

रेल दावा अधिकरण, कोलकाता न्यायपीठ
BEFORE RAILWAY CLAIMS TRIBUNAL, KOLKATA.
Claim Application No. O.A.(Ilu)/KOL/0110/2022

Coram :- Mr. Sanjay Singh Gehlot, Hon'ble Vice-Chairman, RCT/Kolkata
&
Mr. Rajeev Jain, Hon'ble Member(Judicial)/RCT/Kolkata

Date of filing of the Case : 02.06.2022.
Date of Registration : 02.06.2022.
Date of the Decision : 08.01.2024.

1) Sabita Bhuniya @ Bhuiya, wife of Ramesh Bhuiya @ Bhuniya Applicants.

2) Ramesh Bhuiya @ Bhuniya , S/o Late Sarju Bhuiya
both residing at Chinakuri DPS, Asanbani,
P.O. : Sundarchak, P.S. : Kulti, Dist. : Paschim Bardhaman,
PIN – 713 360.

-VS-

Union of India represented through
General Manager, Eastern Railway, Kolkata.

..... Respondent.

Claim for Rs.8,00,000/-.

Presented : Smt. Gouri Guha, Ld. Counsel for the applicant.

Shri G. Sardar, Ld. Counsel for the respondent.

निर्णय

J U D G E M E N T

The Claim Application has been filed under Section – 16 of the Railway Claims Tribunal Act, 1987 seeking compensation for an amount of Rs.8,00,000/- along with cost and interest by the applicants, as dependants, for the death of their unmarried son, Chhotu Bhuiya. It has been stated in the claim application that on 07.12.2021 their son, since deceased, with valid railway journey ticket bearing PNR No.8821693420 and along with his uncle and grandmother was travelling Ex- Daltanganj to Asansol by Shaktipunj Exp. when their son accidentally fell down from the said running train and died on the spot near Sitarampur R/S at KM Post No.221/10-221/08 which the applicants came to know afterwards during searching of the victim. It is submitted that with regard to death of the victim one U.D. Case bearing No. 69/21 dt. 08.12.2022 was registered at Sitarampur GRPS, IO of GRP seized the journey ticket during investigation and prepared Seizure List.

2. The respondent, Eastern Railway has contested the case filing written statement denying the material averments made in the claim application. In the 'WS' the respondent has strongly denied that the deceased at all fell down from any train. It is also averred that

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there was no eye-witness of the alleged incident for which the incident has not been proved. Further the respondent has not specifically denied or disputed that the deceased was a *bona fide* railway passenger. Finally the respondent has prayed for dismissal of the case.

3. Upon pleadings of the parties, the following issues were framed on 27.09.2022:-

- 1) Whether the incident on account of which the victim is alleged to have sustained injury and died and can be termed as an 'untoward incident', as defined under Section-123 (c) (2) of the Railways Act?
- 2) Whether the victim was a *bona fide* railway passenger?
- 3) Whether the applicants are entitled to get any compensation, as prayed for?
- 4) To what other relief, if any the applicant's are entitled?

4. To prove their case, the applicant No.1, Sabita Bhuniya @ Bhuiya has affirmed an affidavit and produced himself as only witness (AW/1). On behalf of the applicants the documents produced and marked as – (1) FIR under U.D. Case (Exhibit – A/1), (2) FIR (Exhibit – A/2), (3) Police Investigation Report (Exhibit – A/3), (4) Seizure List (Exhibit – A/4), (5) E-Ticket (Exhibit – A/5), (6) Dead Body Challan (Exhibit – A/6), (7) P. M. Report (Exhibit – A/7), (8) Final Police Report (Exhibit – A/8), (9) Aadhaar Card of Chhoutu Bhuiya (Exhibit – A/9), (10) Aadhaar Card of Sabita Bhuiya (Exhibit – A/10), (11) Aadhaar Card of Ramesh Bhuiya (Exhibit–A/11) & (12) Death Certificate of Chhoutu Bhuiya (Exhibit – A/12).

