



रेल दावा न्यायाधिकरण
जयपुर न्यायपीठ
**RAILWAY CLAIMS TRIBUNAL
JAIPUR BENCH**

No. OA (Hu)/JP/30/2023



CORAM: Mr. Umesh K. Sharma, Hon'ble Member (Judicial)
Ms. Jhanja Tripathy, Hon'ble Member (Technical)

Date of Registration: 27.02.2023

Date of Decision: 26.12.2023

Mahesh Bishnoi

Son of Sh. Babulal, aged about 22 years.
Resident of: Bishnoiyan Ka Bas, Joliyali,
Mandore, Jodhpur, Rajasthan.

...Applicant

Versus

Union of India

Through General Manager,
North Western Railway, Jaipur.

...Respondent

Appearances: Mr. Munish Tyagi, Ld. Counsel for the applicant.
Mr. Tikam Chand Sharma, Ld. Counsel for the
respondent.

JUDGMENT

By Sh. Umesh Kumar Sharma, Member (Judicial)

1. The claim application is filed by the applicant, Mahesh Bishnoi under Section 16 of the Railways Claims Tribunal Act, 1987 read with Section 125 of the Railways Act, 1986, 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 injuries sustained by him in an alleged untoward incident.
2. The brief facts of the case are that on 03.02.2018, Mahesh Bishnoi, "the injured" after purchasing a second-class rail journey ticket bearing No. 38270279, for going to Jodhpur



Railway Station from Kathgodam Railway Station, boarded in Ranikhet Express train (15014). During the journey, due to ill health he was vomiting while standing in front of the washbasin, suddenly due to strong jerk, he fell down from the moving train between Rajkiyawas and Lomadada at Km No. 798/10. He was taken to Govt. Hospital, Pali by the railway authorities, and from where he was referred to M.G. Hospital, Jodhpur for further treatment. The police informed the family members of the injured about the said incident and family of the injured took him to Command Hospital, Southern Command for better treatment. In the said untoward incident, he suffered from diffuse axonal injury and got fractured on right frontal skull and also sustained injuries on the other parts of the body. The applicant has also stated that the injured was a bonafide passenger of the train No. 15014 and got injured in an untoward incident hence entitled to compensation claimed for.

3. To substantiate their claim, the applicant has filed Memo, Roznamcha, medical record including Discharge Summary, photocopy of rail journey ticket, Medical Board Certificate along true copy of Aadhar Card and Bank Details.
4. On receipt of the notice, the respondent Railway Administration appeared before the Tribunal and filed the 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 applicant was not a bonafide passenger of the said train



because no rail journey ticket was recovered from him during the incident. In addition, nobody from the passengers pulled the chain of the train when the applicant fell down or informed about the same. Thus, the applicant is himself responsible for the said mishap not the railway administration. The negligence and carelessness of the injured caused the incident. On these grounds, the respondent prayed for the dismissal of the claim application.

5. On the basis of the pleadings of both the parties and documents on record, the following issues were formulated for adjudication on 28.03.2023:

- 1) *Whether the applicant was travelling on a valid railway journey ticket and was a bonafide passenger of the train in question at the relevant time?*
- 2) *Whether the applicant got injured in an untoward incident as defined under Section 123 (c)(2) of the Railway Act, 1989?*
- 3) *Whether the applicant is entitled to compensation as claimed for in the claim application?*
- 4) *Relief?*

6. In evidence, Mahesh Bishnoi (AW-1), the applicant filed his affidavit in examination-in-chief. He was cross-examined by Sh. Tikam Chand Sharma, Ld. Counsel for the respondent on 25.09.2023. The documents filed with the claim application were marked exhibit Ex. A/1 to A/4 and Ex. A/7 to A/9 as under:

S.No.	Particulars	Exhibit
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1.	Memo	A-1
2.	Roznamcha	A-2
3.	Discharge Summary	A-3
4.	Adhaar Card of Mahesh Bishnoi	A-4
7.	Rail Journey Ticket	A-7
8.	Medical Board Certificate	A-8
9.	Nabh Accredited Hospital Bill	A-9

7. The respondent Railway Administration has filed the statutory DRM's report along with annexed documents; the same was collectively marked as Ex. R-1. The respondent has also produced Sh. Jamnalal Meena (RW-1), Sub-Inspector, Pali. He was cross-examined by Sh. Munish Tyagi, Ld. Counsel for applicant on 29.11.2023.

