



रेल दावा अधिकरण
गुवाहाटी न्यायपीठ
RAILWAY CLAIMS TRIBUNAL
GUWAHATI BENCH

STATION ROAD
GUWAHATI-781001

Mr. Tanveer Ahmed, Member (Technical)-I

OAIlu-129/2019 (Old)

OA(IIu)/GHY/129/2019 (New)

Date of filing of claim application: 19.12.2019

Date of judgement: 31.01.2023

1. Smt. Krijang Mog @ Krayangri Mog,
Wife of Late Chenglafru Mog
 2. Miss Ruipainsu Mog,
Daughter of Late Chenglafru Mog
- Resident of Village Barabil, Bagala Bashan Para,
P. S. Silachari, District Gomati, Tripura

..... Applicants

-Versus -

The Union of India represented by
General Manager, N. F. Railway, Maligaon

..... Respondent

Present: Smt. A. Bhanu, Learned counsel for the applicant
Shri P. S. Deka, Learned counsel for the respondent

JUDGEMENT

1. This application is filed under Section 16 of the Railway Claims Tribunal Act, 1989 for compensation by Smt. Krijang Mog @ Krayangri Mog for self and on behalf of Applicant no.2, seeking compensation on account of death of Late Chenglafru Mog in an alleged untoward accident.

2. Brief history of the case of applicant no.1 is that on 09.09.2019 her husband viz. Chenglafru Mog travelled from Yesvantpur to Howrah by train with Railway Journey Ticket no.57414975 dated 09.09.2019. On reaching Howrah, he again purchased Railway Journey Ticket no.52036350 dated 11.09.2019 for travelling by train from Howrah to Guwahati. Thereafter on 12.09.2019 he again purchased a Railway Journey Ticket no.95979813 dated 12.09.2019 from New Jalpaiguri to

Guwahati for travelling by Train no.14056 Up and while travelling in the said train, he accidentally fell down from the running train at Kokrajhar Railway Station Yard, as a result of which he sustained grievous injuries. According to her, her injured husband was shifted to a hospital, where he succumbed to his injuries. She also averred that the Bongaigaon GRPS registered a U. D. Case no.77/19, conducted inquest and after getting the post mortem done, the dead body of her deceased husband was handed over to them. In support of her claim, she has filed certified copy of Memo dated 12.09.2019 issued by Station Master, N. F. Railway, Kokrajhar, First Information of a Reporter Case of Unnatural Death sent to the Magistrate under Section 174 of Cr.P.C., Seizure List, Zimmanama, Railway Journey Tickets bearing nos.57414975, 52036350 and 95979813, Discharge Certificate dated 12.09.2019 issued by R.N.B. Civil Hospital, Kokrajhar, BTAD, Assam, Inquest Report, Post Mortem Report, Final Report (in Assamese) along with its English translated copy, Forwarding letter dated 13.09.2019 in connection with post mortem examination issued by IC, Kokrajhar GPP P.P., Dead Body Challan, copy of Birth Certificate of Ruipainsu Mog issued by Registrar (Birth & Death), AGMC and GBP Hospital, School Certificate of Ruipainsu Mog issued by HM, Bagala Bhusan Para S.B. School, Karbook (G), Tripura, Elector Photo Identity Card of Kreyangri Mog and Aadhar Card of Krayangri Mog, marked as Exhibits A1 to A17 respectively.

3. The respondent filed written statement denying all the averments made by the applicants. In the written statement, the respondent averred that the victim cannot be considered as a valid passenger unless contrary is proved as per mandate of Section 124A of the Railways Act, 1989. The respondent also averred that as per statement of the on duty Station Guard of Kokrajhar Railway Station and Loco Pilot of alleged train no.14056 Up, it reveals that while the said train was entering the platform no.2 of Kokrajhar Railway Station, the victim was knocked down by the engine of the said train, hence denied that the victim fell down from a running train. The respondent further averred that the death of the victim has no nexus with any wrongful act, negligent and/or default on the part of the respondent railway and therefore until the cause of the accident is conclusively proved through a competent

judicial proceeding, the respondent railway denies having any liability to pay compensation to the claimant. With these averments, the respondent prays for dismissal of the claim application with cost. In support of their claim, the respondent has filed copy of DRM Report along with its enclosures, marked as exhibit R1.

4. With the consent of the parties, the following issues were framed for determination:-

1. Whether the deceased was a bonafide passenger?
2. Whether the death of the deceased was due to an untoward incident as defined under Section 123(c) of the Railways Act, 1989?
3. Whether the applicants are entitled to claim compensation? If so, to what sum?
4. Reliefs and costs?

