

**RAILWAY CLAIMS TRIBUNAL
Ernakulam Bench**

Dated – 14th February, 2024

Coram

Hon'ble Shri Sanjiv Dutt Sharma

Judicial Member

O.A(IIu)/ERS/32/2022

1. **M.Janaki Amma, (M/o deceased)
W/o Late Krishnankutty Nair
Meethal Mulloli Veedu, Janatha road,
PO Karuvissery, Karaparamba,
Kozhikode, Kerala – 673010.**
2. **Komala M,(Sister of the deceased)
D/o Late Krishnankutty Nair
Anugrah Meethai Mulloli Veedu,
Krishnan Nair Road, Karuvissery P.O.
Karaparamba,
Kozhikode, Kerala – 673010**
3. **Radha M (sister of the deceased) *(Now Dead)*
D/o Late Krishnankutty Nair
Anugrah Meethai Mulloli Veedu,
Krishnan Nair Road, Karuvissery P.O.
Karaparamba,
Kozhikode, Kerala – 673010**

____ Applicants/claimants

Vs

**Union of India,
Through Managing Director
Konkan Railway Co.Ltd.**

____ Respondent

Adv. For the Applicant – Shri. P N Anoop

Adv. For the Respondent Railways – Shri Shyamdeep S.Shenoy

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 son of the first applicant and brother of the 2nd and 3rd applicants, who was allegedly travelling in Matsyagandha Express, Train No. 02619 on 14/01/2020, met with an accident and died.

It is alleged in the claim application that the deceased was travelling along with his relative Nandakumar, in Matsyagandha Train, after purchasing a general ticket and later converted the same to a sleeper ticket.

It is alleged that when the train was running near to Toduru Jadigadde KM Stone 508/2-3, Konkan Railway track, between 03.00 AM and 07:30 AM, the deceased might have gone to the door side, for using wash basin and at that time, due to a powerful jerk, might have fallen down accidentally from the train and died.

As per the Post Mortem Report, the death was caused due to shock and Haemorrhage, as a result of head injury sustained. The Final report of the Police also revealed that the death was caused due to the accidental slipping of the deceased from the train. The applicants are the legal heirs of the deceased and are eligible to get compensation due to the death of Late Prabhakaran M, in a train accident.

It is alleged in the claim application that the deceased was a bonafide passenger of the train and the facts and the documents produced along with the original application, clearly show that the deceased was a bonafide passenger and the accidental fall, which he suffered, will come within the parameters of an untoward incident, defined under the act, hence the dependents of the deceased are legally entitled to get compensation from the respondents as envisaged under the act.

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

In reply,

The Respondent/Railways have denied all the averments and allegations of the application, except those, which are specifically admitted herein, and have stated in the written statement, that the applicants be put to strict proof of the same.

It is further averred that this statement is filed by reserving the right to file a detailed affidavit as and when necessary. All the allegations and averments contained in the above application, except those that are specifically admitted hereunder and denied .

On inquiry it is found that , the Track Safety Man, Harwada of the Railways, on 14-01-2020 found a male body of about 60 years, person, with a broken leg near track side at KM 508/2-3 in between Harwada -Karwar section The matter was informed to the police and to the RPF and accordingly an FIR, vide crime CR No.02/2020 u/s 174 of Crpc was registered.

It was submitted that on 12-8-2021, Sri Nandakumar T. gave a statement to the police that his uncle, the deceased, Sri Prabhakaran. M, was travelling with him from Madgaon to Udupi. According to his statement, he purchased a general ticket bearing No 02040919 on 13-10-2020 for both of them and started travelling in the train No.02619 from Madgaon. It is further stated by him that the ticket was upgraded to sleeper class by the TTE, vide EFT No D356817 and they both got berths No 5 and 6. by paying an extra amount of Rs 360/- and Berth No 5. was allotted to the deceased.

In the application before this court the ticket no. mentioned is 0919

It is submitted that while on inquiring about the veracity of statement regarding upgradation of ticket, Si Raghavendra Shetty S, TTE/MAQ, who was on duty on that day in the train , stated that the upgradation to Berths 5 and 6 was given to general ticket No 02040519 but to one Mr.Uday and another, by collecting Rs 260/- (page no 46

of DRM report), **in other words, the upgradation was not done for Sri.Nandkumar and deceased, as claimed by the applicants.**

It is claimed by the Railways that no upgrade was done, the ticket mentioned is also not correct. Hence it is to be concluded that the deceased had not travelled in the train. The deceased was not a bona-fide passenger with a valid Railway Travelling ticket. The ticket produced by the applicant was not found in the possession of the dead body and after verification, it was found that the same was not upgraded, as falsely claimed by the applicants. The applicants have made a false story to misguide this hon'ble tribunal. This shows that the applicants have not approached this honourable tribunal with clean hands.

