

RAILWAY CLAIMS TRIBUNAL

Ernakulam Bench

Dated – 15th November, 2023

Coram

Hon'ble Shri Sanjiv Dutt Sharma

Member Judicial

O.A.(IIu)/ERS/33/2022

**1. Thankamma, (M/o. Late Saju.P)
Aged 62 years, W/o. Late Paramasivan,
V/15, Melemurali,
Puthupariyaram,
Palakkad,
Kerala, Pin - 678 731**

___ Applicant/Claimant

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 K.B. Sajan**

JUDGMENT

Applicant/claimant has preferred the present claim application against the Railways, under section 16 of the Railway Claims Tribunal Act, 1987, for seeking compensation on account of death of her son, namely Late Shri. Saju P, in a Rail accident.

It is alleged that, on 03-09-2021, sometime during night hours, the deceased, Saju.P, who was traveling in the train, accidentally fell down from the train near Koonamthulli Railway track and died instantaneously. The deceased was a watcher/security guard in Ground Water Department, Thrissur, and was a bachelor, living along with the applicant at Melemurali, Palakkad. It is alleged in the claim application that the incident occurred, while the deceased was returning to his home at Palakkad from his office, after attending his work.

It is alleged that on 03-09-2021, for returning to Palakkad, the deceased had booked a ticket, vide PNR No.4417200713, for Trivandrum Central - Chennai Central Express (Train No. 02624) , he had boarded the train from Thrissur Railway Station and was allotted a berth no.44 in D1 compartment. It is alleged that, the at some time during night hours, the deceased might have gone to bathroom for using washbasin and while standing near the side of the wash basin, as the doors were not closed and kept open and train was running at a high speed, somehow accidentally fell down from the speeding train and died instantaneously. The deceased was very carefully and cautiously traveling in the train by following all the rules.

The body of the deceased was found near Koonamthulli Railway track. On inspection at Taluk Hospital, Ottappalam, the doctors declared the person as brought dead. The Ottappalam police registered a case bearing no- 598/2021 and after investigation concluded that the deceased suffered death due to injuries sustained from accidental fall from the train.

Thus, alleging that the deceased was a bonafide passenger and was a sufferer of an untoward incident, as defined in the Railway act, as such the claimant/applicant is entitled to a compensation from the Railways/respondents.

In reply

The Respondent submits that as per DRM's Report, On 04.09.2021 at about 07:30 hrs., one person from the local public reported to Ottapalam Police Station, through '112' that one male dead body was found lying between Mannanur and Ottapalam Railway Stations, Up line, near Railway over bridge at Kaniyapuram, Koonamthulli. As per the information received from Local Public, Local Police/Ottapalam attended the spot, near Railway Over bridge at Kaniyapuram, Koonamthulli Ovuchal and found one male dead body. The deceased was later identified as Saju. P, aged about 34 yrs. resident of Puthupariyaram, Palakkad, who was working as Watcher/security guard in Kerala Ground Water Department at Thrissur.

In this connection Local Police/Ottapalam registered a case .No.598/2021 u/S 174 Cr.P.C. and took up the investigation. After completing legal formalities, Local Police/Ottapalam handed over the dead body to the brother of the deceased, Shri.

Sathishkumar for cremation. As per the final report of Local Police, the victim, while traveling in a Train, had mistakenly fallen down from the train and succumbed to injuries.

The Respondent humbly submits that the Local Police, on receiving the information attended the spot and identified the deceased as Saju, aged 34 years, who was working as Watcher in Kerala Ground Water Department/Thrissur.

In this connection Local Police/Ottapalam registered a case in No.598/2021 u/s 174 Cr.P.C. and took up the investigation. After completing legal formalities, Local Police/Ottapalam handed over the dead body to the brother of the victim, Shri.Sathishkumar for cremation.

The Inquest was conducted by Local Police/Ottappalam at Taluk Government Hospital/Ottappalam between 11:00 hrs. and 12:30 hrs. During the Inquest, the deceased was identified, but no traveling authority was found in his possession.

