

**RAILWAY CLAIMS TRIBUNAL
Ernakulam Bench**

Dated – 13th March , 2024

Coram

Hon'ble Shri Sanjiv Dutt Sharma

Judicial Member

O.A(IIu)/ERS/20/2022

- 1) Aisamma, (M/o. Late Mohammed Irfan K.J)
Aged 51 years, W/o. Jamal Ahmed
Near Sannadka, Kunjathur P.O,
Manjeshwar, Kasaragod,
Kerala, Pin - 671 323**
- 2) Jamal Ahamed, (F/o. Late Mohammed Irfan K.J)
Aged 59 years, C/o. Segedu Sheik
Bachalike Banglaw House, Kunjathur P.O,
Kasaragod, Kerala, Pin - 671 323**
- 3) Sabeena Begum, (Sister of Late Mohammed Irfan K.J)
Aged 28 years, D/o. Jamal Ahmed,
Sannadakka Road, Bava Quarters,
Kunjathur, Kasaragod,
Kerala, Pin - 671 323**

____ Applicants/claimants

Vs

**Union of India,
Through General Manager,
Southern Railway, Chennai**

____ Respondent

Adv. For the Applicant – Shri. Mohan Pillai

Adv. For the Respondent Railways – Shri. K B Sajan

JUDGEMENT

The claimants/applicants have preferred the present claim application, against the Railways/respondent, under section 16 of Railway Claims Tribunal Act, 1987, for seeking compensation, from the Railways/respondent, on account of death of the son of the applicant no.1 & 2 and the brother of the applicant no.3 namely, late Shri. Mohammed Irfan K.J, **(the deceased)**, who was allegedly travelling in a train, on 07-08-2019, met with an accident and died.

It is alleged by the claimant that on 07-08-2019 at about 21.00 hours the deceased Mohammed Irfan K.J accidentally fell down from the train at Madannada Railway Gate and sustained severe injuries and succumbed to the injuries, on 08-08-2019, while undergoing treatment. It is also alleged that the deceased was employed in a fruit stall/ tea shop at Thiruvananthapuram during the time of incident. The deceased after attending work, took a ticket and entered the train from Thiruvananthapuram Railway Station to the destination, which is unknown to the applicants, and was very carefully and cautiously travelling in the train by following all the rules. It is alleged in the claim application that during the course of travel, the deceased might have gone to the bathroom and for use the washbasin and while standing near the side of the wash basin, as the doors were not closed and kept open, somehow accidentally fell down from the moving train and sustained serious injuries. It is alleged that the injured passenger was first taken to Government District Hospital, Kollam and later for better treatment, was referred to Government Medical College Hospital, Thiruvananthapuram on 07-08-2019, while undergoing treatment, died on 08-08-2019 at 02.14 hours.

It is also alleged that on the basis of intimation, Cr. No. 917/2019 was registered by Eravipuram Police Station and after investigation, concluded that the deceased died due to injuries sustained from an accidental fall from train.

Thus, alleging that the deceased was a bonafide passenger and a sufferer of an untoward incident, as such, the claimants are entitled to a compensation to the tune of Rs.10,00,000/- with interest from the Railways/respondent.

In reply,

The Respondent denies all the averments and various allegations of the claim application for want of knowledge and has further prayed that the applicants be put to strict proof to prove the same.

The Respondent humbly submits that as per DRM's Report, one person name Mohammed Irfan K.J. was alleged to have fallen down from an unknown train during the night time on 07.08.2019. On receiving information from Local people, Local Police/Ravipuram attended the spot and the injured person was shifted to District Hospital/Kollam and further shifted to Medical College Hospital, Trivandrum for better treatment. During the treatment at MCH he succumbed to his injuries at 02.14 hrs. on 08.08.2019. In this connection, Local Police Iravipuram registered a case, Cr.No.917/2019 under Section 174 Cr.P.C. and took up Investigation.

According to the FIR and Inquest Report, **no Railway travelling ticket was recovered from the possession of the deceased during the Inquest by Police.** As per Accident Register-Cum-Wound Certificate from District Hospital, Kollam, it was mentioned in the column of History and alleged cause of injury as, "alleged H/O train run over at Bharanikavu - Madannada Railway Cross around 09.00 PM on 07.08.2019". Also **it was mentioned that according to the accident register cum wound certificate, the Patient was semi-conscious with several injuries and was with "smell of Alcohol".** As per Post-mortem Certificate, the cause of death was due to injury sustained to abdomen and right thigh. The police closed the case as 'Accidental death'.

There is no lapse/negligence from the side of Railway Administration and therefore Railway is not liable to pay any compensation for the death of the victim under Section 124A of Railways Act, 1989.

Thus, Railway has prayed for the dismissal of the claim application.