5. On the basis of pleadings and arguments advanced, issue-wise findings are as follows:-

ISSUE NOS.1 & 2:

(These two issues are taken up together for discussion and decision for the sake of convenience)

6. Before proceeding in the matter, to come to a just conclusion in the case, it is felt necessary to quote the findings of the DRM report (exhibit R1) filed by the respondent, which reads as follows:

"During enquiry, E.O. recorded the statement of the following persons:

1. KrijangMog, Applicant (Wife of deceased) - in her statement she stated that her husband Lt. ChenglafruMog was working in Private Company at Bangalore and when her husband returning from Bangalore by train he met an accident at Kokrajhar Rly station but she had no idea by which train her husband travelling from bangalore to Tripura. On 12.09.2019 she received a phone call from GRP/Kokrajhar and knew about the above accident. Accordingly on 13.09.2019 she attended at GRP Thana, Kokrajhar and then went to RNB Civil Hospital, Kokrajhar where she could know that her husband already dead. After completion of enquiry as well as postmortem the dead body was received from GRP/KOJ for crimination.
2. Sri Swapan Kr. Debnath, Mail LP/NBQ – in his statement he stated that on 12.09.2019 he was on duty in train no.14056 Up as Loco Pilot and while his train was entering at KOJ station P no.2 suddenly one male person aged about 40 years knocked down with engine of said train. He immediately informed the matter to SM/KOJ over walkie talkie and issue a memo to DYC/PRC/APDJ through SM/KOJ. The said train in KOJ station at 16:09 hrs and out at 16:25 hrs of 12.09.2019.
3. Sri Dilip Bangshiary, HC/RPF/KOJ – in his statement he stated that on 12.09.2019 he was detailed to perform seal checking, train passing, station guarding duty etc. at KOJ station from 14:00 hrs to 22:00 hrs. During his duty period at about 16:10 hrs while train no.14056 Up entering on PF no.2, Line no.3 of KOJ station suddenly one male person knock down with engine of said train. In this regard on duty LP of said train issued a memo to on duty SM/KOJ and based on said memo on duty SM/KOJ issued memo to IC/GRP/KOJ and RPF/KOJ and all concerned. The victim immediately shifted to RNB Civil Hospital, KOJ for treatment.

4. Sri Bijoy Sarkar, SM/KOJ – in his statement he stated that on 12.09.2019 while he was performing his duty at KOJ station as a station master, he received a memo from on duty Loco Pilot of T/No.14056 Up regarding knock down of one male person by engine of train no.14056 Up. The victim immediately sent to RNB Civil Hospital, Kokrajhar through GRP/KOJ. In this regard he issued a memo no.SS/KOJ/Misc/01/19 to IC/GRP/KOJ, ASI/RPF/KOJ, SSE/P-Way/KOJ and all concerned for necessary action.

During enquiry, E.O. collected the following documents:

- i. Memo issued by on duty LP & SM/KOJ (Placed at P-2 & 3)
- ii. Form-1 issued by SS/KOJ (Placed at P-4)
- iii. Form-2 (placed at P-5)
- iv. SM's Diary Book of KOJ issued by SS/KOJ (P-6)
- v. Train Register of KOJ issued by SS/KOJ (P-7)
- vi. Xerox copy of Inquest Report, Final investigation report & Post Mortem Report issued from OC/GRPs/BNGN (Placed at P-8, 9 & 10)
- vii. Statement of KrijangMog, Applicant (Placed at P-11)
- viii. Xerox copy of Rly journey ticket (Placed at P-12)
- ix. Statement of Sri S. K. Debnath, Loco Pilot (Placed at P-13)
- x. Statement of Sri Dilip Bongshiary, HC/RPF/KOJ (Placed at P-14)
- xi. Statement of Sri Bijoy Sarkar, SM/KOJ (Placed at P-15)
- xii. DTC certificate issued by SS/NJP (Placed at P-16)

CONCLUSION

From the enquiry the following points come into light

1. It is clear that the deceased ChenglafruMog was a bonafide passenger as per Rly journey ticket no.UOD-57414875 dated 09.09.2019 ex. Yeswantpur to Howrah, UTS-426DGCOOHA/52036350 dt. 11.09.2019 ex. HWH to GHY and UZB-95979813 dt. 12.09.2019 ex. NJP to GHY which were recovered from possession of deceased during investigation by GRP/KOJ.

