



रेल दावा न्यायाधिकरण
जयपुर न्यायपीठ
RAILWAY CLAIMS TRIBUNAL
JAIPUR BENCH

No. OA (IIu)/JP/10/2023

CORAM: Mr. Umesh K. Sharma, Hon'ble Member (Judicial)

Date of Registration: 25.01.2023

Date of Decision: 19.04.2024



1. **Om Prakash alias Om Prakash Goswami**
Son of Ram Chandra, aged about 49 years.
2. **Smt. Sakuntala** aged about 35 years
Wife of Shri Om Prakash alias Om Prakash Goswami,
Both Resident of: 899, Bisthiya ka Baas,
Uday Mandir, Jodhpur. ... Applicants

Versus

Union of India
Through General Manager,
North Western Railway, Jaipur. ... Respondent

Appearances: Mr. Rajesh Panda, Ld Counsel for the applicant.
Mr. Khem Chand Sharma, Ld Counsel for the
respondent.

JUDGMENT

By Sh. Umesh Kumar Sharma, Member (Judicial)

1. The claim application is filed by the parents of the deceased, under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 125 of the Railways Act, 1989 claiming compensation of Rs. 8,00,000/- along with interest at the rate of 18% p.a. from the date of incident on account of death of Akash in an alleged untoward incident.
2. The brief facts of the case are that on 07.07.2022, Akash Goswami (hereinafter referred to as "the deceased") was



travelling from Jodhpur to Bhopal train no. 14813 (Jodhpur-Bhopal Express) On Board House Keeping Services as a coach attendant. On 07.07.2022 when the said train reached Dhankya railway station, the deceased got down to fetch drink water, After drinking water, when he returned to the compartment of the train started moving and in the process he lost his balance and fell down from the train at Km No. 259/2-3, and suffered serious injuries. The deceased was admitted in Trauma Ward of Sawai Mansingh Hospital, Jaipur by 108 ambulance for treatment. But he died on 08.07.2022. GRP informed the family members about the incident. The GRP after certain mandatory formalities including post-mortem, handed over the dead body to his family for last rites. The applicants have also stated that the deceased was a bonafide passenger of the train and died in an untoward incident.

3. To substantiate their claim, the applicants have filed along with the claim application, the copies of Identity Card, certified copy traveling authority, Marg report, Fard Panchayatnama, Post-mortem report, copy of statement of Hanuman Sahay Yadav (Station Master), copy of statement of Sunil (colleague of deceased), copies of Aadhaar Cards, copy of Rashan Card and Bank details.
4. On receipt of the notice, the respondent Railway Administration appeared before the Tribunal and filed written statement and original DRM's Report along with annexures. The respondent denied the averments made by the applicants in their claim application and stated that the



deceased was a contractual Railway servant, he was made well aware of his duties and responsibilities. Deceased was to abide the safety rules in all conditions. It has further been pleaded on behalf of the respondent Railway Administration that the applicant suffered injuries while boarding the running train is covered under exception clause (a) and (c) contained in proviso to Section 124-A of the Railways Act, 1989, for which no compensation is payable to the dependents of the deceased. the respondent also averred that the deceased was not a bonafide passenger at the relevant time as no ticket was recovered from his possession. The burden lies upon the applicants to prove their own case. On the basis of these and other pleas, dismissal of the claim application has been sought by the respondent Railway Administration.

5. On the basis of the pleadings of both the parties and documents on record, the following issues were formulated for adjudication on 22.03.2023:
 - 1) *Whether the deceased was a bonafide passenger of the train No. 14813 at the time of the incident?*
 - 2) *Whether the deceased died in an untoward incident as defined under Section 123(c) (2) of the Railways Act?*
 - 3) *Whether the applicants/dependants are the dependents of the deceased and are entitled to compensation as claimed in the claim application?*
 - 4) *Relief?*
6. In evidence, Om Prakash Goswami (AW-1), the applicant no.1 and the father of the deceased filed his affidavit in

examination-in-chief. He was cross-examined by Learned Counsel for the respondent on 08.08.2023. The documents filed with the claim application were marked exhibit Ex. A/1 to A/12 as under:



S.No.	Particulars	Exhibit
1.	Identity Card	A-1
2.	Travelling Authority for OBHS employees of contractor	A-2
3.	Marg Report	A-3
4.	Fard Panchayatnama	A-4
5.	Post-Mortem Report	A-5
6.	Statement of Hanuman Sahay (Station Master)	A-6
7.	Statement of Sunil	A-7
8.	Aadhaar Card of Om Prakash	A-8
9.	Aadhaar Card of Shakuntala	A-9
10.	Aadhaar Card of Akash Goswami	A-10
11.	Rasan Card	A-11
12.	Jan-Aadhaar Card	A-12

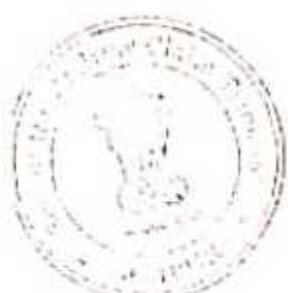
7. Respondent Railway Administration filed the DRM's Report along with documents and produced Krishna Kumar, RPF who filed his examination-in-chief on affidavit. He was cross-examined by learned counsel of the applicant on 29.11.2023.