The respondent has also shown doubt on the act and conduct of the alleged co passenger, by stating that this alleged co passenger, did not report the matter, when he found that his uncle was missing from the train.

The police have not recovered any ticket from the victim on the spot. It is also a fact that the applicants were not having any personal knowledge about the incident. The respondents denies that the 2nd and 3rd applicants are dependents of the victim to claim the compensation. No documents are produced to substantiate that they are legally entitled and the applicants are asked to bring the strict proof of the same.

The approved report by DRM also says that there is no recovery of ticket and eye witness to the incident. It is to be concluded that the deceased was not a bona-fide passenger at all.

It is submitted that the Railways cannot be held responsible to give compensation in cases, where there is no evidence to show that the victim was a bona-fide passenger and died due to an untoward incident as per provisions of the Act.

The claim application is not maintainable U/s 124 and 124-A of the Railway Act 1989, as the applicants have failed to make out a case as per the said provisions and as such the

applicants are not entitled to any relief and therefore the application deserves to be dismissed with cost.

In view of the above submission the Respondent prays that the Tribunal may kindly dismiss the claim application with cost.

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 12/04/2023

- 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, within the meaning of Sec. 123(c) (2) of Railways Act, 1989?***
- 4. Whether the applicants are entitled for compensation as claimed and other relief if any?***

At the time of framing of issues the applicant advocate has stated that the applicant no.3 had died, her death certificate was also taken up on the file and in view of submission, the name of the applicant no.3 , Ms.Radha was deleted from the arena of the parties, vide my separate orders dated 12/04/2023.

In this case, applicant no.2 (AW-1) in support of her claim application had tendered into evidence her affidavit, marked as Ex.A-1 and other documents marked as Ex.A-2 to A-13 and has closed her evidence. She was cross examined as AW-1, by the Railway advocate. Another witness, Shri.Nandalal T, who had filed his affidavit is also cross examined as AW-2

On the other hand, the Railway has submitted the DRM report and has marked the same as Ex-R-1 and the same was taken up on the file. Railway has examined Shri.Raghavendra Shetty/TE/Mangalore (RW-1) as witness. He has tendered into evidence his affidavit, marked as Ex.R-2, the statement given to RPF/Karwar is marked as Ex.R-3, the copy of the duty register dated 13/01/2020 marked as Ex.R-4 and original of the EFT No.D356837 is produced which is marked as Ex.R-5.

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 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/claimants, through their advocate.

After getting the version of the Railways along with the DRM report, applicants were given an opportunity to file a proof affidavit and their entire documents, which they intended to file, in support of their claim application, and this was also done in this case.

It is pertinent to mention here that the deceased was allegedly travelling along with his relative, Nandakumar, in Matsyagandha Train from Madgaon to Uduppy on the strength of general ticket bearing no.0919, which was allegedly, converted to sleeper ticket bearing no. D 356837, according to the alleged co-passenger shri. Nand kumar. This witness of the applicant was also cross examined by the Railway advocate, his cross-examination is as under—

“Cross examination by Railway Advocate

Ans. 1. Yes. I do understand English.

Ans.2. It is correct that Prabhakaran, the deceased, was my close relative.

Ans.3. I am running cashew process unit.

Ans4. Prabhakaran was not married. They are 2 brothers and two sisters.

Ans.5. They own a land about 14 cents, years ago. They had one small house.

Ans.6. One brother, named Shivandan is working but settled separately with his wife and two children.

Ans.7. I don't know about the deceased father. Mother is alive.

Ans8. I was not present when the dead body was taken to the hospital

Ans.9. No physical search of the deceased was taken in my presence.

Ans. 10. I did not go to the spot where exactly the dead was found. I and Prabhakaran's brother went to the hospital (Morcherry)

Ans. 11. The doctor handed over the belongings to the police and police handed over it to the deceased brother, Shivanandan.