5. The respondent railway has not adduced any oral evidence and has filed DRM's Report with Annexures which is marked as **Exhibit – R/1 (collectively)**.

कारणों सहित निर्णय

DECISION WITH REASONS

Issue No. 1 :-

6.1 Considered the arguments advanced by Ld. Counsels of both the sides and perused all the documents and evidence available on the record.

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6.2 It appears that the averment of the applicants is based on the evidence of AW/1 and the documents available on the record. It is evident that neither in the Railway Memo nor in any railway document there is mention of falling down of the victim from train carrying passengers nor there is any adverse remark. Police Investigation Report (Exhibit – A/3) in column No. 10 states that the deceased died due to dash by a running train. Final Police Report (Exhibit – A/8) stated that it is a case of fallen down from running train.

6.3 In the DRM's Report (Exhibit – R/1) the respondent railway has averred that neither the on-duty train Guard nor the on-duty Driver of Shaktipunj Exp. reported happening of any such accident. That apart, there is no eye-witness of the alleged incident. Accordingly, it is contended on behalf of the respondent railway that the incident of accidental fall from Shaktipunj Exp. has not been proved. But at the same time it is seen that no iota of contrary evidence against the pleadings of the applicants has been produced on behalf of the respondent.

6.4 Looking into the facts and circumstances of the case, the Tribunal observes that at this juncture it would be worth mentioning the Judgement of Hon'ble Supreme Court passed in the case of **Union of India –vs- Prabhakaran Vijaya Kumar and Others reported in 2008 TAC 777 (S.C.)** wherein it has held that – *“Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one.”* Conclusively the Tribunal also observes that non production of eye-witness in such cases cannot be a ground to turn down the claim of a poor litigant specifically when the adjudicating provisions of Law {Section – 123 (c) (2) & Section – 124 of Railways Act} are beneficial legislation.

6.5 It is, therefore, concluded that the reason of death of the deceased, Chhotu Bhuiya was a fall from the train and consequently it can be termed as “untoward incident” under Section-123(c)(2) of the Railways Act, 1989. Hence, this issue is decided in favour of the applicants.

Issue No. 2 :-

7.1 In the claim application as well as in the affidavit of the applicant No.1 it is stated that on the date of incident the deceased was travelling with a valid railway journey ticket bearing PNR No.882-1693420 and after the incident GRP seized that ticket. It is seen that the applicant has filed certified copies of seizure list, E-ticket bearing PNR No.882-1693420 (Exhibits – A/4 & A/5). Further, being directed the respondent railway (CCM/PM of ER) has produced Ticket Verification Report wherein the ticket so filed in the record has been authenticated. Further being directed for production of working chart of 11447 dt. 07.12.2021, it is intimated by Chief Ticket Inspector has submitted that the relevant papers had already been disposed of. On the other hand, it is evident that neither in the ‘WS’ there is any specific denial that the deceased was a *bona fide* railway passenger nor in the DRM’s Report there is any contrary evidence against the seizure list and journey ticket filed by the applicant.

7.2 Thus, from the above documents and evidence it is construed by the Tribunal that the victim, Chhotu Bhuiya was a *bona fide* passenger on the date of his ill-fated journey. Hence, this issue is also decided in favour of the applicants.

Issue No. 3 :-

8. The applicants in the claim application as well as in the affidavit sworn on 08.12.2022 by the applicant No.1 has stated that she has preferred compensation for herself and on behalf of her husband, Ramesh Bhuiya @ Bhuinya, as dependants for the death of their unmarried son, Chhotu Bhuiya and no other dependant of the deceased has been mentioned. It is seen that Aadhaar Cards of both the applicants and Aadhaar Card and Death Certificate of the deceased, Chhotu Bhuiya (Exhibits – A/9 to A/12) have been filed on the record. From those documents, it reveals that Sabita Bhuniya @ Bhuiya and Ramesh Bhuiya @ Bhuinya are respectively mother and father of the deceased, Chhotu Bhuiya. Thus, the Tribunal observes that both the claimants are the ‘dependants’ of the deceased under Section -123(b) of Railways Act, 1989 and accordingly they are entitled to get compensation.