2. It is clear that it is a case of knock down not fall down.

3. No wrongful act, negligence or default on the part of Railway administration could be found in the incident in the course of enquiry".

7. The certified copy of Memo dated 12.09.2019 issued at 16:20 hrs. by Station Master, N. F. Railway, Kokrajhar, marked as Exhibit A1, states that *"One unknown male person aged about 35 years old knocked down by 14056 Up. This is as per Memo of Sri S. Debnath at KM 223/5-6 KOJ stn yard Line no.3. This is for your information and necessary action pl"*.

8. As per certified copy of Inquest Report (Exhibit A9), prepared at 02:15 PM by Shri Ranjuman Dutta, ACS, Assistant Commissioner, O/o Deputy Commissioner, Kokrajhar, a dead body of a male person aged 40 years, which was found lying in the RNB Civil Hospital Morgue, Kokrajhar, was identified to be that of Chenglafru Mog on the basis of Aadhar Card. It states that the cause of death of the victim as per police and witness is due to knock down by 14056 Up Brahmaputra Mail.

9. The certified copy of Post Mortem Report (Exhibit A10), which was conducted at 03:40 PM on 13.09.2019, states that the death of the deceased was due

to shock because of excessive bleeding from major arteries and bones. It also states that the time since death is 18 to 20 hours.

10. Exhibit A11 is a certified copy of Final Report (in Assamese). The applicant has filed its English translated copy, as per which, the deceased died because of injuries sustained due to hit by train.

11. Smt. Krijang Mog @ Krayangri Mog, wife of the deceased, during her deposition as AW-1 before this Tribunal on 03.11.2021 stated as under:

"Both my parental house as well as my residence are situated in Tripura. I do not know under which company my deceased husband was used to work in Bangalore. My deceased husband had left home one month's and 16 days prior to his death. Personnel from local Police Station had informed me about the death of my deceased husband on 12.09.2019 at around 6 pm but I do not know who was he, thereafter; I left home on the next date i.e on 13.09.2019 and reached Kokrajhar on 15.09.2019. I can identify my signature at exhibit-A4 of my affidavit i.e Zimanama but no any articles or items were handed over to me except Railway journey ticket and Aadhar Card. Police did not informed me how my husband had died nor I was told where from my husband's dead body was recovered. The last rites were performed at Kokrajhar. I am not an eyewitness regarding the alleged travel and incident of fall down leading the death of my deceased husband as I have stated in my affidavit and original application. I cannot say on what basis I have stated that my deceased husband died due to fell down from a running train in my affidavit as well as in the original application. I do not agree that my deceased husband died due to knock down by Loco of a Train. It is incorrect to suggest that I have deposed falsely before this Hon'ble Tribunal".

12. Shri Swapan Kr. Debnath, the Loco Pilot of Train no.14056 Up of 12.09.2019, during his deposition as CW-1 before this Tribunal on 01.07.2022 stated as under:

"My name is Swapan Kr. Debbath, aged about 65 years old. I was working as a Loco Pilot under SSE/Loco/New Bongaigaon. On 12.09.2019 I was performing Loco Pilot duty in Train No. 14056 UP Ex New Coachbehar to New Bongaigaon. During my duty period Train No. 14056 UP, NCB in at 14:35 hrs and out at 14:40 hrs and Kokrajhar in at 16:09 hrs and out 16:25 hrs at Plat form No. 2 Line No.3. While the said train entered Kokrajhar railway station on Platform No. 2, suddenly one male person aged about 40 years fell down from the coach. I immediately informed the matter to on duty station Master/Kokrajhar over Walkie-Talkie. In this connection, I have also issued a memo to DYC/PRC/APDJ through ASM/Kokrajhar which was received at 16:18 hrs by Station Master Kokrajhar on duty RFP/GRP of Kokrajhar attended the site and shifted the injured person from railway line to Platform No.1 and then we left Kokrajhar railway station to our destination.

Q : Did you record the incident in the knockdown/Unusual Register after completion of your duty?
Ans : No Sir, the procedure of recording the incident in the knockdown register has been done away w.e.f 2019".