I have pursued the claim application as well as the 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 15/09/2022

1. Whether the applicants are the only dependents of the deceased?
2. Whether the deceased was a bonafide passenger as alleged?
3. Whether the incident in which the deceased allegedly lost his life is an untoward incident as defined U/s.123(c) of the Railways ACT, 1989?
4. Whether the applicants are entitled for compensation as claimed and other relief if any?

In this case, the applicants in support of their claim application have tendered into evidence, the affidavit of applicant no.2 and marked the same as Ex.A-1. They have also submitted other documents and have marked the same as Ex. A-2 to A-15 and have closed their evidence. The applicant no.2 was examined as AW-1 was cross examined by the Railway advocate.

On the other hand, the Railway has submitted the DRM report and has marked the same as Ex.R-1 and has not examined any witness.

To clear some ambiguities, the court has examined Dr. Hari Shankar, CMO/Govt.Hospital, Kollam, (Through virtual mode) who had mentioned "Smell of alcohol" coming from the deceased, in the accident cum wound register of the deceased as CW-1 and Shri. P. Ramakanthan, Retired SI, who was the investigating officer of this case as CW-2. The copy of the intimation register submitted by the investigating officer was marked as Ex.Z-1.

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.

Issue No. 2 & 3

It is pertinent to mention here that after the filing of the claim application, Railway filed the written version and the report of the DRM. The copy of the DRM report and the copies of the entire record, on which the Railway relies upon, are supplied to the applicants/claimants, through their advocate.

After getting the version of the Railways along with the DRM report, applicants were given an opportunity to file the proof affidavits and their entire documents, which they intended to file.

The Railways/respondents have admitted the travel of the deceased in the train and his fall from the train in the written version filed by them, however the Railways has opposed the claim of the claimants mainly on the point

that the deceased had consumed alcohol at the time of his travel and further no ticket was recovered from him.

As far as the bonafide status of the deceased is concerned, it is admitted in the reply that the deceased was travelling and had fallen from the train on the spot. To my mind no evidence is brought on record by the Railways that the place, where the deceased had fallen in the night hours and that too during heavy rains was thoroughly searched and only then they came to the conclusion that the deceased was without ticket. It is pertinent to mention here that it was a rainy season and there are chances of losing the ticket, the manner in which the body was found near the track, it is possible that the ticket might have got lost, when the deceased was picked up from the spot and taken to the hospital.

In this regard I am equipped with the judgement of the Hon'ble Madras High Court in Union of India v. G. Jayalakshmi and Others 2002 KHC 147 : - 2008 (3) KHC 433 : -2013 KHC 5289 by relying the judgement of Hon'ble the Division Bench of the Allahabad High Court in Akhtari Vs. Union of India 2009 (1) TAC 644 held that " in the event of death of a travelling passenger, there shall be a presumption that the person travelling in the train was having valid ticket. unless the presumption is rebutted by Railways through cogent and trustworthy evidence."

As per the judgement of the Hon'ble Supreme Court led Kamukayi v. Union of India (2023 KHC 6579) it is stated that initial burden will be on claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on Railways; and Issue can be decided on the facts shown or the attending circumstances. The Hon'ble National Commissioner was pleased to observe at paragraph 12 of the said Judgement as follows:-

"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.'

The Railway has also mainly opposed the application on the ground that the deceased was in a state of intoxication and a smell of alcohol was coming from his mouth, when he was taken to the hospital and was medically examined. In order to clarify this ambiguity, Dr. Hari Shankar as CW-1 was examined through virtual mode. He has specifically stated that the deceased was probably crossing the Railway lines, then might have got hit by the train. And these types of injuries are not possible if a person falls from the train. While answering question no.8 he has stated that **we cannot make sure simply by the smell that one had consumed alcohol. Though he had found the smell of alcohol.**

Surprisingly, the Railway in the written statement as well as in the DRM report has admitted the travel of the deceased and have simply stated that he was travelling in a drunken mood and compromised his personal safety. The stand of the Railways is not in consonance with the opinion of the doctor. The cross examination of the doctor is reproduced as under;

“Cross examination by Applicant Advocate:

Ans. 1. My name is Dr. Hari Shankar, Yes Sir, I have signed the wound certificate.

Ans. 2. Yes Sir, I had examined one unknown person. There was no by-stander with him. He was brought by ambulance personnel with the alleged incident with the history of an alleged train run over at Madannada Railway crossing around 09.00 p.m. on 07/08/2019.

Ans.3. Yes. I have mentioned that he had come under the train while crossing the track.

Ans.4. It is correct that I found the smell of alcohol.

Ans.5. I found severe injuries which are mentioned in the wound certificate.

Ans.6. It is correct that the patient was semi-conscious and was disoriented.

Ans.7. There are two reasons for disorientation. One reason may be due to the consumption of alcohol and the other reason may be that he had suffered a head injury.

Ans.8. No sir, we cannot make sure, simply by the smell, that one had consumed alcohol.

