

RAILWAY CLAIMS TRIBUNAL

Ernakulam Bench

Dated – 06th November, 2023

Coram

Hon'ble Shri Sanjiv Dutt Sharma

Member Judicial

O.A.(IIu)/ERS/25/2022

- 1. Dhanial.P, (W/o. Late K. Balakrishnan)
Kailas, Mannarkkad,
Pallikuripp P.O,
Karakurissi,
Palakkad, Kerala,
Pin - 678 593**
- 2. K.B Sidharth, (S/o. Late K. Balakrishnan)
Kailas, Mannarkkad,
Pallikuripp P.O,
Karakurissi,
Palakkad, Kerala,
Pin - 678 593**
- 3. Sreebala K.B (MINOR), (D/o. Late K. Balakrishnan)
Kailas, Mannarkkad,
Pallikuripp P.O,
Karakurissi,
Palakkad, Kerala,
Pin-678 593
(Rep. by Guardian, Mother Dhanial.P)**
- 4. Retnavally M.E, (M/o. Late K. Balakrishnan)
Kailas, Mannarkkad,
Pallikuripp P.O,
Karakurissi,
Palakkad, Kerala,
Pin - 678 593**

___ Applicants/Claimants

Vs

**Union Of India,
through General Manager,
North Western Railway Jaipur.**

___ Respondent

**Adv. For the Applicants – Shri. Binoy Ram / Shri. Dr. Stanly Chazhoor
Adv. For the Respondent Railways – Shri K.B.Sajan**

JUDGMENT

Applicants/claimants have preferred the present claim application against the Railways, under the Railway Claims Tribunal Act, 1987, for seeking compensation on account of death of the husband of applicant no.1, namely Late Shri.K. Balakrishnan, and the father of applicant no. 2 & 3 and also the son of applicant no.4.

It is alleged that, on 27.09.2019, the deceased was travelling in a train and accidentally fell down from the train on the Railway track near the border of Khidrath, Jodhpur District, of Rajasthan and died instantly. The deceased was working as an insurance advisor and was working with United India Insurance Co. Ltd.

The incident occurred, while a group of the Star Agents of the United India Insurance Co. consisting of, around 52 members were undergoing a trip on the Rajasthan side. On 27-09-2019, the above said group was travelling from Jaipur to Jaisalmer in Rajasthan, in the train, Leelan SF Express. It is alleged that during the night/evening time, all the members of the group including the deceased and the applicants, who were also travelling, had their food and went to sleep on their respective berths. All the passengers including the deceased were very carefully and cautiously travelling in the train, by following all the rules. It is alleged that, during the night hours of 27-09-2019, the deceased might have gone to the bathroom and for using washbasin or while standing near the side of wash basin, as the doors were not closed, somehow accidentally fell down from the speeding train and died instantaneously. The body of the deceased was found at the Railway track near the border of Khidrath, of Jodhpur District in Rajasthan.

On inspection of the body on the spot, the deceased was found dead. The Bap police registered an FIR vide Case no. 35 of 2019 and after investigation, concluded that the deceased suffered death, due to injuries sustained in an accidental fall from a train.

Thus, alleging that the deceased was a bona fide passenger and was a sufferer of an untoward incident, as defined in the Railway act, as such the claimants/applicants are entitled to a compensation of Rs.8,00,000/- with interest from the Railways/respondents.

In reply ---

The Respondent has denied all the averments and allegations of the claim application para wise, for want of knowledge. However, it is admitted by the answering respondent, that the journey ticket vide PNR No. 2626678691 from Jaipur to Jaisalmer was issued by the respondent Railways to the deceased, was a group ticket.

That as per the DRM report, which was filed along with the written statement, the journey ticket vide PNR No. 2626678691 from Jaipur to Jaisalmer was issued by the respondent Railways. It is alleged by the respondent that as per the circumstances of the case and also as per the DRM enquiry report, it is a clear-cut case of a self-inflicted injury sustained by the deceased himself during the journey. It is further averred that the deceased died due to his own negligence and carelessness. The Railway Administration is protected from the liability under Section 124 A of the Railway Act, in such type of cases.

The present claim petition is liable to be dismissed with cost in favour of answering respondent, for the reasons mentioned above.

It is further alleged that, Railway is not responsible for the incident, and therefore railway is not liable to pay any compensation to the applicants under section 124-A of Railway Act, 1989.

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

I have pursued of 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 26/04/2023

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 Railway's ACT, 1989?
4. Whether the applicants are entitled for the compensation as claimed and other relief if any?

The applicants in support of their application have tendered into evidence affidavit A-1 and other documents Exhibit. A-2 to A-16, 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, Railway has not examined any 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 adjudication.