Issue No. 4 - (Relief)

9.1 The applicants have claimed compensation of Rs.8,00,000/-. Ministry of Railways (Railway Board) vide their notification dated 22nd December, 2016 under GSR 1165 (E) has amended the amount of compensation payable in respect of death in Railway Untoward Incidents to Rs.8,00,000/- which has come into force on the 1st day of January, 2017. The applicants are, therefore, held entitled to the enhanced compensation of Rs.8,00,000/- plus *pendente lite* interest @ 5% p.a. on Rs.8,00,000/- from the date of Registration of the claim application, i.e. from 02.06.2022 till the date of the judgement in the line of the Order of Hon'ble High Court, Calcutta in **FMAT No.197/2022** in the case of Renu Begum & Ors. – vs- Union of India where Hon'ble High Court has allowed interest @ 5% on the awarded compensation. Hence, the *pendent lite* interest to that extent only is allowed. The decretal amount shall be shared between the applicants in the following proportion:

1)	Sabita Bhuniya @ Bhuiya, mother of the deceased --	Rs.4,00,000/-
2)	Ramesh Bhuniya @ Bhuiya, father of the deceased --	Rs.4,00,000/-

		Rs.8,00,000/-

There is no order as to costs. Hence, it is

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ORDERED

- 9.2** (i) That the claim application is hereby allowed for Rs.8,00,000/- (Rupees eight lacs only) on contest in favour of the applicants along with *pendente lite* interest @ 5% p.a. on Rs.8,00,000/- from 02.06.2022 till the date of judgement.
- (ii) The respondent railway is directed to deposit the amount awarded along with accrued interest, as ordered, with the Registrar of this RCT within a period of 30 days from the date of communication of this Order.

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- (iii) *Pendente lite* interest portion shall be paid to Sabita Bhuniya @ Bhuiya, mother the deceased and Ramesh Bhuniya @ Bhuiya, father of the deceased in equal share. The applicant Nos.1 & 2 are permitted to withdraw 10% of the amount of compensation individually awarded to them. After withdrawal of 10% of the awarded sum, i.e. Rs.40,000/- each balance amount of Rs.3,60,000/- each shall be split into 36 fixed deposits of Rs.10,000/- each and invested for a period of 01 to 36 months in the ascending order. The bank shall release the amount with accumulated interest upon maturity of each of these deposits to the credit of the respective Bank Accounts of mother and father of the deceased.
- (iv) Directions contained in (iii) above are in conformity with the orders dated 21.04.2018, 24.05.2022 and 06.11.2022 passed by Hon'ble High Court of Delhi in "FAO 22/15 and CMA No.4501/15 in Geeta Devi -vs- Union of India.
- (v) If the claimants are entitled to exemption of deduction of TDS, they shall submit Form 15G or Form 15H (for senior citizen) to the Presenting Officer of the respondent railway (as applicable under sub-section (2) of Section 19 of the Railway Claims Tribunal Act, 1987), so that no TDS is deducted.
- (vi) That the claimants are directed to open individual savings bank account in a nationalized bank near the place 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. the savings bank accounts of the claimants shall be an individual savings bank account and not a joint account.

