



रेल दावा अधिकरण
गुवाहाटी न्यायपीठ
RAILWAY CLAIMS TRIBUNAL
GUWAHATI BENCH

STATION ROAD
GUWAHATI-781001

Mr. Mahtab Amhad, Member (Judicial)

Mrs. Leena Sarma, Member (Technical)

Original Claim Application OAIu-44/2022 (OFFLINE)

OA(IIu)/GHY/44/2022 (ONLINE)

Date of filing of claim application:23.06.2022

Date of judgement:20.12.2023

1. Smti. Anumoni Das,
Wife of Late Shiva Das
2. Miss Bhabani Das,
Minor daughter of Late Shiva Das
3. Sri. Rahul Das,
Minor son of Late Shiva Das
4. Jugal Kishor Das ,
Father of Late Shiva Das

Residence of Vill.-Majuli Grant, P.O.- Hatigarh,
P.S.- Paneri, PIN – 784524, Dist.- Udalguri, Assam.

..... Applicants

-Versus -

The Union of India represented by
General Manager, South Central Railway, Secunderabad.

..... Respondent

Present: Shri B. C. Das, Learned counsel for the applicant.
Shri K. Gogoi, Ld. Counsel for the respondent.

Mr. Mahtab Amhad, Member (Judicial)

JUDGEMENT

This is a claim application filed under Section 16 of the Railway Claims Tribunal Act, 1989 read with Section 124-A of the Railway's Act, 1989 by Smti. Anumoni Das (Applicant no.1) the wife of the deceased, Miss Bhabani Das

(Applicant no.2) minor daughter of the deceased, Sri. Rahul Das minor son of the deceased (Applicant no.3) and Sri. Jugal Kishor Das (Applicant no.4) the father of the deceased for compensation of death of the deceased Shiva Das son of Jugal Kishor Das aged about 32 years residence of Vill.-Majuli Grant, P.O.- Hatigarh, .S.- Paneri, PIN – 784524, Dist.- Udalguri, Assam, who is said to be died in an alleged untoward incident.

2. As per claim application on 03.01.2022 in the morning victim Shiva Das was travelling from Rangiya to Bangalore Cant. Railway Station by DN 12510 GHY- Bangalore Express train by purchasing Railway Journey Ticket vide PNR.6659548256. On the way of his journey when the said train reached in between Hamsavaram and Annavaram Railway Station at KM. No.672/21-23 on 05.01.2022 victim accidentally fell down from the said running train due to heavy rush and commotion of the passengers and received grievous injuries on his body and died on the spot. In this connection Tuni GRPS has registered a case vides CR/No.2/22 dated 05.01.2022 and Postmortem was conducted at Area Hospital, Tuni.

3. The Respondent Railway has contested the claim application by filing written statement dated 12.10.2022 in which all of the averments of the application has been denied by the Respondent asking proof for the same. Further, respondent denies that the deceased herein was a bonafide passenger of train No.12510 Guwahati-Bangalore Express of 03.01.2022 and applicants are put to strict proof of the same. Further, applicant are also put to strict proof of the purchasing of Journey Ticket and any eye-witnesses to the deceased travel and incident, failing which the OA is liable to dismissed. The respondent submits that as per the enquiries conducted by Sr. DSC/Vijayawada, which revealed that Sri. M. Ramana Babu, Keyman on 05.01.2022 at about 11.30 hours, while performing duty, he noticed male dead body lying between UP and Down lines at KM No.672/21-23, in between Hamsavaram and Annavarm Railway Stations and same informed to Station Superintendent/Hamsavaram through SS/Tuni for necessary action. It is also asserted that there is no eye-witness or evidence to prove that the deceased had travelled by any train and has fallen down from the train, mere finding of the dead

body near the Railway track does not construe that the deceased travelled by any train. It is submitted that it is clearly evident, the deceased fell down due to own acts or omissions and commission which tantamount to self inflicted injury. Moreover, the enquiry established that there were no unusual jerks/jolts and Alarm Chain pulling (ACP) as stated by the Train Manager from Visakhapatnam to Vijayawada on 04/05.01.2022 passed through in between Hamsavaram & Annavaram Railway Stations. Hence, the applicant are not entitled to any compensation and the respondent is not liable to pay any compensation. The respondent further submits that the alleged incident, if any was caused by the own conduct and the criminal acts of the deceased and such act dis-entitle the applicants to claim any compensation.

