

# RAILWAY CLAIMS TRIBUNAL

Ernakulam bench

Dated – 18<sup>th</sup> December, 2023

## Coram

Hon'ble Shri Sanjiv Dutt Sharma

Member Judicial

## O.A. No. 29/2019

1. **Smitha, (*formerly W/o. Late Sasi*)**  
**(*Presently got remarried during the pendency of the claim application*)**

**Aged 39 years,**  
**Puthiyeduth Meethal,**  
**Thikkodi, Purakkad,**  
**Kozhikode, Pin 673 522**  
**(*now residing at*) Puzhekadavil House,**  
**111rd street, Welcome Road,**  
**Chittoor, Pin - 682 027**

**(*Now again address changed and residing at*)**  
**Puthiyeduth Meethal,**  
**Thikkodi, Purakkad,**  
**Kozhikode, Pin 673 522**

2. **Adikesh.S.Sasi, (S/o. Late Sasi)**  
**(*Now it is mentioned as Aadikesh S Sasi*)**

**Aged 2 years,**  
**Puthiyeduth Meethal,**  
**Thikkodi, Purakkad,**  
**Kozhikode, Pin 673 522,**  
**(*Rep. by guardian mother*) Smitha,**  
**W/o. Late Sasi,**  
**Puthiyeduth Meethal, T**  
**hikkodi, Purakkad,**  
**Kozhikode**  
**(*now residing at*) Puzhekadavil House,**  
**111rd street, Welcome Road,**  
**Chittoor, Pin - 682 027.**

**(*Now again address changed and residing at*)**  
**Puthiyeduth Meethal,**  
**Thikkodi, Purakkad,**  
**Kozhikode, Pin 673 522**

**3. Kunjikrishnan, (F/o. Late Sasi)**  
**Aged 74 years, S/o. Sankarankutty,**  
**Puthiyadath Meethal, Thikkody,**  
**Purakkad, Kozhikode, Pin 673 522,**  
***(now residing at)* Puzhekadavil House,**  
**111rd street, Welcome Road,**  
**Chittoor, Pin - 682 027**

**4. Lakshmi, (F/o. Late Sasi)**  
**Aged 63 years, W/o. Kunjikrishnan,**  
**Puthiyadath Meethal,**  
**Thikkody, Purakkad,**  
**Kozhikode, Pin 673 522,**  
***(now residing at)* Puzhekadavil House,**  
**111rd street, Welcome Road,**  
**Chittoor, Pin - 682 027**

**\_\_\_ Applicants/Claimants**

**Vs**

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

**\_\_\_ Respondent**

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

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

### **JUDGMENT**

The present order will dispose of a claim application moved by the applicants, seeking compensation from the Railways on account of death of one Shri. Sasi, who allegedly died in a train accident, on 08.06.2018, while travelling in a train.

It is alleged that the deceased was travelling in train no.16307, Alappuzha – Kannur Executive Express train, at Payyoli Railway station on his way from Alappuzha to Payyoli and got severely injured and died instantly, on 08.06.2018 at 22.00hrs.

It also alleged in the claim application that an untoward incident happened on 08.06.2018 at about 22.00 hrs, when the deceased was trying to get down from the alleged train at Payyoli Railway station. It is averred that the deceased took an ordinary travelling ticket and entered in the alleged train from 'Alappuzha' Railway station. It is alleged that the deceased was carefully standing near the door when the train reached Payyoli Railway station and when he was trying to step down from the train at Payyoli Railway station, the train suddenly moved forward and the deceased somehow lost his hold and accidentally fell down from the train and died.

**It is alleged that the deceased was a Bonafide passenger and a sufferer of an untoward incident. Thus, the applicants /claimants are seeking compensation to the tune of Rs.10,00,000/- from the Railways.**

**In reply,**

In 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 travelling inside the alleged train.

The Respondent denies that the deceased had died due to an accidental fall down from Train No. 16307 at Payyoli Railway Station on 08.06.2018.

The Respondent submits that, the enquiries made reveal that, on 08.06.2018 at about 23:00 hours, one passenger fell down from Train No. 16307 Express, from a moving train at Payyoli Railway Station and sustained injuries. He was taken and sent to the nearest hospital by the public for further treatment. The Doctor examined him and declared him brought dead. The name and address and the deceased was identified as 'Sasi, aged 41 years, Puthiyedath Meethal House, Purakkad Post, Payyoli, Kozhikode District, Kerala-673 522'. In this regard, Payyoli/Police had registered a case under Crime No.216/2018 under Section 174 Cr.P.C.

