



रेल दावा न्यायाधिकरण
जयपुर न्यायपीठ
RAILWAY CLAIMS TRIBUNAL
JAIPUR BENCH

Claim Application No.: OA-II-09/2020



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

Date of Registration: 16.01.2020
Date of Judgment: 20.11.2023

1. Smt. Mediya wife of Late Shri Rampal, aged about 47 years.
2. Kallu son of Late Shri Rampal, aged about 12 years being minor hence, through his natural guardian and mother Smt. Mediya wife of Late Shri Rampal.

Both are residents of Sarai Baba, Fatehpur, Sarai Baba (Uttar Pradesh).

.....Applicants

Versus

1. Union of India through the General Manager, North Western Railway, Jaipur (Rajasthan).

....Respondent

2. Smt. Reeta Devi daughter of Shri Shiv Prasad Gupta wife of Late Shri Dharmendra, aged about 25 years, resident of Sarai Baba, Fatehpur, Sarai Bara (Uttar Pradesh).

.....Proforma respondent

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

PRESENT

Mr. Mangilal Choudhary, learned counsel for the applicants.
Mr. Shailendra Kumar Saini, learned counsel for the respondent.

JUDGMENT

Per Jhanja Tripathy, Member (T.),



This claim application has been preferred before this Tribunal by the widow mother, minor brother and wife 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 Shri Dharmendra in an alleged untoward incident.

2. In brief, it has been averred in the claim application that on 30.6.2019 Shri Dharmendra along with his younger brother Shri Mukesh commenced their journey from Jodhpur to Fatehpur by Train No.12308 holding valid second class railway journey tickets bearing No.21452889 and 21452890. During journey, on 01.7.2019 when the said train was passing through Kanakpura railway station, Shri Dharmendra accidentally fell down from the running train due to a sudden jerk of the train and resultant loss of balance, suffered grave injuries and died on the spot. The falling down of Shri Dharmendra could not come in the notice of Shri Mukesh as he was sleeping inside the coach. Further, the Station Master, Kanakpura on receipt of the information about lying of a dead body near the railway track by the shunting staff, in turn, informed the Government Railway Police. The Government Railway Police acting on the same, registered an FIR bearing No.44/2019 dated 01.7.2019 under Section 174 Cr.P.C. and also completed other mandatory formalities including postmortem on the dead body and handed it over to the family members for last rites. It has also been averred in the claim application that the relevant railway journey tickets on which Shri Dharmendra and his younger brother Shri Mukesh were performing their aforesaid journey, were kept by the Police in its custody after recovery from the person of the dead body.



3. To strengthen their claim, the applicants have made available on record certified copies of the railway journey tickets, Memo, Joint Inspection Report, FIR, Fard Naksha Mauka, Fard Surat Hall Laash, Fard Panchayatnama, Postmortem Report, statements of Shri Mukesh, true copies of the Aadhaar Cards, Family Ration Card and 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 denying all the averments made in the claim application. It has been pleaded on behalf of respondent that death of Shri Dharmendra did not happen due to alleged untoward incident. As per the Guard and Driver of the alleged train, none fell down from their train on that day. The dead body of Shri Dharmendra was spotted by Shri Ashok Kumar, Pointsman in the intervening night of 30/1-6-2019 between 20.00 hours to 08.00 hours. According to the Government Railway Police, the deceased was run over by some unknown train. The death of Shri Dharmendra did not happen due to alleged untoward incident. The present case is covered under the exceptions provided with Section 124A of the Railways Act, 1989 for which no compensation is admissible to the applicants. 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 20.2.2020:

- 1) *Whether the deceased 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 deceased met with an untoward incident due to fall from the passenger carrying train, suffered injuries and died as a result thereof and the present case is covered under the definition of Section 123 (c) (2) read with Section 124A 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-16 of the claim application?*
 - 4) *Relief?*
6. In the evidence, applicant No.1 Smt. Mediya has filed her own examination-in-chief on affidavit. The documents filed along with the claim application, were got exhibited by her as A/1 to A/13. Besides, examination-in-chief on affidavit of Shri Mukesh, co-traveller with the deceased, has also been filed on behalf of the applicants. They were cross-examined by learned counsel for the respondent Railway Administration on 30.11.2022.
7. The respondent Railway Administration in its evidence, has filed examination-in-chief on affidavits of Shri Ram Bharose, Loco Pilot and Shri Ashok Kumar Soni, Guard. Relevant documents were got exhibited by them as R/2 to R/5. They were cross-examined by learned counsel for the applicants on 26.7.2023.