4. On the basis of aforesaid pleadings, 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 applicant is entitled for any compensation? If so, to what sum?
4. Reliefs and costs?

5. In support of her claim application, Applicant No.1 Smti. Anumoni Das has examined herself as AW-1. She has also brought on record documentary evidences such as Certified copy of Memo (Exhibit-A1), Certified copy of FIR (Exhibit-A2), copy of Railway Journey Ticket (Exhibit-A3), certified copy of Inquest Report (Exhibit-A4), certified copy of Postmortem report (Exhibit-A5), copy of Final Report (Exhibit-A6), ID Proof of the deceased (Exhibit-A7), ID Proof of the applicant No.1 & 4 (Exhibit-A8) and copy of Birth Certificate of the Applicant No.2 & 3 (Exhibit-9).

6. Respondent Railway has not examined any witness except police papers and railway papers regarding the incident along with DRM's report.

7. We heard Learned Counsel for the applicant Sri. B. C. Das, and Sri. K. Gogoi, Learned Counsel for the Railway and perused the record.

Discussion and findings on issues:

8. Issue No.1 & 2:

- 1. Whether he 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?**

8.1. For the sake of convenience both the above issues are taken together for discussions and disposal. As per DRM's report on the basis of Enquiry Report based on evidence collected by the Enquiry Officer, this case is fell down case from a running train. During the enquiry Sri. Mamidi Ramana Babu, Key man, stated that he was on duty from 06.00 hours to 17.00 hours on 05.01.2022. While he was attending to his duties, as about 11.30 hours he noticed male dead body lying between UP and DN lines at KM.No.672/21-23, Hamsavaram and Annavaram stations. He informed to his In-charge who arranged gang man to guard the body. Later, came to Hamsavaram station and gave memo to station Superintendent in writing who in turn informed to SI/GRP/TUNI and RPF/TUNI. Sri. J.V.S.K. Raju, Constable/RPF/Tuni states that he visited the spot on 05.01.2022 and conducted joint observation along with Sri. P. Srinivas, RPHC/TUNI. The body was found lying beside UP line track at KM. No.672/21-23 between Hamsavaram and Annavaram stations. GRP identified the deceased as Shiva Das, R/O Majuli Grent village, Assam. GRP secured items such as (1) Railway Journey e-ticket vide PNR No.6659548256, dated 03.01.2022, T.No.12510 (GHY-BNC) Express, from Rangia to Bangalore CANT, Coach S-10, Berth No.72, ticket fare Rs.1005.38, (2) UTS No.50TGD4411C from Angla to Rangia dated 02.01.2022, fare Rs.30/- (3) Voter

Identity Card, (4) One PAN Card, (5) Atal Amrit Abiyan Card, (6) Adhaar Card (7) Key Pad Mobile (8) leather purse containing cash Rs.1650/- at the spot. GRP shifted the body to GGH/TUNI for autopsy. GRP/TUNI registered this incident vide FIR No.02/2022 dated 05.01.2022. Inquest over the body of the deceased was held on 07.01.2022. GRP recovered railway journey e-ticket vide PNR No.6659548256, dated 03.01.2022, T.No.12510 (GHY-BNC) Express from Rangia to Bangalore CANT, Coach S-10, Berth No.72, ticket fare Rs.1005.38, Voter ID Card, PAN Card, Aadhaar Card, Key, leather purse containing cash Rs.1650/- from the possession of the body. Postmortem examination was conducted on same day in which opined that the cause of death due to “Shock & Haemorrhage due to multiple vital organs inquiry. IO/RPF verified the journey ticket. Inspector/RPF/Cyber Cell/HQrs extracted the ticket details from database, and furnished the details as PNR No.6659548256, dated 03.01.2022, T.No.12510 express from Rangia (RNY) to Bangalore Cant. (BNC), class-sleeper, coach –S10, berth 72 bearing one person by name Shiva Das M/32 journey dated 03.01.2022.

