



रेल दावा न्यायाधिकरण
जयपुर न्यायपीठ
RAILWAY CLAIMS TRIBUNAL
JAIPUR BENCH

Claim Application No. OA-II-76/2020



CORAM: Mr. Virendra Kumar Goyal, Hon'ble Member (Judicial).
Ms. Jhanja Tripathy, Hon'ble Member (Technical).

Date of Registration: 27.07.2020

Date of Judgment: 21.03.2024

1. Smt. Kesar Bai wife of Late Shri Khemraj alias Kheema Ji, aged about 76 years.
2. Chandu Lal son of Shri Late Shri Khemraj alias Kheema Ji, aged about 50 years.
3. Manna Lal Banjara son of Late Shri Khemraj alias Kheema Ji, aged about 47 years.
4. Mahendra Singh Banjara son of Late Khemraj alias Kheema Ji, aged about 32 years.

All are residents of Village Gopalpura, Rathajana, Pratapgarh, District Pratapgarh (Rajasthan).

.....Applicants

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.

....Respondent

2. Smt. Mamta Banjara wife of Shri Mahipal Banjara, daughter of Late Shri Khemraj alias Kheema Ji, aged about 37 years, resident of Krishna Nagar, Bherda Road, Chanderia, District Chittorgarh (Rajasthan).
3. Maya daughter of Late Shri Khemraj alias Kheema Ji, aged about 34 years, resident of Village Gopalpura, Rathajana, Pratapgarh, District Pratapgarh (Rajasthan).

.....Proforma respondents

Claim for Rs.8,00,000/- along with interest

PRESENT

Mr. Rajesh Panda, learned counsel for the applicants.

Mr. Jitendra Singh Rathore, learned counsel for the respondent.

JUDGMENT

Per Ms. Jhanja Tripathy, Member (T).

1. This claim application has been preferred before this Tribunal by the wife, sons and daughters of the deceased, being the only dependants, 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 on account of death of Khemraj alias Kheema Ji in an alleged untoward incident.
2. In a nutshell, it has been averred in the claim application that on 23.6.2019 Shri Khemraj alias Kheema Ji and his grandson Shri Anand Banjara were to travel from Chanderia to Hardiya Khal by a passenger train. For the aforesaid journey, they were having a valid second class railway journey ticket bearing No.786142617, valid for two adults. Shri Mahipal, son-in-law of Shri Khemraj alias Kheema Ji came to see them off at Chanderia railway station. It has further been averred in the claim application that inadvertently they boarded Train No.09721. During journey, when they came to know about this fact by the fellow coach passengers, they came near the door of the coach with an intention to get down at the next railway station and from where Shri Khemraj alias Kheema Ji due to loss of balance, accidentally fell down from the running train. Due to fall from the running train, Shri Khemraj alias Kheema Ji suffered grave injuries. On seeing this, the fellow coach pulled the alarm chain. After stopping the train, the Guard and Shri Anand Banjara reached the site of incident. Further, the Guard through a Memo informed the Station Master, Bairaj about this incident. Later, Shri Khemraj alias Kheema Ji was shifted to the Government Hospital, Chittorgarh where he died during treatment. Subsequent to death of Shri Khemraj alias Kheema Ji, the Police after completion of certain

requisite formalities under Section 174 Cr.P.C. including postmortem on the dead body, handed it over to the family members for final rituals. It has been stated by the applicants that the relevant railway journey ticket is in the custody of Police.



3. To strengthen their claim, the applicants have made available on record copies of the Memo, Marg Report, Fard Naksha Mauka, Fard Panchayatnama, Postmortem Report, Fard Supurdagi Laash, Final Report, Aadhaar Cards, Family Ration Cards and their Bank details.
4. On receipt of the notice, the respondent Railway Administration appeared before the Tribunal and filed its written statement along with the original DRM's Report pleading therein that present claim application has been filed by the applicants on the basis of false averments. Hence, the claim application filed by the applicants *prima facie* deserves to be dismissed. It has been pleaded on behalf of the respondent Railway Administration that the alleged incident is not covered under the definition of untoward incident as defined under Section 123 (c) of the Railways Act, 1989 but is covered under the exceptions provided with Section 124A of the Railways Act, 1989 for which no compensation is admissible to the applicants. The applicants have not produced the tickets along with the claim application. The ticket claimed to have been possessed by the deceased at the relevant time, was of a passenger train whereas the deceased fell down from a superfast train. Hence, he was not a bonafide passenger at the time of occurrence of the alleged incident within the meaning of Section 2 (29) read with Section 124A of the Railways Act, 1989. The deceased met with this incident in the process of getting down from the running train after coming to know that he had boarded a wrong train. Hence, the deceased met with this incident due to his own criminal act. 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. Based on the pleadings of the parties and material made available on record, following issues were formulated by the Tribunal on 24.6.2021:

