

RAILWAY CLAIMS TRIBUNAL

Ernakulam Bench

Dated – 22nd August, 2023

Coram

Hon'ble Shri Sanjiv Dutt Sharma

Judicial Member

O.A. No. 2/2023

1. Hanumanth (Husband of the deceased)
Rani Bennoor (H),Thaikkavu,
Manakkapadi,Ashokapuram,
Choornikara Village, Aluva,
Ernakulam- 683101.
2. Ganesh (Son of the deceased)
Rani Bennoor (H),Thaikkavu,
Manakkapadi,Ashokapuram,
Choornikara Village, Aluva,
Ernakulam- 683101.
3. Jyothi S.H. (Daughter of the deceased)
Rani Bennoor (H),Thaikkavu,
Manakkapadi,Ashokapuram,
Choornikara Village, Aluva,
Ernakulam- 683101.
4. Lakshmi S.H. (Daughter of the deceased)
Rani Bennoor (H),Thaikkavu,
Manakkapadi,Ashokapuram,
Choornikara Village, Aluva,
Ernakulam- 683101

___ Applicants

Vs

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

___Respondent

Adv. For the Applicants – Shri C.S.Ajith Prakash

Adv. For the Respondent Railways – Shri Anish Jain

JUDGEMENT

Applicants/Claimants have preferred the present claim application 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 late Smt.Devikumari , the wife of the applicant no.1 and mother of the remaining applicants, who died in a railway accident, while attempting to board ERS -SUR Memu, Train no.06018 from platform no.1 of Ernakulam North railway station on 04/06/2021 at about 05:45 p.m. it is alleged that while boarding train she slipped and her head struck against the platform and while on her way to the hospital, died.

Thus claiming the incident to be an untoward incident and further claiming that she was a bonafide passenger, the applicants have sought compensation from the railways to the tune of Rs. 12,00,000/- or any other amount of compensation that may be deem fit and proper.

In reply ---

The Respondent has denied that the deceased died to due to any untoward incident. The Respondent submits that as per the DRM 's Report dated 07/04/2023, the ticket details were not mentioned in Police Inquest Report, since the ticket was not in the possession of the deceased. However, the copy of the ticket was found enclosed in the Docket of Eranakulam North. Respondent further states that as per IPF/ERN, one second class Mail/Express Railway journey ticket No. UMF 6708176 (Ex.ERN to AWY)dt. 04/06/2021, for two persons was found in the possession of the husband of the deceased and it is also mentioned there that their mentally challenged son was also with them. But the ticket details of the 3rd person were not mentioned in the records of RPF/Ernakulam. As per the statement of Husband of the deceased person, his son was holding a disability card issued by Railway Authorities but they did not produce any concession ticket ofr him for the journey on 04/06/2021. The Respondent submits that as per DRM's report, on 04/06/2021 at 17:44 hours, Train no. 06018 MEMU arrived at Eranakulam North railway station platform no.1 . After the schedule stoppage, the above train started from ERN platform at 17:45 hours. Suddenly, the train was stopped by the Guard on seeing one lady falling down from the train, while boarding the moving train. Immediately, on seeing the above, on duty RPF staff and ASIPF/Ernakulam rushed to the spot. She was found stuck between the gap of platform and the train. She was taken to the ESI hospital situated near Eranakulam North Railway station, where she was declared brought dead.

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 her own carelessness and negligent act. Further, the Railway has termed the injuries suffered by her as self inflicted injuries.

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 08/05/2023

1. Whether the applicants are the dependents of the victim?
2. Whether the victim was a bonafide passenger in the train in question?
3. Whether the deceased died, as a result of an untoward incident?
4. Whether the Applicant(s) is/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-1 to A-20, 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, issues No. 2 & 3 are taken up together for the purpose of discussion and orders.

As far as, the bonafide status of the deceased is concerned, it is mentioned in the report of DRM that as per IPF/ERN Ticket No. UMF – 67708176 dt. 04/06/2021 from Ex. ERN-AWY , for two persons of Rs.60/- was found in the possession of husband of the deceased. The copy of the ticket was also found and enclosed in the Docket of ERN posrt UI. However, it is mentioned in the report of DRM that this particular ticket was valid for two persons. but a mentally challenged son of the deceased was also traveling with them and also there is no explanation or details of the 3rd person found in the records of the RPF/ERN. It is also admitted in the report of the DRM that the son of the deceased was holding a disability card/pass issued by the Railway Authority but no such concession ticket was produced for the journey by the husband of the deceased. *It is pertinent to mention here, that the railway has not brought any cogent or trustworthy evidence on record to prove that the deceased had intended to travel in the train without ticket. it is admitted fact that the journey ticket for two adult persons was found with the husband of the deceased and the copy of the same was also found in the docket of ERN as such, it is writ-large on the file, that the deceased was definitely a bonafide passenger and had the legal authority to travel in the train.*