The Applicants had averred in the application that, when the deceased was trying to step down from the train at Payyoli Railway Station, the train suddenly moved forward due to which, the deceased had fallen down from the train.

The Respondent submits that, as per report of Senior Section Engineer(P.Way). Quilandy, that on 08.06.2018, no jerk was reported between KM.690/100-710/00.

**The Statutory Investigation of DRM's Report done by ASC/RPF/Palakkad has concluded that, no such journey ticket or travelling authority was recovered from the deceased during the inquest.** There is no eye-witness to the incident of falling down from the train. Further it is stated that, the dead body of the deceased was found at the front side of the train near the name plate of Payyoli Railway Station.

**In view of the above, it is evident that the deceased was not a bonafide passenger and he did not travel in any train or fell down.** Hence, the Respondent is not liable to pay any compensation for the death of the deceased under Section 124-A of the Railways Act 1989.

Thus, the 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 in this case on 16/12/2019.**

1. Whether the deceased was a bonafide passenger?
2. Whether the deceased died due to an untoward incident within the meaning of Sec.123(c) of Railways Act?
3. Whether the applicants are the only dependents of the deceased? Any other dependents?
4. Relief?

***The applicants in support of their application have tendered into evidence, the affidavit of applicant no.1, Exhibit A-1 and other documents Exhibit A-2 to A-17, and A-Z and the applicant no.1, (AW-1) and friend of the deceased Shri. Rejimon (AW-2) were 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 not examined any witness.***

*During the pendency of the present claim application the Ld.Advocate for the applicant sought amendment on the claim application on the ground that the deceased was travelling in Alappuzha – Kannur Exp. from Thuravur to Payyoli The amendment application was allowed, vide my separate orders dated 18.12.2023, on the main case file.*

In order to avoid repetition of appreciation of evidence, and for the purpose of brevity, issue No. 1 & 2 are taken up together, for the purpose of discussion and orders.

### **Issue no 1 and 2**

It is an admitted fact that the body of the deceased was lying on the track 701/510 KM at the BDJ end, that is the end of the platform. I have perused Ex.A-2, the station masters memo, wherein it is mentioned that the, it is suspected to be a case of fall from the train.

It is also in the FIR that the deceased was aged about 41 years and a resident of Purakkad and while getting down from the train near Payyoli Railway station, slipped and fell down from the train and died. In the postmortem report the Doctor has given an opinion that the deceased suffered injuries from train run over, the postmortem report is Exhibit A-4.

It is also an admitted fact that there was no co-traveller with the deceased and no one had seen the actual incident of his fall from the train or in what manner he suffered injuries and died. The Railways in the DRM report has concluded that the victim was travelling in train no 16307 and this fact has come to their knowledge through the statement of Shri. Rejimon, friend of the deceased. But has further stated that no travelling authority was found from the body of the deceased during the inquest. However the veracity of the statement of Shri. Rejimon is not challenged by the Railways.

It is also specifically stated by the Loco pilot of Calicut depot that "On that day, the aforesaid train no 16307 reached Payyoli Railway station on platform no.2 at 21.54 hrs, **the platform was short of length, the train engine and one bogie had been stopped out of the platform. It appears that the length of the platform was lesser than the length of the train. It derives all possibility of passengers falling down while debarking, especially at night hours.**

It is pertinent to mention here that the travel of the deceased in train no.16307 is not disputed by the Railways, either in the DRM report or in the Written statement, however the Railway has opposed the claim application on the ground of bonafide status of the deceased. As I have discussed above it is admitted by both the parties that there is no eye witness to the incident. It is also on the file that it was the public, who shifted the deceased to the hospital before the arrival of the police. I feel it is possible that while taking the deceased to the hospital by lifting him, by the public from the spot, it is possible that the ticket might have got lost on the way. It has come in the cross examination of the wife of the deceased that his purse was recovered. which was carrying Rs.3500 and Aadhar card. During the preparation of the inquest report in the hospital, it was found that blood was found sprinkled on the shirt, scratches were found and the flesh was coming out besides that the deceased had suffered a number of injuries. **It further fortifies my opinion that it is possible that in the process of taking him to the hospital the ticket might have been lost or fallen somewhere.**

It is not the case of the Railways that the deceased was a vagabond or a road romeo. He was a married man of 41 years of age and was duly dropped at the station by his friend Rejimon who has filed his affidavit in support of his statement Exhibit A-Z. his cross examination is as under;