- 1) *Whether the deceased was a bonafide passenger of the alleged train at the relevant time?*
- 2) *Whether the deceased died as a result of an untoward incident due to a fall from the passenger carrying train and whether the present case is covered under the definition of Section 123 (c) (2) of the Railways Act, 1989?*
- 3) *Whether the applicants are the sole dependants of the deceased and are entitled to compensation as claimed under Para-VII of the claim application?*
- 4) *Relief?*

6. In the evidence, applicant No.2 Shri Chandu Lal has filed his own examination-in-chief on affidavit. The documents filed along with the claim application, were got exhibited by him as A/1 to A/15. Besides, examination-in-chief on affidavits of Shri Anand Banjara, co-traveller with the deceased and Shri Mahipal Singh have also been filed on behalf of the applicants. They were cross-examined by learned counsel for the respondent Railway Administration on 30.6.2023 and 04.10.2023.

7. The respondent Railway Administration in its evidence, has filed examination-in-chief on affidavit of Shri Amit Kumar, Enquiry Officer. The DRM's Report filed along with the written statement, was got exhibited by him as R/1. He was cross-examined by learned counsel for the applicants on 21.11.2023.

FINDINGS

8. We have carefully gone through the pleadings of the parties, material made available on record, evidence adduced by them 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 & 2:

9. Both these issues are being taken up and decided together.

10. Applicant No.2 Shri Chandu Lal has deposed by way of his affidavit that on 23.6.2019 his father Shri Khemraj alias Kheema Ji and his nephew Shri Anand Banjara were to travel from Chanderia to Hardiya Khal by a passenger train. For the aforesaid journey, they were having a valid second class railway journey ticket bearing No.786142617, valid for two adults. His brother-in-law Shri Mahipal Singh came to see them off at Chanderia railway station. It has further been deposed by him that inadvertently they boarded Train No.09721. During journey, when they came to know about this fact by the fellow coach passengers, they came near the door of the coach with an intention to get down at the next railway station and from where his father Shri Khemraj alias Kheema Ji due to loss of balance, accidentally fell down from the running train. Due to fall from the running train, Shri Khemraj alias Kheema Ji suffered grave injuries. On seeing this, the fellow coach pulled the alarm chain. After stopping the train, the Guard and Shri Anand Banjara reached the site of incident. Further, the Guard through a Memo informed the Station Master, Bairaj about this incident. Later, Shri Khemraj alias Kheema Ji was shifted to the Government Hospital, Chittorgarh where he died during treatment. Subsequent to death of Shri Khemraj alias Kheema Ji, the Police after completion of certain requisite formalities under Section 174 Cr.P.C. including postmortem on the dead body, handed it over to the family members for final rituals. It has also been deposed by him that the relevant railway journey ticket is in the custody of Police. During cross-examination nothing contradictory has come out. The applicants' witnesses Shri Anand Banjara, co-passenger with the deceased and Mahipal Singh have also deposed the same facts by way of their affidavits. During cross-examination nothing contradictory has come out which could lead us to doubt their

testimonies. Applicant No.2 Shri Chandu Lal got the documents exhibited as A/1 to A/15 filed along with the claim application.



11. *Per contra*, learned counsel for the respondent has argued that deceased Shri Khemraj alias Kheema Ji was not a bonafide passenger at the material time within the meaning of Section 2 (29) read with Section 124A of the Railways Act, 1989 as the train by which he allegedly fell down, was a superfast train and the ticket possessed by him, was not valid for that train. He has further argued that the deceased met with this incident due to his own criminal act as he was attempting to alight from the running train. This act of the deceased is a criminal act as defined under Section 156 of the Railways Act, 1989. Hence, the alleged incident is covered under clause (b) and (c) to the proviso to Section 124A of the Railways Act, 1989 for which no compensation is admissible to the applicants. It has also been argued by him that the said fact stands corroborated with the testimony of the witness of the respondent Railway Administration and the original DRM's Report. In the end, he has prayed for dismissal of the claim application.
12. We have carefully heard the submission made by both the parties and also perused the material made available on record by them.
13. The witness of the respondent Railway Administration Shri Amit Kumar has deposed by way of his affidavit that enquiry in present matter was conducted by him. During enquiry, it was revealed that the deceased and his grandson boarded a wrong train and when they came to know about the same, Shri Khemraj alias Kheema Ji while getting down from the moving train at Dagla Ka Khera Bairaj, accidentally fell down, suffered grave injuries and died. It has also been deposed by him that the train by which Shri Khemraj alias Kheema Ji fell down, was a Superfast train and the ticket being possessed by him at the relevant time, was for a passenger train. Hence, the said ticket was not valid for the train by which he fell



