

RAILWAY CLAIMS TRIBUNAL

Ernakulam Bench

Dated – 08th August, 2023

Coram

Hon'ble Shri Sanjiv Dutt Sharma

Judicial Member

O.A. No. 15/2023

1. Bijoy, (Father of the deceased)
Thekkepalliyali
Vazhayur East P.O.
Vazhayur, Malappuram,
Kerala – 673633
2. Shibi C. (Mother of the deceased)
Thekkepalliyali
Vazhayur East P.O.
Vazhayur, Malappuram,
Kerala – 673633

___ Applicants

Vs

**Union Of India,
through General Manager,
Southern Railway**

___ Respondent

Adv. For the Applicants – Shri M.Sabu/Aby Jacob

Adv. For the Respondent Railways – Shri Kamal Ram R

JUDGEMENT

Bijoy, AND Shibi C, parents of the deceased, late Shri Abhijit, the claimants have filed the present claim petition against the Railways, under section 16 of Railway Claims Tribunal Act, 1987, before this Tribunal for seeking compensation from the railways, on account of death of their son, namely late Shri Abhijit, allegedly died in a train accident on 22/02/2019, while travelling in Mangalore – Chennai Mail. It is alleged that the deceased was a bonafide passenger and was traveling on the strength of a valid journey with ticket having PNR No.415 5523746 from Calicut to Chennai. It is further

alleged that he was also a sufferer of an untoward incident as he had fallen from the moving train. However, nothing is mentioned in claim application that how the deceased had fallen down from the train.

Thus, alleging that the deceased was a sufferer of an untoward incident and was a bonafide passenger, as such they are entitled for compensation from the Railways to the tune of Rs. 8,00,000/- along with interest from the date of accident. Hence, the present claim application.

In reply---

The Respondent has denied that the deceased died to due to any untoward incident. The Respondent submits that as per DRM report, on 22/02/2019 at about 21:17 hours , Train No. 12602 (Mangalore to Chennai), after passing Madukarai Railway Station, stopped at KM 494/18-20 due to ACP I S/10 coach, since one passenger had fallen down form train. Immediately, Train Manager of the said train rushed to the spot , duly informing the Station Master, Madukrai through walkie-Talkie, found one body of a passenger lying in the middle of Road No.2 at KM.495/20-22 near down home signal of Madukarai Railway station with multiple injuries. Station Master /Madukarai, informed the matter to GRP/Podanur. GRP/Podanur, registered a case in Crime no. 19/2019 U/S.174 Cr.P.C. and took up the investigation. The deceased was identified as Abhijit from the Aadhar card, which they recovered during inquest. DRM also submits that during inquest one Railway Reservation Ticket PNR No. 415 5523746 for the journey from Calicut to Chennai of Train No. 12602 was recovered. It is further alleged by the Respondent that the deceased was standing near doorways as per the statement of co-passenger, Sri.Safwan and others and responsible for his own death. Thus, the Railway has claimed that the incident had occurred due to the negligence of the deceased as he had chosen to travel at the door ways of a moving train. Therefore, this incident cannot be called as an accidental fall from the train. It is alleged that the incident occurred due to the gross negligence and carelessness of the deceased, who had not observed safety measures, while travelling in moving train. The Respondent submits that the Railways are not liable to pay any compensation for the death of deceased which took place due to his own negligence as defined under Section 124-A of the Railways Act, 1989.

Thus, the railway has prayed for the dismissal of the claim application and has further stated that the accident of the deceased is the net result of his own carelessness and negligence.

I have pursued of the claim application as well as written statement filed by the Railways. Based on the above said pleadings, and material evidence

placed on record, the following issues were framed for determination and adjudication in this case on 11/07/2023.

1. Whether the Applicants are dependent(s) of the deceased?
2. Whether the deceased was a bonafide passenger of the train in question?
3. Whether the deceased died, as a result of an untoward incident?
4. Whether the Applicants are entitled to the compensation as claimed and what relief?

The applicants in support of their application have tendered into evidence affidavit A-1 and Exhibit. A-2 to A-8, and the applicant no.1 (AW-1) was also cross examined by the railway advocate. On the other hand, railway has submitted the DRM report and has marked the same as Exhibit.R1. The railway has not examined any other witness.

In order to avoid repetition of appreciation of evidence, and for the purpose of brevity, issue No. 2 & 3 are taken up together for the purpose of discussion and orders.

It is writ-large on the file that the deceased was traveling in the train on the strength of a reserve ticket bearing PNR NO. 415 5523746. The genuiness of the ticket is not disputed by the railways, rather railway has admitted that he was a bonafide passenger. As such, the issue no. is decided in favour of the claimants and it is declared that the deceased namely Shri Late Abhijit was a bonafide passenger and had a legal authority to travel in the train.

As far as the issue no. 3 is concerned, it is clearly mentioned in the report of DRM dated 16/03/2023, that when the train no.12602 (Bangalore to Chennai) was running and crossed Madukarai railway station the same was stopped at KM 494/18-20 due to ACP in Coach No. S/10, since, the deceased had fallen down from the train. It is also in the written statement that immediately the Train Manager of the said train and other co-passenger of the train rush to the spot and informed the Station Master/ Madukarai through Walkie-Talkie. The body of the deceased was found lying in the middle of Road No.2 at KM.495/20-22, near down home signal of Madukarai Railway station with multiple injuries. It is admitted by the Respondent that the deceased went to the toilet and while standing near the door ways, fell down from the train and died. However, the railway has termed the happening of the incident, as negligence on the part of the deceased since he was traveling at the door ways of a running train.

