incident as is defined under the provisions of Section 123(c) of Railways Act, 1989?*
- 3) Whether the applicant(s) is/are dependent(s) of the deceased?*
- 4) Whether the applicant(s) is/are entitled for any relief and interest as prayed for in the application?*

5) Relief if any?

5. Rakesh Chandra, father of the deceased, appeared before the Tribunal. He tendered his affidavit towards examination in chief. He was examined as AW-1 on 31st July 24. The witness was duly cross-examined by Ms Jatinder Kaur, counsel for the respondent. AW-1, father of the deceased in his cross-examination specifically stated that his son Vishnu, was having a mobile shop at Nehru Place, New Delhi. He further admitted that he is not an eyewitness of the occurrence and he had neither seen his son purchasing the ticket nor boarding the train nor falling from the train. He further disclosed to the Court in cross-examination that he learnt about the incident from the railway police on 14th September 23 in the evening at 7.00 PM.
6. Today, we have heard Shri B.S Mahur, counsel for the applicant and Ms Jatinder Kaur, counsel for the respondent. Shri B.S Mahur has submitted that in the first document, prepared at Trauma Centre of AIIMS, New Delhi, it is noted that the deceased had fallen from the train. To counter the arguments raised by Shri B.S Mahur, counsel for the respondent submitted that there is no eyewitness of the occurrence and there is no evidence of the deceased falling from the train or being run over by the train. We have given due consideration to the rival submissions advanced

before us and we shall take up Issue Nos. 1 and 2 together as on the facts and submissions advanced, they are interconnected.

FINDINGS: -

Issue Nos. 1 and 2: -

7. It may be noted that Okhla is a part of Delhi and it has industrial units and offices situated there. The first memo was sent by Station Master, Okhla railway station on 14th September 2023 at 18:35 hours to RPF and all concerned. In the memo, which is at page 43 of the DRM Report, it is recorded *“As per reported by unknown passenger, that one unknown person is lying dead on between Up and Dn line outside the track between KM 1527/19/20. Same be informed to GRP by Sr Constable Rakesh Kumar. Please do take necessary action.”* This memo was received by ASI, Babu Lal Meena on 14th September 2023 at 18.42 hours. Thus, the dead body was spotted in the evening at 18.35 hrs immediately after the offices and industrial units had closed. We can well assume that Okhla is heavily infested with traffic and a lot of people visit Okhla in the evening hours after closure of industrial units and offices. Therefore, if a dead body is lying before passing of any train, it will be known to all people around, all and sundry. What is crucial is the information noted in the investigation conducted by Babu Lal Meena, investigating officer who submitted the report of investigation to the

Divisional Railway Manager on 4th April 2024. The said report of investigation had been accepted by the Divisional Railway Manager in consonance with Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2020. The report of investigation is from page 46 to 50 of the DRM report Ex. R-1. In column 14-(b), it is noted that before the time of information of the incident relayed i.e. 18.35 hrs, one hour before, one passenger EMU train 04437 going from Palwal to Shakurbasti had passed from Okhla railway station. It is further noted in Column 14-(e) that on 14.09.2023, train No. 04437 EMU, as per the statement of the guard and loco pilot, arrived at Okhla at 17.17 hrs and left at 17.17 ½ hrs. Thus, we find merit in the argument raised by Shri B.S Mahur that before 17.17 ½ hrs, no dead body was spotted on the railway line which is heavily visited by passengers and people around. We have also seen page 17 of the DRM report which is a medico-legal examination of Jai Prakash Narayan Trauma Centre of AIIMS, New Delhi wherein on September 14, 2023 at 21.08 hrs, it is recorded that a patient was brought directly to AIIMS Trauma Centre by the police in an ambulance in an unconscious state. He was declared dead after resuscitation. In the history given by the police, it is mentioned in the medico-legal report that the person who was brought to the Trauma Centre had a fall from moving train near Okhla railway station. Thus, it is apparent that after the EMU train had left Okhla railway station at 17.17½

hrs, a dead body was spotted and said information had been relayed and noted in the memo at 18.35 hrs. Thus, immediately after passing of the train, a dead body was spotted and this fact is also recorded in the history given by the police to the doctor at Trauma Centre, that person brought had a fall from a moving train. We have also seen the post-mortem report annexed with the claim application and the nature of injuries and same rule out death of deceased as a result of run over, collision or hit by the train. Thus, the nature of injuries and the alleged history given by the police noted in the medico-legal report establish that the death in the present case was a result of fall from the train. From the perusal of the Site Map (Naksha Naziri), it is evident that the dead body was lying in between the Up main lines and Dn main lines and EMU Trains from Tughlakabad to Shakubasti run between New Delhi Dn main line and thus, it cannot be ruled out that the deceased had fallen from the train. Furthermore, in the post-mortem report, the doctor has opined the cause of death as under:-

“In my opinion cause of death in this case is haemorrhage & shock consequent upon antemortem injuries to chest, abdomen, lower limb caused by blunt force trauma and could be possible the case of a death by railway accident.”