13. On being summoned again, he appeared before this Tribunal on 19.10.2022. During his deposition as CW-1, he stated as under:

"In compliance of summon issued by this Hon'ble Tribunal, I had appeared before this Tribunal on 01.07.2022 and my statement was recorded. I was quoted as saying "While the said train entered Kokrajhar railway station on Platform No. 2, suddenly one male person aged about 40 years fell down from the coach." In fact, I did not see a person falling down but I have heard hue and cry by the people present at plat form no.2 and I had sent my assistant Loco Pilot. Thereafter, he told to me that a person sustained injuries and two person was carrying him and made him sit. I also had seen a person apparently injured being carried by two persons into the plat form no.2 from inside the cabin of the Loco. Upon being shown my statement is quoted in DRM's, report I say that "I did not see the incident causing injury to the person".

14. Respondent has based its denial on the claim, as the statement of the loco pilot, who stated before the RPF that “suddenly one male person aged about 40 years knocked down with engine”. The Loco Pilot Shri Debnath was summoned to the court and in the court he gave the statement that one person fell down from the coach. Since, he changed his statement in the court, the counsel for the respondent sought to summon him again to cross-examine. The prayer was allowed and Debnath was summoned again. He stated that he did not see any one falling down, but he heard hue and cry and therefore sent the Assistant Loco Pilot to see what the hue and cry was about. The Assistant Loco Pilot informed that one person had sustained injury and two persons carried him away. It is, hence, obvious that the victim was not knocked down by the loco. The DRM report has stated that the victim was a bonafide passenger. The victim was travelling from Yeshwantpur (Bangalore) and his residence is in Tripura. There was no reason for him to have been found in seriously injured condition at Kokrajhar Station, but for the fall from the train. And I hold it accordingly.

15. Issue nos.1 and 2 are decided in favour of the applicants.

ISSUE NO.3:

16. Section 123 (b) of the Railways Act, 1989 defines ‘dependant’ means (i) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his parent and (ii) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a predeceased son, if dependant wholly or partly on the deceased passenger.

17. As per copy of Aadhar Card of Krayangri Mog, marked as Exhibit A17, she is the wife of Chenglafru Mog. Exhibit A14 is copy of Birth Certificate issued by the Department of Health Services, Government of Assam, as per which, Miss Ruipainsu Mog is the daughter of Krijang Mog and Chenglafru Mog and her date of birth is 05.05.2011.

18. Since the respondent has not repudiated the claim of the applicant by filing contra evidence, therefore I have no hesitation to hold that Smt. Krijang Mog @

Krayangri Mog and Miss Ruipainsu Mog are the dependants of the deceased and they are entitled to statutory compensation of Rs.8,00,000/- (Rupees eight lakhs only) with interest @ 9% on account of death of the deceased in an untoward incident, as per Rule 3 of the Railway Accidents & Untoward Incident (Compensation) Rules, 1990, as amended.

19. Issue no.3 is accordingly decided in favour of the applicants.

ISSUE NO.4:

20. In view of my findings above, it is held that the applicants are entitled for compensation of Rs.8,00,000/- (Rupees eight lakhs only) with 9% simple interest. There is no order as to costs. Hence ordered accordingly.

ORDER

I. The original application is allowed on contest against the respondent. I award a sum of Rs.8,00,000/- (Rupees eight lakhs only) as compensation along with 9% interest from the date of incident to the date of payment. The compensation amount is directed to be distributed as under:

- | | |
|---|--|
| 1. Smt. Krijang Mog @ Krayangri Mog
(Wife of the deceased) | - Rs.4,40,000/- (Rupees four lakh
forty thousand only) with interest |
| 2. Miss Ruipainsu Mog
(Daughter of the deceased) | - Rs.3,60,000/- (Rupees three lakh
sixty thousand only) with interest |

II. Respondent is directed to deposit the awarded compensation along with interest with the ADR of RCT, Guwahati Bench within a period of one month from today.

III. So far as disbursal of the amount of award is concerned, I have heard the learned counsel for the parties.

IV. It has been seen that in Geeta Devi vs Union of India, Hon'ble Delhi High Court has observed as under:-

"As regards amendment to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 5.1. Many of the claimants are drawn from rural areas with low levels of literacy and lower levels of making appropriate decision for the use of amounts guaranteed under the awards. There are several instances of their exploitation by middlemen and touts operating in the field. The scope for such exploitation is itself one of the incentives for

formenting bogus claims, fabricated documents and duplicate claims in different Benches of the Tribunal for the same cause of action. The availability of bulk funds in the name of an ill-informed claimants also a cause for exploitation. A scheme for protection of the amount due to such a claimant is the need of the hour. Earlier, this Court has involved 21 Nationalized Banks in dialogue to evolve a scheme of annuities for disbursement of claims. They have been ordered already to be implemented in this case, vide directions passed on 22nd February, 2019. This scheme as applied to motor accident claims has been approved by the Supreme Court in its order dated 05th March, 2019 in Krishnamurthi v New India Insurance Company, SLP(C) No. 31521-31522 of 2017. A statutory rule backing will, therefore, best serve the interest of the litigant in the manner set out below:

