

RAILWAY CLAIMS TRIBUNAL

Ernakulam bench

Dated – 27th November, 2023

Coram

Hon'ble Shri Sanjiv Dutt Sharma

Member Judicial

O.A. No. 20/2023

1. Ajitha, (M/o. Late Sarath)

**Aged 50 years,
W/o. Muthukrishnan,
Parakkal Thazhe,
Chengotukavu,
Edakulam, Koyilandi,
Kozhikode District, Pin – 673 306.**

2. Muthukrishnan, (F/o. Late Sarath)

**Aged 49 years,
S/o Kuppaswami
Parakkal Thazhe,
Chengotukavu,
Edakulam, Koyilandi,
Kozhikode District, Pin – 673 306.**

___ Applicants/Claimants

Vs

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

___ Respondent

Adv. For the Applicants – Shri Binoy Ram V and Shri. Dr. Stanly Chazhoor

Adv. For the Respondent Railways – Shri Anish Jain

JUDGMENT

The present order will dispose of a claim application moved by the applicants, seeking compensation from the Railways to the tune of rupees 10,00,000/-, on account of death of Shri. Sarath, who allegedly died in a train accident, on 07.09.2014, while traveling in a train. It is alleged that the deceased was traveling in train no.16650 from Quilandi to Mangalore Central, and fell down during the journey. The body of the deceased was found lying inside the track. The Manjeshwar police registered a case, vide FIR no 574/2014.

It is alleged that the deceased was a Bonafide passenger and a sufferer of an untoward incident. Thus, the applicants /claimants are seeking compensation from the Railways.

In reply,

While in the reply, the Railway/respondent has denied the contents of the claim application. However, it is admitted in the reply/written statement, that the deceased was traveling on the strength of a valid journey ticket, which is mentioned in the Inquest Report. It is mentioned in the written statement that, as per the DRM report, three general tickets were found, having numbers 583510775, 583510776 and 583510777, showing the journey from Quilandi to Mangalore central. It is further submitted by the respondent that the deceased fell down from the moving train sometime before 07.30 PM. It is averred that the deceased was on a pilgrimage along with his friends to Kollur Mookambika temple AND boarded train no.16650, Parasuram express. It is further averred that the deceased and his friends were sitting in the general compartment of the train at the time of the journey. At about 07.30 pm when the train was reaching Manjeswar Railway station, the deceased went to the toilet and later his friends came to know that the deceased had fallen from the train.

It is further averred in the written statement that no one had pulled the chain, which creates doubt about the veracity of the statement of Shri.Rajin Lal C H, who was allegedly traveling with the deceased.

It is further alleged by the respondent that the deceased had traveled in an alcoholic condition, met with an accident, and was traveling on the doorways.

Thus, the Railway has termed the incident to be a net result of his own fault, since he was doing his journey in that alcoholic state, and has further 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 pleadings, and material evidence placed on record, the following issues were framed for determination in this case on 26/07/2023.

- 1. Whether the Applicant(s) is/are the only dependent(s) 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 Applicant(s) is/are entitled to the compensation as claimed and other relief if any?**

The applicants in support of their application have tendered into evidence, the affidavit of applicant no.2, Exhibit A-1 and other documents Exhibit A-2 to A-14, and the applicant no.1, was also cross examined by the Railway advocate.

On the other hand, the Railway has submitted the DRM report and has marked the same as Exhibit.R1, the Railway has examined one Shri. Sasi N K, Investigating officer of this case, SI/RPF/Southern Railway, as 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.

Issue no 2 and 3

It is pertinent to mention here that after the filing the claim application, Railway files 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 Railways relies upon are supplied to the applicants through their advocate. After getting the version of the Railways along with the DRM report, the applicants are given an opportunity to file proof affidavits and their entire documents, which they intend to file in support of their claim application.

In this case also, along with the copy of the DRM report, the copies of all the statements recorded by the Railways, during its investigation, were supplied to the applicants. The concerned DRM of the particular division, after perusing the reports submitted to him by the head of the Railway Protection Police, had signed the same.

In the DRM report, it is specifically stated that, as mentioned in the statement of one Shri.Rajin lal C H, who was a co-traveler with the deceased along with other friends,

who were also traveling in the same compartment the deceased was a habitual drunkard and was in the habit of taking alcohol .He has further stated that, It was Onam festival day, on 07.09.2014, and he, along with the deceased, had consumed alcohol. They were all traveling together. This witness had further stated that the deceased proceeded from his seat towards the bathroom and after sometime a co-passenger informed about the fall of the deceased from the train.