8.2. Further in the above circumstance the defence taken by the respondent railway that since, there is no eyewitness of the incident; they denied the incident as to be untoward incident.

8.3. On the above, it is established that at the time of the incident the deceased passenger was travelling by the train no. T.No.12510 express from Rangia (RNY) to Bangalore Cant with valid Railway Journey e-ticket vide PNR No.6659548256, dated 03.01.2022. During travelling he fell down from the running train due to his own negligence and carelessness and succumbed to injuries. Therefore, respondent railway is not liable to pay any compensation. The above averments show the admission of the fact that deceased was fell down from the running train while he was travelling with valid railway journey ticket which comes under the ambit of Untoward Incident define in 123 (b) (2) of the Railways Act, 1989. The above provision is referred as under –

123 (c) (2) Untoward Incidents means an accidental falling of any passenger from train carrying passenger.

8.4. The railway defence is that the victim was falling down from running train due to his own negligence and carelessness but in the above provision there is no such exception to the an accident of falling down of any passenger from train carrying passenger to be Untoward Incident. Section 124-A provides certain exceptions to the Railway liability to provide compensation on account of untoward incident to the dependents of the victim which are as under -

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to—

- (a) suicide or attempted suicide by him;*
- (b) self-inflicted injury;*
- (c) his own criminal act;*
- (d) any act committed by him in a state of intoxication or insanity;*
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.*

8.5. The defence taken by the railway is not any of the above but negligence and careless of the deceased. Therefore, under the above exceptions also this case cannot be excluded from the ambit of Untoward Incident as defined in Section 123(c) (2) of the Railways Act. Thus, it is proved that the deceased victim is died in a untoward incident as define in 123(c) (2) of the Railways, Act 1989. Accordingly, issue no.1 & 2 is affirmatively in favor of the applicant and against the respondent railway.

9. Issue No.3: Whether the applicants are dependent within the meaning of section 123(b) of Railway Act.1989 and entitled to claim compensation? If so, to what sum?

9.1 The applicant Anumoni Das has filed his claim application stating herself as wife of the deceased of Shiva Das. Applicant's witness proves this fact and nothing contrary on the record to belie her statement contained in evidence affidavit. The

applicant has also filed Adhaar Card, marked as Annezure-A8, in which her husband name is shown as Shiva Das. Adhaar Card of the deceased, Adhaar Card of father of the deceased and Birth Certificate of minor son and daughter is also filed by the applicant, in which they are shown as minor son, daughter and Parents of the deceased respectively. They all are first category dependents of the deceased under Section 123 (a) (i) of the Railway Act. Therefore; the applicants are entitled to get statutory compensation of Rs. 8,00,000/- along with interest under Section 124-A of Indian Railways Act 1989, from the respondent railway. Accordingly, issue no.3 is decided.

10. Issue No.4:

Relief:

In view of the conclusion drawn on the issue 1,2 & 3 as the above the applicants are proved to be entitled for statutory compensation of Rs.8,00,000/- (Rupees Eight Lakhs Only) with the simple interest @ 6% Per annum from the date of registration of the Original Claim Application i.e 23.06.2022 up to the date of this award without any further provision for cost. Accordingly issue No.4 is decided in favor of the applicant.

Conclusion:

11. On the discussions and findings as above on the issues framed in this case the claim application is liable to be allowed for payment of Rs.8,00,000/- (Rupees Eight Lakhs only) compensation along with simple interest @ 6% Per annum from the date of Registration of original application up to the date of this award to the applicant namely Anumoni Das (Wife of the decease), Miss Bhabani Das (Minor daughter of the deceased), Sri. Rahul Das (Minor son of the deceased) and Sri. Jugal Kishor Das (Father of the deceased) from the Respondent Railway. No provision for cost is required to be ordered.