5.2 Insert following Rule 5 after Rule 4:-

Rule 5: Mode of payment (1) The Tribunal may, in order to protect the sum awarded to the claimant, having due regard to the illiteracy or other disabling factors impairing the judicious use of such sum, issue directions for disbursing the award in terms of annuities, fixed deposits or other suitable mode as shall subserve justice.

(2) If any of the claimants is a minor person of unsound mind, the Tribunal may give liberty to the guardian ad litem to use the interest accruals on the deposit that shall be made during the minority for maintenance.

(3) Nothing in this Rule shall limit the power of the Tribunal to make modifications of the mode of disbursement for reasons to be stated in writing depending on the exigencies requiring liquidation of any corpus created for annuity or premature closure of fixed deposit, for the benefit of the claimant".

In pursuance of the order passed by the Delhi High Court, recently, Government of India has issued a Notification of 3rd June, 2020 amending Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 2020, amending Rule 5 which reads as under:-

"5. Mode of payment.

5.1 The Tribunal may, in order to protect the sum awarded to the claimant, having due regard to the illiteracy or other disabling facts impairing the judicious use of such sum, issue directions for disbursing the award in terms of annuities, fixed deposits or other suitable mode as shall subserve justice.

5.2 If any of the claimants is a minor or person of unsound mind, the Tribunal may give liberty to the guardian ad litem to use the interest accruals on the deposit that shall be made during the minority for maintenance.

5.3 Nothing in the Rule shall limit the power of the Tribunal to make modifications of the mode of disbursement for reasons to be stated in writing depending on the exigencies requiring liquidation of any corpus created for annuity or premature closure of fixed deposit, for the benefit of the claimant.

5.4 The orders dated 21st April, 2017, 24th May, 2019 and 6th November, 2019 of Hon'ble High Court of Delhi in FAO No.22/2015 and CM Application no.4501/2015 in Geeta Devi vs Union of India, relating to disbursement of compensation shall be read as part of this Rule".

V. Therefore, relying upon the judgement rendered by the Hon'ble Delhi High Court in the case of Geeta Devi and in pursuance of Rule 5 quoted above, in the present case, the amount of compensation of Rs.8,00,000/- (Rupees eight lakhs only) with 9% interest from the date of incident to the date of payment will be disbursed as under:

- a) Out of total compensation amount of Rs.4,40,000/- (Rupees four lakh forty thousand only) with interest payable to Smt. Krijang Mog @ Krayangri Mog (Applicant no.1), Rs.80,000/- (Rupees eighty thousand only) with entire interest will be released by the respondent through RTGS/NEFT in her saving bank account. Remaining Rs.3,60,000/- (Rupees three lakh sixty thousand only) will be invested in four FDRs of Rs.90,000/- (Rupees ninety thousand only) for a period of one to four years in ascending order i.e., one FDR for one year, second FDR for two years and third FDR for three years and so on in a nationalized bank and

on maturity the FDRs amount to be transferred to her saving bank account.

- b) The entire compensation amount of Rs.3,60,000/- (Rupees three lakh sixty thousand only) with interest payable to Miss Ruipainsu Mog (Applicant no.2), will be invested in her name in a Nationalized Bank as Fixed Deposit through her mother (Applicant no.1), a natural guardian, till the date she attains the age of majority and on maturity the FDR amount will be transferred to her saving bank account.

VI. If the applicants are entitled to exemption of deduction of TDS, they shall submit Form 15G to the Presenting Officer of the respondent railway [as applicable under sub-section (2) of Section 19 of the Railway Claims Tribunal Act, 1987] so that no TDS is deducted.

VII. Applicants are directed to give their details of the bank account, opened in any Nationalized Bank situated near their place of residence, to ADR/RCT/GB.

VIII. With the above direction, the claim application is disposed of with no order as to costs.

IX. Registry is directed to send a certified copy of this judgement to the applicant's address through speed post.

X. Let the case file be consigned to the record room after due compliance.

(Tanveer Ahmed)
Member (Technical)-I

Guwahati
Dated: 31.01.2023