FINDINGS

8. I have carefully gone through the pleadings of the parties, material made available on record; evidence adduced by applicants and railway respondent and heard the arguments advanced on behalf of both the sides by their learned counsels. My findings on the aforesaid issues are as follows:

Issue No. 1:

9. Learned counsel for the applicants submitted that on 07.07.2022, Akash Goswami was travelling as a coach attendant as On Board House Keeping staff, from Jodhpur to Bhopal in train no. 14813 (Jodhpur-Bhopal Express) When the said train reached Dhankya railway station, the deceased got down to fetch drink water, After drinking water, when he returned to the compartment of the train started moving and in the process he lost his balance and fell down from the train at Km No. 259/2-3, and suffered serious injuries. The deceased was admitted in Trauma Ward of Sawai Mansingh Hospital where he died during treatment. Ld Counsel for the applicant submitted that the deceased was a contractual railway servant on duty in the said train therefore a bonafide passenger as defined under section 2(29), and died in an untoward incident as defined under Section 123(c) (2) of the Railways Act, 1989.
- 10.
11. During cross-examination, nothing contradictory has come out. The documents filed along with the claim application, were got exhibited by him as A/1 to A/14. Hence the applicants being the only dependant is entitled for compensation as claimed for in the claim application.



12. On the other hand, learned counsel for the respondent has argued that the alleged incident is not covered under the definition of untoward incident within the meaning of Section 123 (c)(2) of the Railways Act, 1989. It is clear from the investigation that one Chittar Mal informed that a person got injured while boarding in a running train, and in the incident both his legs have been amputated but he is alive. Thus the incident falls under exception contained in proviso (b) to section 124-A of the Railways Act, 1989. The deceased was not a bonafide railway passenger. Hence, the claim petition is liable to be dismissed.
13. In Post-Mortem Report (A-1) specifically mentioned that "मृतक की मौत ट्रेन से गिरने से आई चोट के कारण"। And in the conclusion, the DRM's Report mentioned that "एक बाहरी व्यक्ति द्वारा उक्त व्यक्ति को रेल लाइनो के पास गिरने और उसके दोनों पैर कटने का चश्मदीद गवाह होना पाया जिसने अपने बयानों में बताया गया है। उक्त घटना के बारे में स्टेशन मास्टर द्वारा भी छीतरमल द्वारा सूचना देने के बारे में अपनी TSR बुक में दर्शाया है। उक्त गाड़ी के चालक व गार्ड द्वारा अनभिज्ञता जताई गई उनके द्वारा भी अपने बयानों में मृतक को गाड़ी गिरकर पैर कटने की सूचना नहीं होना बताया गया है। मृतक दिनांक 07.07.2022 को रेल का सदभावी यात्री नहीं था, व रेल अधिनियम की धारा 124 के उपधारा (1) ग के तहत घटना आनपेक्षित घटना की श्रेणी में नहीं है, वह मृतक का वादी रेलवे से कोई दावा लेने का हकदार नहीं है।
14. The applicants have filed the identity card of the deceased (Ex- A/1) and travelling authority of the deceased. (Ex-A/2) indicating specifically the validity period from 01.06.2022 to 31.07.2022 authorised to travel in Train No. 14S13/14 (JU-BPL-JU). The Railway administration has not question

or rebut these documents. Thus the deceased was authorised to travel in the said train.

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15. In the Form-1 prepared by the RPS, it is specifically mentioned that as per the eyewitness Chittarmal, a person fell down from the train. The same fact was recorded in the untoward incident register maintained by the Station Master, Dhanakaya Railway Station. The same facts were recorded by the Investigating officer in the statement of Chittarmal annexed with DRM's Report at page 16.
16. In **Union of India versus Rina Devi (2018 ACJ 1441)** it is specifically held that if the injuries are suffered while boarding or de- boarding from the train, same will not constitute self inflicted injuries. Para 16.6 of the said judgment is reproduced below:

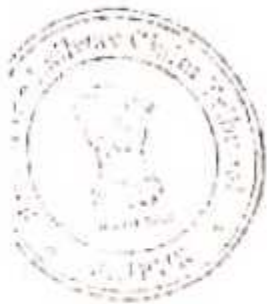
"16.6 We are unable to uphold the above view as the concept of 'self inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. We may in this connection refer to the judgment of this Court in United India Insurance Co Ltd., versus Sunil Kumar laying down that plea of negligence of the victim cannot be allowed in claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or deboarding a train will be an 'untoward incident' entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor.



17. On the touchstone of the observations made by the Hon'ble Apex Court in Rina Devi (supra), the injuries suffered by the deceased will not fall under the exception clause of Section 124-A of the Railways Act, 1989, and thus, it is held that the death of the deceased has taken place on account of an untoward incident. Hence the issues under consideration are decided in favour of the applicants and against the respondents.