Post-mortem of the deceased was conducted at Taluk Govt. Hospital/Ottappalam and issued a certificate with finding as, death was due to "ASPHYXIA FROM HEAD INJURY".

SSE/P.Way/Shornur ruled out any unusual jerk in Railway track between Mannanur and Ottappalam on 03/04.09.2021 and further stated that there was no eye-witness to the incident.

It is alleged by the respondent that the victim carelessly traveled on the doorways/Foot board of the train and fell down from the running train. There is no evidence to prove any lapse or technical reason, causing the death of the deceased, from the side of Railways. The travel of the victim on the doorways/footboard of the train is a punishable offense under Section 156 of Railways Act, 1989.

The incident happened due to the negligent/careless act of the deceased. Hence applicants are not eligible for any compensation from Railways under Section 124A of 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 pleadings, and material evidence placed on record, the following issues were framed for determination in this case on 30/03/2023

- 1. Whether the victim was a bonafide passenger in the train in question?***
- 2. Whether the victim died on account of untoward incident as defined U/s.123(c) of the Railways ACT?***
- 3. Whether the applicants are the dependents of the victim?***
- 4. Whether the applicants are entitled for compensation from the respondent? If so, to what amount?***

The applicant in support of her application has tendered into evidence affidavit A-1 and other documents, Exhibit. A-2 to A-10, and the applicant, (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. 1 & 2 are taken up together for the purpose of discussion and adjudication.

Issue no 1 & 2

It is pertinent to mention here that the Respondent/Railway has said nothing in the written statement about the bonafide status of the deceased, but in the DRM report it is admitted that the deceased was a bonafide passenger of train no. 02624 Exp. on 03.09.2021, as the authenticity of the ticket was verified by the Railways. However it is alleged that the deceased was carelessly traveling on the doorways/footboard of the train, which is a punishable offense under the provisions of Railway act, then fell down from the running train. There is no evidence to prove any lapse on the part of the Railways.

As far as the carelessness or negligence on the part of the deceased is concerned, I feel that the Railways had not brought any cogent or reliable evidence on record to prove the same. There is no evidence that the victim carelessly traveled on the doorways or on the footboard of the train and then fell down. The victim also had a journey ticket bearing no. 4417200713.

As far as the negligence is concerned, in this regard, I am equipped with the judgment 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 were 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 another judgment of Hon'ble Kerala High Court titled “Union of India Vs. Paremashwaram 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 succor to the beneficiaries of that statute.

I feel that, whenever there are two possible interpretations in a beneficial statute then the one which subserves the object of legislation viz. benefit to the subject should be accepted.

Thus, on holistic evaluation of evidence 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. 1 & 2 are decided accordingly in favour of the applicant and against the railways.

Issue no.3 & 4

As far as the issue no.3 is concerned, the Railway has not challenged the veracity of the claimant that she is not the dependent of the deceased. As per the act—

(b) “Dependent” 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 dependent wholly or partly on the deceased passenger.
- iii) A minor child of a predeceased 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 applicant is the only dependent of the deceased and very much falls within the definition of the dependent.

Since the applicant is the only dependent of the deceased, this issue is also decided in favour of the applicant.

In view of my above discussion, I feel that the applicant is 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. 03/10/2022

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 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 to the applicant.

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/claimant and the remaining amount shall be invested in the shape of fixed deposits for a period of 3 years.

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

ADR/RCT will verify the details of the bank accounts of the applicant, 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 the applicant should be in a Nationalized Bank nearest to the place of her 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 claimant in Malayalam language, since the claimant does not know English language. The copy of the Judgment will also be sent to her free of cost.

Additional Registrar of this tribunal is directed to do the needful, accordingly. Copies of this order be supplied to the applicant free of any charge. The bank manager of the concerned bank will be personally responsible, if the money of the applicant is misappropriated.

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

Pronounced in the open Tribunal, on this, the 15th day of November 2023.

(Sanjiv Dutt Sharma)
Judicial Member