

RAILWAY CLAIMS TRIBUNAL

Ernakulam bench

Dated – 08th December, 2023

Coram

Hon'ble Shri Sanjiv Dutt Sharma

Member Judicial

O.A. No. 40/2022

- 1. Subaida, (W/o Late Ummer Kutty)**
Aged 51 years,
Oottukandam Kuniyil House,
K.T. Bazar, Rayarangoth P.O.,
Vadakara, Kozhikode District,
Kerala State -673102
- 2. Muhammed Adnan Veeshalikkaravida (S/o Late Ummer Kutty)**
Aged 33 years,
Oottukandam Kuniyil House, K.T. Bazar,
Rayarangoth P.O., Vadakara,
Kozhikode District, Kerala - 673102,
currently residing at
Veesalikkaravida,
Chorode, Muttungal west P.O
Vadakara, Kozhikkode - 673106
- 3. Ubaid V K (S/o Late Ummer Kutty)**
Aged 31years, Oottukandam Kuniyil House,
K.T. Bazar, Rayarangoth P.O.,
Vadakara, Kozhikode District,
Kerala State 673102,
currently residing at
Veesalikkaravida, Chorode,
Muttungal west P.O,
Vadakara, Kozhikkode 673106
- 4. Thasleema V.K., (D/o Late Ummer Kutty)**
aged 24 years, Veesalikkaravida,
Chorode, Muttungal west P.O,
Vadakara, Kozhikkode -673106
currently residing at
Baithul Rahma House,
Rayarangoth P.O.,

**Vadakara, Kozhikode District,
Kerala State 673102**

___ Applicants/Claimants

Vs

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

___ Respondent

Adv. For the Applicants – Shri K Shaj

Adv. For the Respondent Railways – Shri Kamal Ram

JUDGMENT

The present order will dispose of a claim application moved by the applicants, seeking compensation from the Railways on account of death of Shri. Ummer Kutty, who allegedly died in a train accident, on 22.12.2021, while travelling in a train.

It is alleged that the deceased was travelling in train no.16630, Malabar express in coach no. S-8 from Vadakara to Trivandrum with his family, and fell down from the train, when the train reached Chalakudy Railway station and died subsequently, due to run over. It is alleged in the claim application that based on the information given by the Chalakudi Corporation Councilor, the Chalakudy Police registered a case under Chalakudy Police Station Crime No. 1032/2021 U/s174 of Cr.P.C.1973, dated 22/12/2021. According to the postmortem examination held by Junior Consultant, THQ Hospital Chalakudy, the death was due to Polytrauma possibly due to train run over.

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 travelling on the strength of a valid journey ticket.

The Respondent humbly submits that, on 22.12.2021 at about 04.30 hours an information was received from Divisional Security Control Room/Trivandrum stating that, a dead body of a male person was found lying inside down main line Road No.01 at KM. No.62/800 at Chalakudy Station, Sub Inspector/Aluva with staff proceeded to the spot, where an untoward incident was reported. Meantime Local Police, Chalakudy attended the spot and removed the body at 04.40 hrs, from the track. Later Sub-Inspector/RPF/Aluva and Local Police/Chalakudy, during the preliminary enquiry, identified the deceased as Ummer.

During the course of enquiry done by the Railways, Post-mortem Report, Inquest Report, Final Report and Detailed Accident Report of Local Police, Chalakkudi were collected. Shri. Shajahan M.S./Sub- Inspector of Police/Chalakudi investigated the case and concluded that the deceased Ummerkutty T K was travelling from Vadakara to Thiruvananthapuram by Malabar Express along with his wife, son, brother and brother's son for treatment and during the journey, when every-one fell asleep, Ummerkutty TK fell down from the train on 22.12.2021, between 02:00 am and 02:45 am at KM. No.62/800 near Chalakudy Railway Platform, sustained injuries and died.

From the statement of witnesses, it has come out in the investigation that the deceased Ummerkutty T K was suffering from mental problems/depression for the past five months. Smt. Subaida, Wife of the deceased Ummerkutty and other relatives were travelling on 21.12.2021 from Vadakara to Thiruvananthapuram in Malabar Express and were going for the treatment of the deceased at Sree Chithira Hospital, Thiruvananthapuram, as the treatment already taken at Meitra Hospital was not found effective for the deceased.

The Respondent humbly submits that the deceased was suffering from mental problems, and the incident has happened due to the carelessness on the part of the deceased and

on the part of the relatives of the deceased, who accompanied him in the train. Therefore, the Railway is not responsible for the incident in any manner.