Issue No. 3 & 4:

18. Case in hand has been filed before this Tribunal by the applicants, are the only dependants of the deceased. Applicant No.1 Om Prakash has also deposed in his affidavit during evidence that present applicants are the only dependants of the deceased. To prove the dependence of the applicants, true copies of Aadhaar Card, Jan-Aadhaar Card and Family Ration Card have been placed on record by the applicants as Ex. A/8 to Ex. A/12. On the contrary, no evidence whatsoever has been adduced on behalf of respondent to rebut the case of the applicants on the point of dependence of the applicants. Moreover, during pendency of the claim application, none else appeared before the Tribunal claiming himself/herself as one of the dependants or/and the sole dependants of the deceased.
19. Applying the principles laid down by Hon'ble Supreme Court in the case of Rina Devi (2018) to the present case, it is held that the applicants being the only dependants of the deceased within the meaning of Section 123(b)(i) & (ii) of the Railways Act, 1989, are entitled to get an amount of Rs. 8,00,000/- as

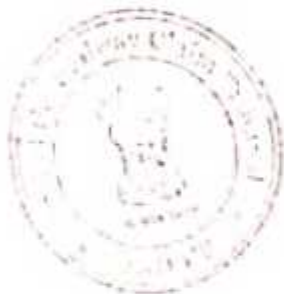


compensation as prescribed under Part-I of the Scheduled appended to Rule 3(3) of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 as amended on 22.12.2016 (w.e.f 01.01.2017) along with interest @ 9% per annum from the date of incident i.e. 07.07.2022 till the date of award. Hence it is

ORDERED

20. That the claim application is allowed in favour of the applicants. The respondent Railway administration is directed to pay Rs. 8,00,000/- to them as compensation along with interest @ 9% per annum from the date of incident i.e. 07.07.2022 till the date of award.
21. The payment shall be made to the applicants in the manner described as under:

<i>Name of the applicants</i>	<i>Amount to paid to the applicants immediately by NEFT/RTGS</i>	<i>Amount to be invested in fixed deposit scheme of Nationalized Bank and the amount to be dispersed monthly</i>
<i>Om Prakash (father of the deceased)</i>	<i>Rs.40,000/- (Rs. Forty Thousand Only) along with proportionate interest.</i>	<i>Rs.3,60,000/- (Rupees Three Lakhs Sixty Thousand Only). This amount will be kept in the form of fixed deposit for a period of three years. However, the monthly interest accrued on this amount shall be credit to his SB account.</i>



Shakuntala (mother of the deceased)	Rs.40,000/- (Rs. Forty Thousand Only) along with proportionate interest.	Rs.3,60,000/- (Rupees Three Lakhs Sixty Thousand Only). This amount will be kept in the form of fixed deposit for a period of three years. However, the monthly interest accrued on this amount shall be credit to her SB account.
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22. The respondent Railway Administration is hereby directed to deposit the amount awarded with the Additional Registrar of this Tribunal within a period of 60 days failing which the applicants shall also be entitled to receive interest @ 9% per annum from the date of award till the actual date of depositing the amount with the Additional Registrar.
23. The applicants are hereby directed to submit the details of their Aadhaar linked Bank accounts of a Nationalized Bank situated nearest to their place of residence to the Additional Registrar of this Tribunal.
24. The Bank shall not permit any joint name to be added in the saving bank account or fixed deposit account of the applicants i.e. their Saving Bank Accounts shall be an individual Saving Bank Account and not a Joint Account.
25. The maturity amounts of the FDRs be credited by Electronic Clearing System (ECS) in the said Saving Bank Accounts of the applicants.



26. No loan, advance, withdrawal, or pre-mature discharge be allowed on the fixed deposit without permission of the Tribunal.
27. The concerned Bank shall not issue any cheque book and/or debit card to the applicants. However, in case the debit card and/or cheque book have already been issued, Bank shall cancel the same before the disbursement of award amount. The Bank shall freeze the accounts of the applicants so that no debit card be issued in respect of the accounts of the applicants from any other Branch of the Bank.
28. The Bank shall make an endorsement on the passbooks of the applicants to the effect that no cheque book and/or debit card have been issued or will be issued without the permission of the Tribunal and the applicants shall produce the passbooks with the necessary endorsement duly signed and stamped by the Bank before the Additional Registrar of this Tribunal. The Bank is further directed to permit the applicants to withdraw money from their Saving Bank Accounts by means of a withdrawal form only.
29. The Respondent Railway Administration is also directed to place on record the proof of deposit of the award amount with up-to-date interest along with a calculation sheet and the same shall be filed with the Additional Registrar.
30. In the facts and circumstances of the case, there is, however, no order as to costs.
31. Registry is directed to send a free certified copy of this judgment directly to the applicants at their postal address

mentioned in the claim application by Speed Post in view of Rule 34 (3) of the Railway Claims Tribunal (Procedure) Rules, 1989.



32. Copy of this order be supplied to both the parties free of costs, and to file, after its due compensation, be consigned to the Record Room.

Judgment pronounced, signed and sealed in open Court today i.e. 19.04.2024.

(Umesh K. Sharma)
Member (Judicial)
RCT, Jaipur