Ans. 12. Komalam, the applicant is not working anywhere. Komalam is my cousin sister.

Ans. 13. It is correct that Komalam is having a share in her parent's property.

Ans. 14. I was not tutored to say so being the close relative of the applicant to get the claim.

Ans. 15. It is incorrect that I managed false ticket on the other day and the same handed over to the police on the next day i.e 15/01/2020”.

It is important to mention here that the DRM has concluded his report by stating that on 14/01/2020 between 03:00 a.m. the dead body of the victim was found lying

between Km 508/2-3, but there was no eye witness to the incident and no ticket was found.

Further, the journey ticket was actually not recovered by the Police from the victim from the spot, which was rather collected on 15/01/2020, after consultation and contact with the co-passenger, namely Shri Nandkumar, during preliminary enquiry process done by the IPF/Karwar.

I have also seen the cross examination done by the Railways ,to my mind nothing could be extracted from the cross examination of the co passenger sh.Nand kumar. It is admitted by the Railways that the deceased was travelling in the train. It is also admitted that initially they both had the general ticket to travel.

To my mind it is writ large that the deceased was at least not travelling without a ticket.

It is an admitted fact that the deceased was not without any ticket or a trespasser in the train. Here the deceased was having a proper valid journey ticket to prove that he was travelling on the strength of the same. As per the statement of the co-passenger, Nandkumar, they have converted the general ticket to a sleeper ticket. On the other hand, the veracity of Railway ticket no. 02040919 booked from Madgaon booking on 13/01/2020 stands verified.

The genuineness of up-gradation of ticket through EFT no.356837 for the journey from Madgaon to Udupi has also been verified from Shri Raghavendra Shetty, Sr.TTE/Madgaon, who was on duty, in the said train on 14/01/2020 night from Madagaon and his statement was recorded and he admitted that the said EFT was issued by him in the said train on 14/01/2020, on payment of Rs. 260/- for two passengers, but he has denied that this upgrading of the ticket was done for the deceased and his co passenger Nand kumar ,rather this was done for one sh. Uday and someone else

It is pertinent to mention here then how this receipt had come in the custody of sh Nand kumar, the co passenger, which he handed over to the police on the next very day. Moreover the Railway has not collected any evidence that the money was not collected from the deceased or his companion. Nothing was asked to this witness when he was present for the purpose of cross examination.

It is pertinent to mention here that DRM has admitted the travel of the deceased in the train and even his fall. As far as the ticket and the bonafide status of the deceased is concerned, I feel it was incumbent upon the Railways to bring more cogent evidence to prove that the deceased had not converted the ticket and was travelling in the sleeper compartment as a trespasser. **Surprisingly the version of the Railways is highly contradictory and not clear, rather the Railway officer in charge has not bothered to collect more evidence.**

It is an admitted fact that the deceased is not the resident of the place where his body was found. I feel, it is only a guess work of the DRM that the victim's recklessness and negligent act led to this incident.

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 applicants.

Issue no.1

Since, the Railways have not opposed and challenged the veracity of the dependency of the applicant no.1 and her relationship with the deceased, but have challenged the dependency of the applicant no. 2 & 3, the applicant no.3 during the pendency of the application had passed away. I have no alternative except to believe that the applicant no.1 is the only legal heir of the deceased, since no evidence is brought on record by the applicant no-2 that in what manner, she was dependent on the deceased.

Accordingly, this issue is also decided in favour of the applicant no.1 and against the Railways/Respondent.

Issue No.4

In view of my above discussion, I feel that the applicant no.1 is 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, from the date of adducing applicant's evidence i.e, on 14/06/2023, since there was delay of 531 days, in filing the claim application. This issue is also decided accordingly in favour of the applicant and against Railways.

The ADR is further directed to contact the 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 "Suitor'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 noticed that the applicant no.1 is above 90 years of age and there are chances that her amount may be misappropriated either by her children or by the middle men, as such it is ordered that her amount will be kept in the shape of fixed deposit forever in such a way that she can get Rs.15,000/- every month out of this amount. The bank manager is directed to do the needful.

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 tribunals.

ADR/RCT will verify the details of the bank account of the applicant, 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 claimant in Malayalam language. The copy of the Judgment will also be sent to the applicant free of cost and outcome be informed to her telephonically so that her 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 14th February 2024.

**(Sanjiv Dutt Sharma)
Judicial Member**