FINDINGS

We have carefully gone through the pleadings of the parties, material made available on record; evidence adduced by applicant and heard the arguments advanced on behalf of both the sides by their counsels. Our findings on the aforesaid issues are as follows:

Issue No. 1:

8. Learned Counsel for the applicant submitted that on 03.02.2018, Mahesh Bishnoi "the injured" after purchasing rail journey ticket No. 38270279 and PNR No. 2822248155 for going to Jodhpur Railway Station from Kathgoda Railway Station boarded in Ranikhet Express train (15014).



Thus, at the time of the incident the injured was a bonafide passenger of the said train. In the DRM's Report the respondents have admitted the fact that at the time of the incident, the injured had a rail journey ticket bearing PNR No. 2822248155 for one person. In view of the admission by the railway administration regarding the railway journey ticket, the issue that the injured was bonafide passenger at the time of the incident is decided affirmatively in favour of the applicant.

Issue No. 2:

9. Learned Counsel for the applicant submitted that on 03.02.2018, Mahesh Bishnoi "the injured" after purchasing second class rail journey ticket No. 38270279 for going to Jodhpur Railway Station from Kathgodam Railway Station boarded in Ranikhet Express train (15014). During the journey, due to ill health he was vomiting while standing in front of the washbasin, suddenly due to strong jerk, he fell down from the moving train between Rajkiyawas and Lomadada at Km No. 798/10. In the said untoward incident, he suffered from diffuse axonal injury and got fractured on right frontal skull and also sustained injuries on the other parts of the body. Thus, the applicant got injured in an untoward incident and is liable to compensation as claimed for.
10. In Contra, Ld. Counsel for the respondent has argued that the applicant was not a bonafide passenger of the said train because no rail journey ticket was recovered. And, nobody



from the passengers pulled the chain of the train when the applicant fell down or informed about the same. Thus, the said incident does not come under the category of untoward incident as defined under Section 124-A of Railway Act, 1989. Hence, the claim petition is liable to be dismissed.

11. Mahesh Bishnoi (AW-1), the injured in his affidavit has deposed that "यात्रा में तबीयत खराब हो जाने के कारण वॉश बेशन के सामने खड़ा होकर उल्टी कर रहा था, अचानक जोर से शटका लगने से दुर्घटनाग्रस्त राजकीय बस व लोमादड़ा के मध्य किलोमीटर संख्या 798/10 में चलती गाड़ी के डिब्बे के दरवाजे से बाहर गिर गया। इस अप्रिय घटना में प्रार्थी के डिफ़्यूज एक्सोनाल इन्जरी तथा फ्रैक्चर राइट फ्रैटल स्क्यूला तथा शरीर के अन्य हिस्सों में भी चोट आई है।"
12. Sh. Jannalal Meena (RW-2), the witness produced by the respondent during his cross-examination stated that "घायल महेश विशनोई भारतीय सेना में कार्यरत है। मुझे घटना की जांच बलेम यादिका पेश होने के बाद मिली थी। मुझे जांच मिली से उससे पहले हुई जांच की जानकारी मुझे है। घटना के पश्चात घायल को एम्बुलेंस में ले जाते वक्त वह सेना में है मुझे इस बात की जानकारी नहीं थी। यह कहना सही है कि मैंने जांच रिपोर्ट मैंने समस्त जांच करने के पश्चात ही लिखी है। मैंने टिकट का सत्यापन करवाया था। टिकट का भुगतान फ्रीजी बालेट से किया गया था।"
13. In the DRM's Report conclusion, it is mentioned that "घायल महेश विशनोई पुत्र श्री दादुलाल दिनांक 03.02.2018 को रेलवे राजकियावास के मध्य किमी. सं. 71342 पर घायल अवस्था में पड़ा होने की सूचना दकरी घराने वाले व्यक्ति के द्वारा पॉइन्ट्समैन को मिलना पाया गया जिसने एम्बुलेंस के द्वारा इलाज हेतु अस्पताल भेजा गया। उक्त घटना को ऐसा कोई गवाह नहीं मिला जिसने घायल को गाड़ी से गिरते हुए देख हो। परिवारदी (घायल) द्वारा अपने दायनो में सवारी गाड़ी सं. 150 15014 से काठगोदाग से जोधपुर की यात्रा करते हुए अचानक तबीयत खराब हो जाने के कारण गाड़ी में लगे वॉशिन बेशन पर उल्टी करते हुए चक्कर आ जाने के

कारण चलती गाड़ी से गिरना बताया है। दावा पत्रावली शामिल टिकट का सत्यापन करने पर सही होना पाया गया।"

14. In **Union of India versus Rina Devi (2018 ACJ 1441)** it is specifically held that "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 de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will not fall under the proviso to Section 124-A merely on the plea of negligence of the victim as a contributing factor."
15. 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 any of the exceptions clauses 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. Accordingly, this issue is decided in favour of the applicant.