8. The opinion of the doctor after seeing the nature of injuries also fortifies the submissions advanced by Sh. B.S Mahur, counsel for the applicant. Thus, it is apparent that in the present case the death is the result of an

‘*untoward incident*’. Thus, issue no. 2 is decided in favour of the applicants and against the respondent

9. Regarding Issue No. 1, it is averred in the claim application and in the affidavit filed by the father of the deceased, Rakesh Chandra, that the deceased had purchased a ticket and was a bonafide passenger. Paras 3 and 5 of the affidavit filed by AW-1 towards examination in chief read as under:-

“3. यह कि मैं शपथ पूर्वक बयान करता हूं कि मेरा पुत्र विष्णु कुमार दिनांक 14.09.2023 को एक्सप्रेस स्पेशल रेलगाडी द्वारा वैध मेल एक्सप्रेस रेल टिकट लेकर ओखला रेलवे स्टेशन से नई दिल्ली रेलवे स्टेशन की यात्रा कर रहा था कि अचानक ओखला व ओखला बाईपास केबिन रेलवे स्टेशन के बीच चलती रेलगाडी से गिर गया और घटना स्थल पर ही मृत्यु हो गयी उक्त घटना के घटित होने में मेरे पुत्र का कोई दोष नहीं था।

4. -----

5. यह कि मैं शपथ पूर्वक बयान करता हूं कि मेरे पुत्र के पास एक रेल टिकट ओखला रेलवे स्टेशन से नई दिल्ली रेलवे स्टेशन तक का था जो घटना स्थल पर खो गया मेरा पुत्र कभी भी बिना रेल टिकट के यात्रा नहीं करता था और घटना वाले दिन भी रेल टिकट लेकर ही यात्रा कर रहा था।” (reproduced in verbatim)

10. The above assertion of the witness deponent could not be demolished in the cross-examination. Thus, the applicant has stated on affidavit that the deceased was a bonafide passenger. The Hon’ble Supreme Court of India in Union of India v/s Rina Devi (2018 ACJ 1441) held as under: -

“17.4 We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

11. On the touchstone of the observations made above by the Honourable Supreme Court, since the requisite affidavit has been filed by the father of the deceased, we hold that the deceased was a bonafide passenger. Thus, issue no. 1 is also decided in favor of the applicants and against the respondent.

Issue No. 3 :-

12. The applicants have filed on record the attested copies of their Aadhar Cards (Exhibit A-2 and A-3) respectively, including the Aadhar Card of the deceased Vishnu Kumar, (Exhibit A-1) issued by Government of India. The same proves the relationship of the applicants with the deceased. Thus, the applicants, being parents of their unmarried son, are held to be the dependents of the deceased within the meaning of Section 123 (b) of the Railways Act, 1989.

ORDER

13. The applicants are entitled to receive a sum of Rs 8,00,000/- (Rupees eight lacs only) together with interest @ 9% p.a. from the date of accident till date of this order by the respondent.

14. Respondent is directed to pay the amount of compensation in the suitor's money account of the Principal Bench of this Tribunal at Delhi within one month from date of receipt of certified copy of this order, failing which,

they will be liable to pay simple interest @ 9% per annum for any subsequent delay.

15. So far as disbursement of the amount of award is concerned, we have heard the learned counsel for the parties.

16. We may notice that in ***Geeta Devi Vs Union of India***, 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. Earlier, this Court has involved 21 Nationalized 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 v 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 directions for disbursing the award in terms of annuities, fixed deposits or other suitable mode as 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 litem 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 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.”

17. In pursuance of the orders passed by the Delhi High Court, recently, Government of India has issued a Notification of 3rd June, 2020 amending Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 2020, amending 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.”

18. Therefore, relying upon the judgement rendered by the Delhi High Court in the case of *Geeta Devi* (supra) and in pursuance of Rule 5 quoted above, in the present case, the amount of award along with the interest shall be disbursed in the following manner: -

19. The amount of compensation together with accrued interest shall be shared by both the applicants equally.

20. 10% of the shares of the applicants shall be released forthwith by ECS/NEFT transfer to their respective savings bank accounts. Rest of

their respective shares together with accrued interest, if any, shall be invested in FDRs for a period of three years in their respective names in a nationalized bank, near to the place of their residence, with monthly payment of accrued interest to them.

21.ADR/PB/RCT/Delhi will verify the details of the bank accounts of the awardee before making payment. Further to that, the bank should also be directed not to allow any loan, advance, withdrawal or premature discharge on the fixed deposit without permission of the Tribunal. The bank account should be in a Nationalised Bank near his place of permanent residence.

22.The application is allowed in the above terms. No order to costs.

(Mukesh Nigam)
Vice Chairman (Technical)
RCT ALD @ Delhi

(Kanwaljit Singh Ahluwalia)
Chairman