I feel, that the Respondent Railways have wrongly construed the Railway Claims Act and the meaning of an untoward incident and has wrongly deprived the claimants from their genuine claim. In this regard, **I am equipped with the judgment of Hon'ble**

High Court of Kerala in case titled, Thomas K.V. Vs Union of India M.F.A. No.1131 of 2002.

Sub 3 – Railway Act, 1989 – S (123) c, S124 A – compensation on account of untoward incident injury sustained while getting down from train -entitled for compensation -negligence on part of a bonafide passenger cannot be a ground to deny compensation – even a platform ticket holder is entitled.

Held: - To claim compensation under S.124 A, it is not necessary to show that there is any negligence on the part of the railway administration. It is also not necessary to establish that the injured was not negligent. The negligence of either the railway administration or that of the injured is not relevant under S.124 A. The negligence of the claimant cannot disentitle him from claiming compensation under S.124 A. Admittedly, the accident occurred not as a part of an attempt of suicide. It is not a self-inflicted injury or he has not done any criminal act. Mere negligence on the part of the bonafide passenger is not a ground to deny the compensation for untoward incident. Like S.163 A of the motor vehicle act, strict liability is cast on the railway administration for payment of compensation. In the explanation to the section, it is stated that even if a person has a platform ticket and become a victim of untoward incident, he will come within the section 16, if there is an untoward incident, he will come within the section 16, if there is and untoward incident in the course of working in a railway and if a person will be entitled to get compensation from railway administration unless the passenger dies or suffers injury due to any of the reason stated in (a) to (e) of the provision to S.124 A

In this regard, I am also equipped with the judgment of Hon'ble Kerala High Court titled "Union of India Vs. Paremeshwaram Pillai Railway Claims Tribunal Act, 1987 (Central Act 54 of 1987)- Section 18- When a Court or Tribunal is discharged its function under a social welfare legislation, the adjudicatory body shall regulate its procedure so as to provide succor to the beneficiaries of that statute- The presumption is that a railway passenger has boarded the train after purchasing the ticket.

Thus, on holistic evaluation of evidences on record and from attending circumstances, I have come to a conclusion that the accident of deceased was an 'untoward incident within the ambit of provisions of section 123 (C) 2 of Railway Act, 1989. Accordingly, issue no. 3 is decided in the favour of the applicants.

Issue no. 1 & 4

As far as the issue no.1 is concerned, the railway has not brought any cogent evidence against the applicants and has not challenged the veracity of their relationship with the deceased. As such, the issue no.1 is decided in the favour of the applicants.

In view of my above discussion, I feel that both the applicants are entitled to a compensation to the tune of Rs.8,00,000/- (Rs.Eight lakhs only)from the railways along with the interest @ 9 % p.a. from the date of filing of the present application i.e. 08/02/2023.

As such, the application is allowed and it is ordered that Respondent will pay Rs.8,00,000/- to the applicants, within 60 days along with interest @9% p.a. from the date of filing of the present application i.e., 08/02/2023 in the following manner.

- 1. Mother of the deceased, the applicant no.2 will get Rs.4,00,000/- with interest.**
- 2. Father of the deceased, applicant no.1 will get Rs.4,00,000/- with interest.**

Respondent, is directed to deposit the compensation amount in the "Suitor's account" of this Tribunal within a period of 60 days from the date of this order, failing which, simple interest @9% p.a. will be payable for the subsequent delay on the total amount awarded to each of the applicant.

So far as disbursal of the amount of award is concerned, I have heard the learned counsels for the parties.

Therefore, relying upon the judgment rendered by the Hon'ble Delhi High court in the case of Geeta Devi(supra) and in pursuance of Rule 5, in the present case, the amount of award along with the interest shall be disbursed in the following manner:

It is ordered that only 10% of the total compensation amount i.e. Rs. 40,000/- to each plus interest will be released to both the applicants and remaining amount will be invested in the shape of fixed deposit for a period of 3 years. The FDRs will remain in the name of applicants in a Nationalized Bank, situated, near to the place of their residence with monthly payment of accrued interest to them. This special arrangement is done to protect the money of the applicants from the middlemen and other unscrupulous people.

ADR/RCT will verify the details of the bank accounts of the applicants, before making payment. Further to that, the bank is directed not to allow any loan, advance, or withdrawal or premature discharge on the fixed deposit without the permission of this Tribunal. The bank account of both the applicants should be in a Nationalized Bank nearest to the place of their permanent residence. The ADR is further directed to contact the Branch Manager of the bank before sending the amount

Additional Registrar, of this tribunal is directed to do the needful, accordingly. Copy of this order be supplied to both the applicants free of any charge. The bank manager of the concerned bank will be personally responsible, if the money of the applicants is misappropriated.

The application is allowed in the above terms. No order as to cost.

Pronounced in the open Tribunal, on this, the 8th day of August 2023.

(Sanjiv Dutt Sharma)
Judicial Member