It is also admitted fact, that the husband of the deceased firstly entered the train and accommodated his mentally retarded son on a seat in the compartment and again came out to assist his wife to board the train and in the mean time the train started moving from platform and when she tried to board the train she lost her balance slipped and fell down on the gap of platform and train and got stuck there. Immediately ther husband of the deceased and the son alighted from the train and

with the help of railway officials took the deceased to a nearby hospital where she was declared brought dead.

Surprisingly, the Railway has termed the present incident to be a 'self inflicted injury'. The arguments of the Id.advocates on this point are not convincing. I feel, that the railway has wrongly construed the meaning of 'self inflicted injury' and also the definition of untoward incident. The manner in which the deceased had fallen down while boarding the train and suffered injuries and died to my mind, definitely was a sufferer of an untoward incident. I feel, that she could not expect this sudden incident. It is also admitted by the Railways that her mentally retarded son was also with them and firstly both the parents ensured the 'safe entry' of the mentally retarded son in the rail compartment and then their own entry in the train.

In this regard I am also equipped with the judgment of Hon H.C 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 an untoward incident in the course of working in a railway and 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 another 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 accidental death 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.

In view of my above discussion, I feel that the claimants are successful in proving that the deceased was a bonafide passenger and a sufferer of an untoward incident.

Thus, both the issues are decided in the favour of the applicants /claimants and against the Railways.

Issue No.1 & 4

Since, the railways have not opposed and challenged the veracity of the dependency of all the applicants and their relationship with the deceased, I have no alternative except to believe that the applicants no.1, and 2 are the only legal heirs of the deceased, accordingly, this issue is decided in favour of the applicants.

In view of my above discussion, I feel that the applicants are entitled to an amount of compensation from the railways to the tune of Rs.8,00,000/- This issue is also decided accordingly in the favour of the applicants and against the railways.

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 the present application i.e., 07/02/2023, in the following manner.

1. Husband of the deceased namely Shri Hanumanth the applicant no.1 will get Rs.1,00,000/- (Rupees one lakh only) with interest.
2. Son of the deceased, namely Ganesh, who is mentally retarded and was totally dependent on the deceased, the applicant no.2 will get Rs.5,00,000/- (Rupees five lakhs only) with interest.
3. Remaining two daughters of the deceased, namely, Jyothi S.H.and Lakshmi S.H., the applicant no.3 & 4 will get Rs. Rs.1,00,000/- each (Rupees one lakh only) with interest.

During the pendency of the claim application, it was brought to my knowledge that the applicant no.1, 3, & 4 who are majors were not dependent on the deceased. Only, the mentally retarded son, Ganesh was dependent on his mother. I have awarded Rs.5.00,00/- along with interest

to Shri Ganesh, the mentally retarded son, Ganesh, so that his interest and survival can be protected. Even in the cross examination the applicant no.1 has stated that he knows nothing about the claim case and how much money he will get. I feel that there are chances of misappropriation of money awarded in favour of the mentally retarded person, Ganesh. Accordingly, I appoint Smt. Ashadevi/Steno And Smt. Silja(Steno and Court Master/RCT/ERS) as Court Guardians to protect the interest of mentally retarded person, Shri Ganesh, the applicant no.2. Both the Court Guardians will visit the house of the applicants and will ensure that the money of the mentally retarded person is properly invested in the shape of FDR and will also direct the concerned Bank Manager to pay only the interest part pertaining to the share of applicant no.2, only to one of the remaining applicants who is looking after Shri Ganesh, the mentally retarded applicant no.2. The Railways in addition to the compensation amount will pay Rs.10,000/- (Rupees ten thousand only)to both the Court Guardians and will deposit the same along with the compensation. Both the Court Guardians will also submit their report after doing the needful before this Tribunal.

Respondent, is directed to deposit the awarded 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 disbursement 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 be released to all the applicant no.1, 3 & 4 and remaining amount shall be invested in the shape of fixed deposit for a period of 3 years. The amount will remain in a Nationalized Bank, 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 all 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 should also be 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 should be in a Nationalized Bank nearest to the place of their permanent residences of the applicants, the ADR will ensure it.

Additional registrar, of this tribunal is directed to do the needful. Copy of this order be supplied to all 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 22nd day of August 2023.

(Sanjiv Dutt Sharma)
Judicial Member