Surprisingly no affidavit of this witness was filed by the applicant advocate in denial of his statement, which was recorded with the RPF, during the inquiry. During arguments the applicant advocate argued that the Railway should have proved the same by examining this witness.

The statement of this witness is a part of DRM report and the same is duly signed by him also. Admittedly, about nine persons were traveling together, and they were all friends, but not even a single person has come forward to deny that the deceased had taken alcohol. The DRM has specifically concluded that the deceased had traveled in an alcoholic condition. In such circumstances, the onus is on the applicants to prove that these allegations are false and concocted. It is quite strange that out of his eight other friends, no one came forward to support the applicants in this matter.

Now the paramount question before me is whether the statement of this witness is sufficient to prove that the deceased had consumed alcohol and was traveling in the train like that, as such claimants are not entitled to any claim from the Railways.

It is also on the file that none of the friends of the deceased, who were traveling with him had pulled the chain even after knowing about his fall from the train, and all had consumed alcohol.

The Ld.advocate for the applicants has argued that there is no medical evidence qua the fact that the deceased had consumed alcohol and was in the state of intoxication at the time of incident.

It is pertinent to mention here that no doubt, one of the friends of the deceased had stated, while deposing before the RPF, that the deceased had consumed alcohol, but to my mind there is no medical evidence to prove the same. No

chemical analysis report is produced by the Railways to prove this fact. Even during the postmortem, no evidence of alcohol is found. I feel, the Railway had the option to examine this witness namely Shri. Rejin Lal C.H.

Thus, the Railway has failed to provide any cogent, reliable or trustworthy evidence to prove that the deceased was in a state of intoxication and was traveling in the train.

As far as the self-inflicted injury is concerned, in this regard I am equipped with the judgment ***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

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, the deceased/ victim was also a bonafide passenger. Accordingly, both the issues are decided in the favour of the applicants.

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 applicants are the only legal heirs of the deceased.

Accordingly, this issue is also decided in favor of the applicants.

Issue No.4

In view of my above discussion, I feel that both 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 favor 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/-, in total. The amount is distributed among the applicants in the following manner;

1. Mother of the deceased, the applicant no.1, will get Rs.4,00,000/- (Rupees Four lakhs only).
2. Father of the deceased, the applicant no.2, will get Rs.4,00,000/- (Rupees Four lakhs only).

Respondent is directed to deposit the awarded compensation amount in the "Suitors' 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 applicants.

So far as the disbursal of the 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 shall be disbursed to the applicants.

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 pertinent to mention here that both the claimants, who have lost their son, are illiterate. In these circumstances there are all chances that the claim amount may get misappropriated, in case the amount is released to them. She admitted in the cross examination that both have no source of income and were all dependent on the deceased.

Accordingly, it is ordered that the entire compensation amount of both these applicants will remain with the nationalized bank situated nearest to their house, and the bank manager of that bank, out of the total compensation amount, will release, Rs.10,000 (Ten thousand) each, to the applicants every month (in total Rs.20,000 (Twenty Thousand)) along with the interest for a period of 3 years. After 3 years both the applicants will be entitled to withdraw the balance amount. Manager will follow the annuity scheme and will make the appropriate arrangement accordingly.

It is ordered that the bank will make such an arrangement, so that at all costs, the applicants should not suffer loss. Bank manager will also inform this tribunal immediately, after making the monthly payment arrangement as per the orders to this tribunal.

This special arrangement is made to protect the money of these illiterate applicants from unscrupulous people, who may grab their money. **It is also known to this tribunal from the file that they are also having another mentally retarded son aged 30 years, who is dependent on them.**

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. The ADR is further directed to contact the Branch Manager of the bank before sending the amount telephonically and will give his noting qua this on the file.

Additional registrar of this tribunal is directed to do the needful. The bank manager of the concerned bank will be personally responsible, if the money of the applicants is misappropriated in any manner.

The Superintendent of this Tribunal is directed to inform the outcome of this case to the claimants in Malayalam language, since the claimants do not know English language. The copy of the Judgment will also be sent to them free of cost.

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

Pronounced in the open Tribunal, on this, the 27th day of November, 2023.

(Sanjiv Dutt Sharma)
Judicial Member