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 25/04/2023.

- 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.3, Exhibit A-1 and other documents Exhibit A-2 to A-14, and the applicant no.3, 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 Dr. K A Salam, (RW-1) Senior consultant, Neurologist, Meitra Hospital, Calicut, 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, has given his opinion and has signed the same.

In the DRM report, it is specifically stated that the deceased was suffering from mental problems and fell down from the train, at KM no.62/800, ran over and died on the spot during the night hours on 22.12.2021. He has further blamed the deceased as well as the relatives of the deceased who were travelling with him for the alleged incident.

In order to clarify this ambiguity, this tribunal chose to examine Dr.K. A Salam as RW-1, Senior consultant, Neurologist of Meitra hospital Calicut by virtual mode, in order to ascertain the mental status of the deceased at the time of accident. It is pertinent to mention here that the deceased was under the treatment of this doctor. His cross examination is as under;-----

“Ans1. Cerebral amyloid angiopathy is a vascular disease, which obstructs supply of blood to the brain

Ans2. It is gradually progressing. It cannot be developed in a day or two.

Ans3. This can produce so many complications like paralysis, brain stroke etc.

Ans 4 He was first seen in the hospital 14.09.2021. Self-stated seeing his condition, I asked him to get admitted in the hospital

Ans5. He was admitted in the hospital on 18/10/2021 and was discharged from the hos on 25/10/2021

Ans. 6. During this period, symptoms of Cerebral amyloid angiopathy were found in him Ans. 7. Cerebral angiography was done. There was evidence of blockage in the brain. Ans. 8. He was under my treatment for more than a month. He was on constant medication.

Ans. 9. It is correct that there is a chance that he could lose his body balance due to seizure.

Ans. 10.It is correct that in such cases memories can be lost.

Ans. 11. It is correct that he was not supposed to travel alone.

Ans. 12. There is a chance that his executive functions will be affected and due to seizure, he could lose body balance

Ans. 13. There will be lapses in memories.

Ans. 14. Insane is a different word.

Ans. 15. It is correct that he could not be insane.

Ans. 16. He can have abnormality in finding directions while travelling

Ans. 17. Perception of 'Seizure' means short term memory is not affected. Self-stated that memory is not suddenly loose like dementia/Alzheimers.

Ans. 18. It is correct that he should be taken care of.

Ans. 19. His disease has not developed to the point that he could not travel alone.

Ans. 20. It is incorrect that I am deposing falsely.

Ans. 21. It is incorrect that I was tutored to say so.”

It is important to mention here that this doctor has specifically admitted in the cross examination that at the time of the alleged incident he was not insane or suffering from any mental disorder. While answering the question no.19 he has specifically stated **“the deceased was not developed to such a point that he could not travel alone”** it is really surprising that the DRM and officers of the Railways without applying their own mind and without taking any medical evidence on record declared that the deceased was suffering from mental ailment.

I feel that the report of the DRM is vague and absurd and not based on proper medical evidence and at the same time, same cannot be appreciated.

As far as the negligence on the part of the deceased is concerned, it is very commonly seen that even the doors of reserved compartments are always wide open in the night hours. Since there is no check on the passengers who keep roaming in the various compartments in the night and frequently open the doors. It is also seen that when the train is moving fast in the night and the doors are open at that time it becomes very dangerous to even reach the toilets or even the washbasins. I have noticed that there are thousands of instances where people have fallen from the moving train due to the opening of the doors by some unscrupulous passengers in the night hours.

I feel that there is sufficient evidence on the file that the deceased was not insane and was a sufferer of an untoward incident.

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

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.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 all the applicants 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 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, 13.12.2022. The amount is distributed among the applicants in the following manner;

- 1. Wife of the deceased, the applicant no.1, will get Rs.5,00,000/- (Rupees Five lakhs only).**
- 2. Son of the deceased, the applicant no.2, will get Rs.1,00,000/- (Rupees one lakh only).**
- 3. Son of the deceased, the applicant no.3, will get Rs.1,00,000/- (Rupees one lakh only).**
- 4. Daughter of the deceased, the applicant no.4, will get Rs.1,00,000/- (Rupees one lakh only).**

Respondent is directed to deposit the awarded compensation amount in the "Sutor'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 all the applicants/claimants 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 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 8th day of December, 2023.

**(Sanjiv Dutt Sharma)
Judicial Member**