Ans.9. by mentioning 'smell of alcohol (++)' means the smell of alcohol was persisting.

Cross Examination by Railway Advocate-NIL. Opportunity given.

Cross examination by Applicant Advocate:

Ans.1. The injured was brought by an ambulance person.

Ans. 2. I don't remember whether any Police was there or not.

Ans.3. Yes, the patient was referred to medical hospital/Trivandrum

Ans.4. Usually, we write in a separate casualty ticket for referring patients which was not produced.

Ans.5, Injuries are noted down first. We have mentioned the smell of the alcohol after examining the patient.

Ans.6. I might have missed the pulse rate and BP.

Court Question:

Ans. 1. The injuries given on the wound certificate, it is possible that the person might have got hit by the train while crossing the Railway track.

Ans.2. It is possible that if the train is going at a very high speed and if a person falls on any surface, these types of injuries are not possible.

At this stage, Id.advocate for applicant requested the court to cross examine to clarify the word, 'Ran over'

Ans. These injuries are possible when there is a high velocity of accident. These injuries are also possible when somebody falls from the train."

There is no cogent evidence on the file that the deceased was crossing the Railway lines as per the version of the Doctor. It is pertinent to mention here that the Railway has not built up their case on this point, rather the Railway has admitted the travel of the deceased. As I have already discussed above, the doctor has categorically stated, while answering question no.8 , that he cannot come to a conclusion that one had consumed alcohol simply by feeling the the smell of alcohol.

As far as the negligence on the part of the deceased is concerned, I am equipped with the judgement of *Hon'ble H.C of Kerala in a 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 becomes a victim of an 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 judgement of Hon'ble Kerala High court, in a case titled Union of India V. Parameswaran Pillai and another

“Railway Claims Tribunal Act, 1987 (Central Act 54 of 1987)— Section 18-When a Court or Tribunal is discharging its functions under a social welfare legislation, the adjudicatory body shall regulate it's procedure so as to provide succour 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, AND the deceased was also a bonafide passenger . Accordingly, both the issues are decided in the favour of the applicant.

Issue no.1

Since, the Railways have not opposed and challenged the veracity of the dependency of the applicants and their relationship with the deceased, I have no alternative except to believe that the parents are the only legal heirs of the deceased and not the sister/applicant no.3. Further, the applicant advocate has not led any evidence to prove that the applicant no.3 was dependent on the deceased in any manner. So I declare that the applicant no.1 & 2 are the legal heirs of the deceased.

Accordingly, this issue is also decided in favour of the applicants and against the Railways/Respondent.

Issue No.4

In view of my above discussion, I feel that the applicant no.1 & 2 are entitled to an amount of compensation from the Railways to the tune of Rs.8,00,000/- (Eight Lakhs Only) along with the interest at the rate of 6% p.a, in equal share , from the date of filing the written statement i.e, on 16/08/2022, since there was delay in filing the claim application. This issue is also decided accordingly in favour of the applicant no.1 & 2 and against Railways.

The ADR is further directed to contact claimant before sending the amount, and will give his noting qua this, on the file after getting her contact.

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

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

Therefore, relying upon the judgement 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 shall be disbursed to the applicant in the following manner.

This follows the direction of the Hon'ble High Court in Geeta Devi vs.Union of India in FAO No.22/2015 and ordered the Principal Bench to be applied all across the Benches in India. The monthly payments as provided in Geeta Devi's case, was indeed the mode of payment that was approved by the Hon'ble Supreme Court in M.R.Krishna Murthi vs.New India Assurance Company (Appeal Nos.2476 & 2477 of 2019 decided on 5.3.2019) for all claims relating to the motor accidents. The Hon'ble Delhi High Court has directed the scheme as approved for motor accident victims, will also be applied for train accident victims.

It is ordered that only 10 % of the total compensation amount be released to the applicant no.1 & 2 and the remaining amount shall be invested in the shape of a fixed deposit for a period of 3 years. It has come to the knowledge of this tribunal that the applicants are very poor and there are chances of misappropriation of their money. Hence, it is ordered that the ADR of this tribunal is responsible for informing the applicants through telephonic mode and informing about the award of the claim amount.

This special arrangement is done to protect the money of the applicant from the middlemen and from other unscrupulous people, who had been grabbing the money of claimants earlier and matters were brought to the notice of the tribunal.

ADR/RCT will verify the details of the bank account 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.

Additional registrar of this tribunal is directed to do the needful.

The Superintendent of this Tribunal is directed to inform the outcome of this case to the claimants in Malayalam language. The copy of the Judgment will also be sent to the applicants free of cost and outcome be informed to her telephonically so that their money is not misappropriated.

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

Pronounced in the open Tribunal, on this, the 13th March 2024.

(Sanjiv Dutt Sharma)
Judicial Member