down being a Superfast train. Therefore, the deceased was not a bonafide passenger of the train in question at the time of occurrence of the incident. Besides, Shri Anand Banjara resisted Shri Khemraj alias Kheema Ji to not to alight from the running train but he did not hear him. The DRM's Report is Ex.R/1. During cross-examination, he has stated that it is true that deceased fell down from Train No.09721. The deceased was having a ticket at that time. He has further stated that during enquiry, he did not record statement of any railway official who was present at the site of incident.

14. From the testimony of this witness of the respondent Railway Administration, it is amply clear that the deceased at the material time, was having a ticket and he fell down from Train No.09721. Admittedly the deceased was not having a superfast ticket at that time but it is also true that he inadvertently boarded the said train. Besides, the respondent Railway Administration has a vast ticket checking machinery and the deceased could have been charged for the difference of fare. Although this witness of the respondent Railway Administration has deposed that deceased met with this incident in the process of getting down from the running train, no witness has been produced on behalf of the respondent Railway Administration to establish the said fact. Hence, the deposition made by this witness of the respondent Railway Administration, in our considered view, is not sufficient to establish the fact that the deceased met with this incident in the process of getting down from the running train which is a criminal act under Section 156 of the Railways Act, 1989. Thus, the said incident is covered under clause (c) to the proviso to Section 124A of the Railways Act, 1989 for which no compensation is admissible to the applicants.
15. Ex.A/1 is the copy of Memo issued by the Guard of Train No.9721 addressed to the Station Master, Bairaj Junction C/o concerned Police Station. In the said Memo, the Guard has specifically

mentioned that a person while getting down from the train as told by the other passengers, has fallen down. He was having a ticket ex. Chanderia to Hardiya Khal bearing No.86142617.



16. The copy of Memo issued by the Guard of the train in question further confirms the facts that the deceased was having a ticket and he fell down from the train. Although it has been mentioned therein that he fell down from the said train in the process of getting down from the running train as told by the other passengers, no witness has been produced on behalf of the respondent Railway Administration to prove the same.
17. Hence, the respondent Railway Administration in view of the law and principle laid down by the Hon'ble Supreme Court in the case of *Union of India v. Rina Devi* 2018 SCC OnLine SC 507, has failed to discharge the burden of proof *prima facie* shifted upon them to prove that deceased Shri Khemraj alias Kheema Ji was not a bonafide passenger at the material time within the meaning of Section 2 (29) read with Section 124A of the Railways Act, 1989 and his death did not happen as a result of an untoward incident due to a fall from the passenger carrying train as defined under Section 123 (c) (2) read with Section 124A of the Railways Act, 1989; or the present case is covered under any of the exceptions provided with Section 124A of the Railways Act, 1989 for which no compensation is admissible to the applicants.
18. In view of the judgement quoted above, our discussions in foregoing paras and looking at the facts and circumstances of the case in hand, it is held that Shri Khemraj alias Kheema Ji was a bonafide passenger at the relevant time within the meaning of Section 2 (29) read with Section 124A of the Railways Act, 1989 and his death happened as a result of an untoward incident due to a fall from the passenger carrying train under the ambit of Section 123 (c) (2) read with Section 124A of the Railways Act, 1989. Accordingly both these

issues are decided in favour of the applicants and against the respondent.

Issue No.3 & 4:

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19. Both these issues are being taken up and decided together being interlinked with each other.
 20. Case in hand has been filed by the wife, sons and daughters of the deceased being the only dependants. Applicant No.2 Shri Chandu Lal vide Para-5 of his affidavit, has deposed that the present applicants and proforma respondents No.2 and 3 are the only dependents of the deceased. During cross-examination nothing contradictory has come out. To prove their sole dependence, true copies of the Aadhaar Cards and Family Ration Cards have been filed by the applicants as Ex.A/8 to A/15. 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 present applicants and proforma respondents No.2 and 3. 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 dependant of the deceased.
 21. Applying the principles laid down in *Rina Devi (supra)* in the present case, it is held that the present applicants and proforma respondents No.2 and 3 being the only dependants of the deceased within the meaning of Section 123 (b) (i) 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 Schedule 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. 23.6.2019 till the date of award. Both these issues are decided accordingly.