Issue No.3&4



16. Case in hand has been filed before this Tribunal by the applicant on account of injuries suffered by him in an untoward incident. The applicant has filed the Medical Report of the injured wherein it is specified that the applicant had sustained mildly depressed fracture of right frontal squama. Medical Board Certificate issued by C.H.C., Jaipur, has categorised the injuries to the applicant as 25% permanent physical disability due to head injury. To prove the injuries, the applicant has made available on record relevant material record as Ex. A/3 to A/6. Perusal of the aforesaid medical record.
17. During cross-examination of the applicant, both the counsels agreed that the injuries to the victim are non-scheduled as per the Railway Accident and Compensation Rules, 1990.
18. Applying the principles laid down by Hon'ble Supreme Court in the case of Union of India Vs. Rina Devi (supra), and keeping in view 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) we are of the view that an amount of Rs. 1,00,000/- shall be reasonable under the facts and circumstances of the case. Hence, it is:

ORDERED

19. The claim application is allowed in favour of the applicant. The respondent Railway administration is directed to pay Rs. 1,00,000/- to him as compensation along with interest @ 9% per annum from the date of incident i.e. 03.02.2018



till the date of depositing the compensation amount with Suitors Money Account of Additional Registrar of this Tribunal . Accordingly, the respondent shall deposit the amount of award in the Suitors Money Account of this Tribunal maintained by the Additional Registrar within a period of 30 days from the date of this award.

20. So far as disbursal of the amount of award is concerned, we have heard the learned counsel for the parties. It is noticed that in *Geeta Devi v Union of India [FAO 22/2015 & CMA 4501/2015]* dated 24th May, 2019, Delhi High Court has *inter alia* observed that: -

"5. 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 fomenting 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 claimant is 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 vs New India Insurance Company*, SLP (C) No.31521-31522 of 2017. A statutory rule backing will, therefore, best serve the interest of the litigant”

21. In pursuance of the orders passed by the Delhi High Court, Government of India has issued a Notification No. GSR (E) 347 dated 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 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 sub serve 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 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.*

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."*

22. Therefore, in compliance of Rule 5 quoted above, in the present case, the amount of award shall be disbursed in the following manner:
23. The respondent Railway shall deposit the awarded amount in the Suitors Money Account of this Tribunal maintained by the Additional Registrar within a period of 30 days from the date of this award. While depositing the awarded amount, along with interest, if any, the respondent railway shall send notice by the registered post to the applicant with a copy of the same to the Additional Registrar and to the counsel for the opposite party giving complete details of the payment such as UTR number, calculation of interest etc.



24. Out of the total, 10% amount of compensation, Rs. 10,000/- (Rupees Ten thousand) together with interest, if any, shall be released forthwith by ECS/NEFT to the applicant. The remaining amount i.e. Rs. 90,000/- (Rupees Ninety Thousand only) shall be invested in a fixed deposit scheme for three years in a nationalized bank near the place of residence of the applicant. On maturity, the amount payable to him along with accrued interest shall be transferred to his savings bank account.

25. The applicant is hereby directed to submit the details of individual Bank account of a nationalized Bank situated near the place of his residence to the Additional Registrar of this Tribunal.

26. In pursuance of Rule 5.4.4 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 as amended by GSR 347 (E) dated 3rd June, 2020, following conditions are imposed in respect to the fixed deposits: -

- (i) The Bank shall not permit any joint name(s) to be added to the applicant's savings account or fixed deposit account.
- (ii) No loan, advance, withdrawal or pre-mature discharge be allowed from the fixed deposit without permission of the Tribunal,



(iii) The monthly interest be credited by ECS in the savings bank account of the applicant.

(iv) The Bank shall not issue any cheque book and/or debit card to the applicant. However, in case the debit card and/or cheque book have already been issued, bank shall cancel the same before the disbursement of the award amount.

(v) The bank shall make an endorsement on the passbook of the applicant to the effect that no cheque book and/or debit card have been issued and shall not be issued without the permission of the Tribunal and the applicant shall produce the passbook with the necessary endorsement before the Additional Registrar of this Tribunal.

27. The application is allowed in the above terms with no order as to costs.

28. Judgment pronounced, signed and sealed in open Court today i.e. 26.12.2023.

(Jharaja Tripathy)
Member (Technical)
RCT, Jaipur

(Umesh Kumar Sharma)
Member (Judicial)
RCT, Jaipur