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- (vii) The concerned bank is directed not to issue any cheque book(s) and/or debit card(s) to the claimant(s). 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 be issued to the claimants without the permission of the RCT. **The concerned Bank is also directed that digital transaction of compensation received under annuity scheme shall be strictly prohibited.** The concerned bank of the claimants is directed to permit the claimants to withdraw money from their savings bank account by means of a withdrawal form only. The claimants are directed to produce the copy of the order passed by the RCT before the concerned bank whereupon the bank be directed to make an endorsement on the passbook.
- (viii) 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 bank to the claimants. The monthly interest to be credited by ECS in the savings bank account of the claimants near the place of their residence. The maturity amounts of the FDRs be credited by ECS in the savings bank account of the claimants near the place of their residence. The bank shall not grant any loan, advance, withdrawal or pre-mature discharge on the fixed deposits without permission of the RCT.
- (ix) That the respondent is directed to deposit the amount awarded with the Registry of this RCT within a period of 30 days from the date of communication of the award, failing which, the claimants shall be entitled to interest @ 9% per annum on the sum of Rs.8,00,000/- plus *pendente lite* interest, as ordered, from the date of default till the date of actual deposit of the amount with the Registry of this Bench.

- (x) Directions contained above are in conformity with the Ministry of Railways (Railway Board) Notification dated 3rd June, 2020 under GSR 347 (E) which has come into effect on 1st day of January, 2020.
- (xi) RCT registry shall release the decretal amount to the claimants as per the directions contained in para (iii) to (viii) above within 60 days of the full verification of the claimants and submission of all required documents or the receipt of the decretal amount from the Respondent Railway whichever is later.

Accordingly, the claim application filed by the applicants stands disposed of.

The Registry is directed to send the certified copy of this Judgement directly to the applicant No.1, Sabita Bhuniya @ Bhuiya, mother of the victim to her residential address.

(Rajeev Jain)
Member(Judicial)

(Sanjay Singh Gehlot)
Vice-Chairman

रेल दावा अधिकरण,
कोलकाता न्यायपीठ
RAILWAY CLAIMS TRIBUNAL
Kolkata Bench

ORDER SHEET

Nature of application _____ Number OA(IIu)/0110 Year 2022

1) Sabita Bhuniya @ Bhuiya -Versus- GM/Eastern Railway
2) Ramesh Bhuniya @ Bhuiya

Date	Proceeding of the Bench	Notes of the Registrar
13 ----- 08.01.2024	Record is put up for delivering judgment. Vide the Judgment delivered in separate sheets the O.A. is allowed on contest on its merit. No costs. The respondent railway is directed to deposit the awarded amount of Rs.8,00,000/- along with <i>pendente lite</i> interest @ 5% p.a. on Rs.8,00,000/- from 02.06.2022 till the date of the Judgement within 30 days from the date of communication of this award with the Registry of this Bench, failing which the claimants shall be entitled to interest @ 9% per annum on Rs.8,00,000/- plus <i>pendente lite</i> interest @ 5% p.a. on Rs.8,00,000/- from 02.06.2022 till the date of the Judgement from the date of default till the date of actual deposit of the amount with the Registry of this Bench. The respondent will furnish the proof of deposit of the awarded amount with upto date interest along with a calculation sheet to the Registry/RCT/Kolkata. The applicants will appear in person before the Registry/RCT/Kolkata along with the following for verification : 1) Bank Account details opened near their place of residence. Passbook must contain the necessary endorsement by the Branch Manager of the concerned bank that “No cheque book and/or debit card has been issued.” If it has already been issued, there should be endorsement that “cheque book and/or debit card has been cancelled and the same shall not be issued without the permission of the RCT.” The endorsement must be signed and stamped by the bank official. 2) Aadhaar Card and PAN Card or any other appropriate ID Card. 3) Two sets of photographs and specimen signatures of the claimants. After complete verification of the claimant(s), Registry of this Bench will release the payment of the decretal amount to the claimant(s) within 60 days from the date of verification of all the required documents or from the date of the receipt of confirmation of payment from the respondent railway, whichever is later. Let a free copy of this order be served to both the sides. (Rajeev Jain) <u>Member(Judicial)</u> (Sanjay Singh Gehlot) <u>Vice-Chairman</u>	