Issue no 2 & 3

It is an admitted fact that on 27/09/2019, the deceased was travelling in a train, with a valid group ticket bearing PNR 2626678691 from Jaipur to Jaisalmer in Rajasthan area in the train of the respondent. He was also allotted Seat no.57 in coach no. B2, since it was a reserved ticket

The deceased was working as an insurance advisor under United India Insurance Co. Ltd. during the time of incident. The incident occurred, while a group of the Star Agents of the United India Insurance Co. consisting of around 52 members were undergoing a trip. On 27-09-2019 the above said group was travelling from Jaipur to Jaisalmer Rajasthan in Leelan SF Express train. All the members of the group including the deceased and applicants had their food and went to sleep on their respective berths. It is alleged by the applicant that during the night hours of 27- 09-2019, the deceased might have gone to bathroom and for using washbasin and while standing near the side of wash basin, as

the doors were not closed, somehow accidentally fell down from the speeding train and died instantaneously. The body of the deceased was found at the railway track near the border of Khidrath, Jodhpur District in Rajasthan state.

It is an admitted fact that, no one has seen the incident and only from the surrounding circumstances, it is believed that the deceased, while using toilet or standing near the washbasin had fallen from the moving train. It is not the case of the railways that the deceased intended to commit suicide or he was standing on the doors of the coach and was travelling in a careless manner.

It is admitted by the Railways that the deceased was travelling with his family and in a group, and on the strength of a valid journey ticket. It is also admitted by the Railways that he was allotted a seat in a coach and the incident took place in the night hours.

It is an admitted fact that there is no eyewitness to the incident, and is also proved on file that the deceased had fallen down from the moving train. There is no clarity in what manner the accident had taken place.

As far as, the negligence or carelessness on the part of the deceased is concerned, I feel the arguments on this point, raised by the respondent do not augur well for them. No cogent or any reliable evidence is brought on record by the Railways that the deceased was at fault, while doing his journey.

It is generally noticed that even the doors of the reserved coaches are wide open at night and when train picks up speed, it becomes very dangerous to use either the wash basin or the toilet and in case, someone is either sleepy or not fully alert, can definitely fall outside the train. It is also seen that many people roam around in that area and frequently open the doors, even enter the reserved coach without any authority and they are always unchecked.

The Railway has wrongly construed the meaning of self-inflicted injury and is trying to build up a case against the deceased, based on surmises and conjectures.

In this regard: -

I am equipped with the judgment of Hon'able 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 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 succour to the beneficiaries of that statute .

Thus, on holistic evaluation of evidences on record and from attending circumstances, I have come to a conclusion that the accident of the deceased was an 'untoward incident, and falls, 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 and against the respondent /railways.

The issue no. 2 & 3 are decided accordingly in favour of the applicants and against the railways.

Issue no.1 & 4

As far as the issue no.1 is concerned, the Railway has not challenged the veracity of the claimants that they are not the dependents of the deceased.

(b)“ Dependant” means any of the following relatives of a deceased passenger, namely:

- i) The wife, husband, son and daughter and in case the deceased passenger is unmarried or is a minor, his parents only.
- ii) The parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child or a pre-deceased son, if dependant wholly or partly on the deceased passenger.
- iii) A minor child of a pre-deceased daughter, if wholly dependent on the deceased passenger.
- iv) The paternal grandparent wholly dependent on the deceased passenger (emphasis supplied).

It is proved on file that the applicants are the only dependants of the deceased.

Since the applicants are the dependents of the deceased, this issue is also decided in favour of the applicants.

In view of my above discussion, I feel that all 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. 07/07/2022 in a following manner.

- 1. Wife of the deceased, the applicant no.1 will get Rs.4,00,000/- (Four Lakhs only) with interest.**
- 2. Son of the deceased, applicant no.2 will get Rs.1,50,000/- (One Lakh Fifty Thousand only) with interest.**
- 3. Daughter of the deceased, applicant no.3 will get Rs.1,50,000/- (One Lakh Fifty Thousand only) with interest.**
- 4. Mother of the deceased, applicant no.4 will get Rs.1,00,000/- (One Lakh only) 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 the 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 to the applicants.

It is ordered that only 10 % of the total compensation amount of compensation be released to all the applicants/claimants and the remaining amount shall be invested in the shape of fixed deposits for a period of 3 years.

As far as, the minor (applicant no.3) is concerned, her total amount will remain in the shape of FDR till she attains the age of majority, even after that the amount will remain in FDR, for a period of 3 years. The amount will remain in a Nationalized Bank, near to the place of their residences with a monthly payment of accrued interest to her.

This special arrangement is done to protect the money of all the applicants from the middlemen and from other unscrupulous people. Moreover, the applicants are from a village background as such, our responsibility is more towards them, so that, their money is not usurped.

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 all 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 telephonically and will give his noting qua this on the file.

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

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 06th day of November 2023.

(Sanjiv Dutt Sharma)
Judicial Member