*"Ans. 1. Sasi and myself were neighbours in Gulf.*

*Ans.2. I don't know whether the deceased told his wife that where he was going.*

*Ans.3. I do not know the amount of ticket which I spend on him.*

*Ans.4.I went by car to the Railway station to drop him at the station.*

*Ans.5.It is correct that he was not handicap and mentally sound.*

*Ans.6.It is incorrect that I did not go inside the station.*

*Ans.7.I had also attended the funeral of my friend, Sasi.*

*Ans.8.I don t know the present husband of Smitha*

*Ans.8.I told the wife of the deceased that he boarded the train when she called me on the next*

*Ans.9.It is an open area. I did not purchase the platform ticket. Ans. 10.RPF has recorded my statement which bears my signature.*

*Ans. 11.My house is at Thuravoor village, in Alappuzha district. I told his wife that he had left from my house.*

*Ans . 12.It is incorrect that on that day the deceased didn't come to my house.*

*Ans. 13.It s incorrect that I am deposing falsely.*

*Ans. 14. It is incorrect that I was tutored to say so."*

It is pertinent to mention here that the Railway advocate could not extract anything from his cross examination to prove that he is stating falsely and the deceased was not coming from that station from where Rejimon, his friend left him.

**I feel that if a person is carrying Rs.3500/- with him, and appears to be a responsible married man, will not take the adventure of travelling without a ticket and that too in a long journey.**

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

***In this regard, I am also equipped with the judgment of 2012 (3) KHC 827, Kerala High Court, Thottathil B. Radhakrishnan; K. Vinod Chandran, JJ, Union of India V. Parameswaranpillai and Another, Railways Act, 1989 - 124A- No ticket - recovered from the body of the deceased contention of the Railways that deceased is not a "bonafide passenger" - Tenability of - A passenger travelling in a train is always presumed to have travelled with valid ticket unless there is evidence to the contrary - Railway Claims Tribunal Act, 1987, S.18.***

***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, AND a bonafide passenger also. Accordingly, both the issues are decided in the favour of the applicants.***

### **Issue no.3**

During the pendency of the present claim application, it is brought to my notice that applicant no.1 Smt. Smitha has remarried and is living with her husband somewhere and is no more dependent on the deceased. The applicant no.2 Adikesh , minor son of the deceased is also living with Smitha. Accordingly the applicant no.2, 3 & 4 are found to be the dependents of the deceased.

Since, the Railways have not opposed and challenged the veracity of the dependency of applicant no 2, 3, & 4 and their relationship with the deceased, I have no alternative except to believe that the applicants no 2, 3 & 4 are the only legal heirs of the deceased.

Accordingly, this issue is also decided in favour of the applicants 2, 3 & 4 and against the Railways/Respondent.

#### **Issue No.4**

In view of my above discussion, I feel that all the applicants 2, 3 & 4 are entitled to an amount of compensation from the Railways to the tune of Rs.8,00,000/- with interest. This issue is also decided accordingly in favour of the applicants 2, 3 & 4 and against the Railways.

**As such, the application is allowed and it is ordered that Respondent will pay Rs.8,00,000/-, with interest at the rate of 9% p.a from the date of filing the present claim application, i.e, 21.06.2019. The amount is distributed among the applicants in the following manner;**

- 1. Son of the deceased (Minor), the applicant no.2, will get Rs.5,00,000/- (Rupees Five lakhs only).**
- 2. Father of the deceased, the applicant no.3, will get Rs.1,50,000/- (Rupees one lakh and Fifty thousand only).**
- 3. Mother of the deceased, the applicant no.4, will get Rs.1,50,000/- (Rupees one lakh and Fifty thousand only).**

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 applicants.

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 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 ordered that only 10 % of the total compensation amount be released to the applicant no. 3 & 4, parents of the deceased and the remaining amount shall be invested in the shape of fixed deposits for a period of 3 years. As far as the minor is concerned, his entire amount will remain in the shape of fixed deposit for a period, till he attains the age of 21 years, however the interest of the minor will go to the claimant no.1 , mother of the minor, with whom he is living.** This special arrangement is done to protect the money of all the applicants from the middlemen and from 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 Nationalised 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. The copy of the Judgment will also be sent to the applicants free of cost.**

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

Pronounced in the open Tribunal, on this, the 18th day of December, 2023.

**(Sanjiv Dutt Sharma)**

**Judicial Member**