ORDER

22. The claim application is allowed in favour of the applicants and proforma respondents No.2 and 3. 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. 23.6.2019 till the date of award.
23. The payment shall be made to the applicants in the manner described as under:

Name of the applicant	Amount to be paid to the applicant immediately by NEFT/RTGS	Amount to be invested in fixed deposit scheme of Nationalized Bank and the amount to be disbursed monthly
Smt. Kesar Bai (wife of the deceased)	Rs.55,000/- (Rs. fifty five thousand only) along with proportionate interest.	Rs.4,95,000/- (Rupees four lakh ninety five thousand only). This amount will be kept in the form of fixed deposit for a period of one year. However, the monthly interest accrued on this amount shall be credited to her SB Account.
Chandu Lal (son of the deceased)	Rs.5,000/- (Rs. five thousand only) along with proportionate interest.	Rs.45,000/- (Rupees forty five thousand only). This amount will be kept in the form of fixed deposit for a period of one year. However, the monthly interest accrued on this amount shall be credited to his SB Account.
Manna Lal Banjara (son of the deceased)	Rs.5,000/- (Rs. five thousand only) along with proportionate interest.	Rs.45,000/- (Rupees forty five thousand only). This amount will be kept in the form of fixed deposit for a period of one year. However, the monthly interest accrued on this amount shall be credited to his SB Account.



<i>Mahendra Singh Banjara (son of the deceased)</i>	<i>Rs.5,000/- (Rs. five thousand only) along with proportionate interest.</i>	<i>Rs.45,000/- (Rupees forty five thousand only). This amount will be kept in the form of fixed deposit for a period of one year. However, the monthly interest accrued on this amount shall be credited to his SB Account.</i>
<i>Smt. Mamta Banjara (married daughter of the deceased)</i>	<i>Rs.5,000/- (Rs. five thousand only) along with proportionate interest.</i>	<i>Rs.45,000/- (Rupees forty five thousand only). This amount will be kept in the form of fixed deposit for a period of one year. However, the monthly interest accrued on this amount shall be credited to her SB Account.</i>
<i>Maya (daughter of the deceased)</i>	<i>Rs.5,000/- (Rs. five thousand only) along with proportionate interest.</i>	<i>Rs.45,000/- (Rupees forty five thousand only). This amount will be kept in the form of fixed deposit for a period of one year. However, the monthly interest accrued on this amount shall be credited to her SB Account.</i>

24. 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 and proforma respondents No.2 and 3 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.
25. The applicants and proforma respondents No.2 and 3 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.
26. The Bank shall not permit any joint name(s) to be added in the saving bank accounts or fixed deposit accounts of the applicants and

proforma respondents No.2 and 3 i.e. their Saving Bank Accounts shall be an individual Saving Bank Account and not a Joint Account.



27. The maturity amounts of the FDRs be credited by Electronic Clearing System (ECS) in the said Saving Bank Account of the applicants and proforma respondents No.2 and 3.
28. No loan, advance, withdrawal, or pre-mature discharge be allowed on the fixed deposit without permission of the Tribunal.
29. The concerned Bank shall not issue any cheque book and/or debit card to the above applicants and proforma respondents No.2 and 3. 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 above applicants and proforma respondents No.2 and 3 so that no debit card be issued in respect of the account of the above applicants and proforma respondents No.2 and 3 from any other Branch of the Bank.
30. The Bank shall make an endorsement on the passbook of the applicants and proforma respondents No.2 and 3 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 and proforma respondents No.2 and 3 shall produce the passbook 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 and proforma respondents No.2 and 3 to withdraw money from her Saving Bank Account by means of a withdrawal form only.
31. 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.

32. In the facts and circumstances of the case, there is, however, no order as to costs.
33. 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.
34. Judgment pronounced, signed and sealed in open Court today i.e. 21.03.2024.

(Virendra Kumar Goyal)
Member (Judicial)
RCT/Bhubaneswar
at Jaipur

(Jharna Tripathy)
Member (Technical)
RCT/Jaipur