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.1 Smt. Mediya has deposed by way of her affidavit that on 30.6.2019 her son Shri Dharmendra along with her younger son Shri Mukesh were travelling from Jodhpur to Fatehpur by Train No.12308 holding valid second class railway journey tickets bearing No.21452889 and 21452890. During journey, on 01.7.2019 when the said train was passing through Kanakpura railway station, Shri Dharmendra accidentally fell down from the running train due to a sudden jerk of the train and resultant loss of balance, suffered grave injuries and died on the spot. The falling down of Shri Dharmendra could not come in the notice of Shri Mukesh as he was sleeping inside the coach. Further, the Station Master, Kanakpura on receipt of the information about lying of dead body near the railway track by the shunting staff, in turn, informed the Government Railway Police. The Government Railway Police acting on the same, completed certain requisite formalities including postmortem on the dead body and handed it over to the family members for final rituals. It has further been deposed by her that the relevant railway journey tickers on which her son Shri Dharmendra and her younger son Shri Mukesh were performing their aforesaid journey, were kept by the Police in its custody after recovery from the person of the dead body along with other personal belongings. During cross-examination nothing contradictory has come out. Applicants' witness Shri Mukesh has also deposed the same facts by way of his affidavit and during cross-examination, he has maintained the same averments. Applicant No.1 Smt. Mediya got the documents exhibited as A/1 to A/13 filed along with the claim application.
11. *Per contra*, learned counsel for the respondent has argued that deceased Shri Ashok Kumar neither was a bonafide passenger at the relevant time nor his death happened due to alleged untoward incident as a result of a fall from the passenger carrying train. He has further argued that as per the Loco Pilot and Guard of the alleged train none fell down from their train on that day. There is no eye-witness to the incident and, therefore, alleged incident is not



covered under the definition of untoward incident within the meaning of Section 123 (c) (2) of the Railways Act, 1989. In fact, the death of Shri Dharmendra was happened due to his own criminal act and, therefore, 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 testimonies of both the witnesses of the respondent Railway Administration and the original DRM's Report. Hence, the claim application filed by the applicants is liable to be dismissed with costs.

12. We have carefully heard the submission made by both the parties and also perused the material made available on record by them.
13. First witness of the respondent Railway Administration Shri Ram Bharose has deposed by way of his affidavit that on 30.6.2019 he was manning Train No.12308 as Loco Pilot and during his working neither anyone fell down from the train nor was got hit by the train; or was run over. His statements recorded by the Police and the copy of Driver's Note Book are Ex.R/2 and R/3 respectively. During cross-examination, he has stated that it is true that he cannot come to know about falling down of a person from the rear side.
14. Second witness of the respondent Railway Administration Shri Ashok Kumar Saini has deposed by way of his affidavit that on 30.6.2019 he was working as Guard on Train No.12308 and during his working none fell down, got hit or was run over by his train. His statements made before the Police and the extract of Guard's Rough Journal are Ex.R/4 and R/5 respectively. During cross-examination, he has stated that his statements were recorded by the RPF regarding falling down of some person after a period of 6-7 months from the date of incident. It was told by him that his train was passed through the site of incident without alarm chain pulling.



15. The testimonies of both the witnesses of the respondent Railway Administration, in our considered view, do not have any force to prove that no such untoward incident as pleaded and deposed on behalf of the applicants, was happened on that day. On the other hand, the testimony of the witness of the applicants Shri Mukesh, co-traveller with the deceased remained un rebutted and unchallenged throughout.

16. Ex.A/1 is the certified copy of railway journey tickets having an endorsement regarding taking the same on record by the Police after recovery from the dead body during search. Besides, the original DRM's Report filed along with the written statement by the respondent Railway Administration also admits the fact that the aforesaid ticket on verification, were found to be valid.