ORDER

I. The original application is allowed on contest against the Respondent. Respondent is directed to make payment of statutory amount of Rs.8,00,000/-

(Rupees Eight lakhs only) to the applicants namely Anumoni Das (Wife of the deceased), Miss Bhabani Das (Minor daughter of the deceased), Sri. Rahul Das (Minor son of the deceased) and Sri. Jugal Kishor Das (Father of the deceased) along with simple interest @ 6% (Six percent) per annum from the date of registration of original claim application i.e. 23.06.2022 upto the date of this award. The compensation amount along with interest shall be paid within 90 days from the date of the receipt of copy of this award failing which, applicant shall be entitled to receive interest @ 9% per annum from the 91st day of the receipt of the order till the actual date of depositing the decreed amount with the Additional Registrar, RCT/Guwahati. The Compensation amount is directed to be distributed as under.

- a) The compensation amount of Rs.3,50,000/-(Rupees Three Lakhs Fifty Thousand only) along with whole pendilite interest on the whole compensation amount shall be payable to the wife of the deceased namely Anumoni Das, out of which Rs.1,00,000/- (Rupees One Lakhs Only) along with Pendilite interest shall be payable to her immediately through RTGS/NEFT transfer and rest of the amount of Rs.2,50,000/-(Rupees Two Lakhs Fifty Thousand only) shall be kept in the Fixed Deposit in a Nationalized Bank for 1 to 2,3,4 and 5 years respectively in equal amount i.e. Rs.50,000/- 50,000/- (Rupees Fifty Thousand) in each. On maturing the fixed deposits, the entire amount along with interest accrued during the fixed deposit will be transferred to her Savings Bank Account.
- b) The compensation amount of Rs.50,000/-(Rupees Fifty Thousand only) shall be payable to the Father of the deceased namely Jugal Kishor Das, immediately through RTGS/NEFT transfer.
- c) The compensation amount of Rs.2,00,000/-(Rupees Two lakh only) each shall be payable to the minor son and minor daughter of the deceased namely Miss Bhabani Das and Sri. Rahul Das. The above amount shall be kept as Fixed Deposit in a Nationalized Bank up to the date of they being major.

Afterward, the entire amount along with interest accrued will be transferred to their Savings Bank Account.

II. The Respondent Railway is hereby directed to deposit the awarded amount with the Additional Registrar of this Railway Claim Tribunal within a period of Ninety days from the date of receipt of this order.

III. While deciding the mode of payment, Geeta Devi Case and the Para-5 of the Ministry of Railways notification dated 3rd June/2020 and RCT/Principal Bench/Delhi's decision in Case No. OA(Ilu)DLI/53/2019 dated 16/09/2020 are taken into consideration.

IV. Railway need to ensure compliance of all the conditions mentioned in Para 5.4.4 and of Para 5.4.5. Ministry of Railways Notification of 3rd June, 2020 issued under F. No.-2019/TC-III/26/3.

V. The claimants are directed to open individual savings Bank accounts in a Nationalized Bank near of their permanent residence. The bank is directed not to permit any joint name(s) to be added in the savings bank account or fixed deposit accounts of the claimants i.e. savings bank accounts of the claimants shall be an individual savings bank account and not a joint account.

VI. The concerned bank is directed not to issue any cheque book(s) and/or debit card(s) to the claimants. If the same have already been issued, the bank is directed to cancel the same before the disbursement of the award amount and the bank shall freeze the account of the claimants so that no debit card is issued in respect of the account of the claimants from any other branch of the bank. The bank should make an endorsement on the passbook of the claimants to the effect that no cheque book and/or debit card shall not be issued to the claimants without the permission of the RCT.

VII. The original fixed deposit shall be retained by the bank in safe custody. However, the statement containing FDR number, FDR amount, date of maturity and maturity amount shall be furnished by the bank to the claimants.

VIII. Registry is directed to send a certified copy of this judgment to the applicant No.1's address through speed post.

IX. This original application stands disposed of accordingly.

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

(Mahtab Ahmad)
Member (Judicial)
RCT/GB

(Leena Sarma)
Member (Technical)
RCT/GB

Date: 20.12.2023

Rd