17. All the documents prepared by the Police in ordinary course of duty, clearly indicates that the death of Shri Dharmendra was happened as a result of a fall from the running train and resultant injuries. Since these documents were prepared in the ordinary course of duty, the veracity of the same, in our considered opinion, cannot be doubted.

18. The respondent Railway Administration on the other hand, has not adduced any evidence to rebut the case of the applicants or to prove that the alleged incident 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.

19. Merely because there is no eye-witness to the incident, it cannot be presumed that death of Shri Dharmendra did not happen as a result of an untoward incident due to a fall from the passenger carrying train. The recovery of a valid ticket from the person of the deceased

establishes the fact that he was on the train going towards Fatehpur at the material time.



20. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of *Union of India v. Rina Devi* 2018 SCC OnLine SC 507.

21. In view of our discussion in foregoing paras and looking at the facts and circumstances of the case, it is held that deceased Shri Dharmendra was travelling as 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 happened as a result of an untoward incident due to a fall from the passenger carrying train and the instant case is fully covered 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:

22. Both these issues are being taken up and decided together.
23. Applicant No.1 Smt. Mediya has deposed by way of her affidavit that present applicants and proforma respondent No.2 are the only dependants of the deceased. It has also been deposed by her that her daughter-in-law had left the home after death of Shri Dharmendra. No cross-examination has been effected on this point. To prove their dependence, true copies of the Aadhaar Cards and Family Ration Cards have been filed by the applicants as Ex.A/9 to A/13 respectively. On the contrary, no evidence whatsoever has been adduced on behalf of respondent to rebut the case of the applicants on the point of their dependence. 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.



24. Applying the principles laid down in *Rina Devi (supra)* in the present case, it is held that the present applicants and proforma respondent No.2 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 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. 01.7.2019 till the date of award. Both these issues are decided accordingly.

ORDER

25. The claim application is allowed in favour of the applicants and proforma respondent No.2. 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. 01.7.2019 till the date of award.
26. The payment shall be made to them in the manner described as under:

Name of the applicants	Amount to be paid to the applicants immediately by NEFT/RTGS	Amount to be invested in fixed deposit scheme of Nationalized Bank and the amount to be dispersed monthly
Smt. Mediya (widow mother of the deceased)	Rs.60,000/- (Rs. sixty thousand only) along with proportionate interest.	Rs.5,40,000/- (Rupees five lakh forty 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 credited to her SB Account.



Kallu (minor brother of the deceased)	-	Rs.1,00,000/- (Rupees one lakh only) along with proportionate interest. This amount will be kept in the form of fixed deposit under the guardianship of his mother till such time he becomes a major.
Smt. Reeta Devi (wife of the deceased)	Rs.10,000/- (Rs. ten thousand only) along with proportionate interest.	Rs.90,000/- (Rupees ninety 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 credited to her SB Account.

27. 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 above applicants and proforma respondent No.2 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.
28. The applicants and proforma respondent No.2 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.
29. The Bank shall not permit any joint name(s) to be added in the saving bank account or fixed deposit account of the applicants and proforma respondent No.2 i.e. their Saving Bank Accounts shall be an individual Saving Bank Account and not a Joint Account.
30. The maturity amounts of the FDRs be credited by Electronic Clearing System (ECS) in the said Saving Bank Accounts of the applicants and proforma respondent No.2.



31. No loan, advance, withdrawal, or pre-mature discharge be allowed on the fixed deposit without permission of the Tribunal.
32. The concerned Bank shall not issue any cheque book and/or debit card to the applicants and proforma respondent No.2. 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 and proforma respondent No.2 so that no debit card be issued in respect of the accounts of the applicants and proforma respondent No.2 from any other Branch of the Bank.
33. The Bank shall make an endorsement on the passbooks of the applicants and proforma respondent No.2 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 respondent No.2 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 and proforma respondent No.2 to withdraw money from their Saving Bank Accounts by means of a withdrawal form only.
34. 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.
35. In the facts and circumstances of the case, there is, however, no order as to costs.
36. 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.



37. Judgment pronounced, signed and sealed in open Court today i.e. 20.11.2023.



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



(Jhanja Tripathy)
Member (Technical)
RCT/Jaipur