

रेल दावा अधिकरण, कोलकाता न्यायपीठ
BEFORE RAILWAY CLAIMS TRIBUNAL, KOLKATA.
Claim Application No. O.A.(IIu)/KOL/0115/2023

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 : 08.05.2023.

Date of Registration : 08.05.2023.

Date of the Decision : 10.04.2024.

- 1) Tarkeshwar Jaisawal, Applicants.
husband of the deceased, Lila Devi
- 2) Khusbu Jaisawal, daughter of the deceased, Lila Devi
- 3) Kajal Jaisawal, daughter of the deceased, Lila Devi
- 4) Julee Jaisawal, daughter of the deceased, Lila Devi
- 5) Raj Jaiswal, son of the deceased, Lila Devi

All are permanently residing at Pakadi Das, P.O. : Bhatani,
Bujurg Batrauli, Hetimpur, Kushinagar, U.P. PIN - 274 206.

All are presently residing at 11/4/2, Canal Circular Road,
P.O. & P.S. : Ultadanga, Kolkata – 700 067.

-VS-

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

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

Presented : Shri S. Sinha, Ld. Counsel for the applicant

Shri P. S. Ghosh, Ld. Counsel for the respondent

Dictated by Rajeev Jain, Member(Judl.)

निर्णय

J U D G E M E N T

The instant claim petition 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 the victim, Lila Devi. It has been stated in the claim application that on 22.01.2018 at about 17.00 hrs. the victim, Lila Devi, since deceased, along with her husband, son and three daughters and with the valid journey ticket which was purchased by her husband, boarded a local train from Rishra

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to return to Howrah and when the said train took motion she could not control balance and accidentally fell down from the train at platform No.1 of Rishra R/S due to over-crowding and jostling and as a result sustained severe head injury. It is submitted that after the incident the victim was taken to Sreerampur S.D. Hospital wherefrom she was shifted to R.G. Kar Medical College & Hospital where she expired on 23.01.2018. Initially the claim application was filed with delay and Tribunal has condoned that delay vide Order No.5 dated 04.5.2023.

2. The respondent, Eastern Railway has contested the case filing written statement wherein the respondent has denied and disputed each and every allegations of the applicant made in the claim application. In the 'WS' the respondent has contended that the claim is confusing, speculative frivolous, misconceived, harassing and it is based on concocted story. It is also averred that the deceased never fell down from a train and it is also denied that the deceased was a *bona fide* railway passenger. Conclusively in the 'WS' the respondent has prayed for dismissal of the case with cost.

3. For proper adjudication of the case, the following issues were framed on 26.09.2023:-

- 1) Whether the deceased was *bona fide* passenger of the train in question?
- 2) Whether the death of the deceased was caused in an 'untoward incident', coming under the purview of Section-123 (c) (2) of the Railways Act?
- 3) Whether the applicants are entitled to get compensation, as prayed for?
- 4) Relief.

4. To prove their case, the applicant No.1, Tarkeswar Jaisawal, husband of the deceased, has affirmed an affidavit and produced himself as only witness (AW/1). On behalf of the applicants the documents produced and marked as – (1) Inquest Report (Exhibit – A/1), (2) P.M. Report (Exhibit – A/2), (3) Death Certificate of Lila Devi (Exhibit – A/3) (4) Aadhaar Card of Tarkeswar Jaisawal (Exhibit – A/4), (5) Voter Card of Tarkeswar Jaisawal (Exhibit – A/5), (6) Aadhaar Card of Raj Jaiswal (Exhibit – A/6), (7) Aadhaar Card of Khusbu Jaisawal (Exhibit – A/7) & (8) Aadhaar Card of Julee Jaisawal (Exhibit – A/8).
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. 2 :-

- 6.1 For the sake of cogency the issue No.2 is taken up first for adjudication.
- 6.2 Considered the arguments advanced by Ld. Counsels of both sides and perused all the documents and evidence available in the record.
- 6.3 It appears that the averment of the applicants is based on the evidence of AW/1 and the documents available on record. On going through the entire record and considering the evidences both documentary and oral, it is evident that the main conflicting point for adjudication is that whether the victim fell down from the train in natural course of action or she actually jumped down from the train compartment by her own will and if she at all jumped from the running train whether this incident can be termed as an 'untoward incident', as

pleaded on behalf of the applicant or it is a bare instance of 'self-inflicted injury', as pleaded on behalf of the respondent. It is seen that the applicant before the RPF Inquiry Officer and during cross-examination as AW/1 has stated that his wife, namely, the victim jumped from the running train noticing that her husband, namely, the applicant could not board the train. Thus, now it is an admitted fact that the victim jumped from the running train by her own will. In this context, Ld. Counsel for the applicant cited one Judgement passed by **Hon'ble High Court, Bombay (Nagpur Bench) in First Appeal No.116 of 2022 pronounced on 13.05.2022** wherein their Lordships have observed that –

“(25) 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 judgement of this Court in United India Insurance Co. Ltd. –vs- Sunil Kumar laying down that plea of negligence of the victim cannot be allowed in claim based on “no fault theory” under Section 163-A 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 in the compensation and will not fall under the proviso of Section – 124-A merely on the plea of negligence of the victim as a contributing factor” Further, looking into the facts and circumstances of the case the Tribunal observes that 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. 17. Section 124A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124A it is wholly irrelevant as to who was at fault. 55. In view of the above, we are of the opinion that the submission of learned counsel for the appellant there was no fault on the part of the Railways, or that there was contributory negligence, is based on a total misconception and hence has to be rejected.”*

6.4 It is, therefore, concluded that the reason of death of the deceased, Lila Devi 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. 1 :-

7.1 In the claim application it has been stated that on the date of incident the deceased had a valid railway journey ticket and in Para – 7 of the affidavit sworn by the applicant (AW/1) it is clearly stated that the applicant (AW/1) was a co-passenger of his wife, namely the victim and he purchased the journey ticket which has been lost after the incident. On the other hand, the respondent in their ‘WS’ has taken a plea that the victim was not a *bona fide* passenger.

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7.2 Looking into circumstances of the case, the Tribunal observes that whether the victim was a *bona fide* passenger having valid ticket should be adjudicated within the four corners of the observation of Hon'ble Supreme Court vide their Judgement passed in the case of **Union of India –vs- Rina Devi reported in 2018 (3) T.A.C. 26 (S.C.)** the relevant portion of which is reproduced below :

“17.4 We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found”

7.3 In the instant case, it is construed that the affidavit sworn by the witness AW/1 has sub-served the purpose, as directed by the Hon'ble Apex Court, since the affidavit contains relevant facts and AW/1 stated before the Court that he was a co-traveller and he purchased the ticket. Thus, the Tribunal observes that the burden of proof that the victim was not a *bona fide* passenger shifted to the railway which has not been able to prove beyond reasonable doubt that the victim was not a *bona fide* passenger and was a ticketless traveller.

7.4 Thus, it can be presumed on the basis of available evidences that the victim was a *bona fide* passenger on the date of the alleged incident. 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 07.03.2024 by the applicant No.1, Tarkeswar Jaisawal has stated that he has preferred compensation for himself and on behalf of his 03 daughters, namely, Khusbu Jaisawal, Julee Jaisawal, Kajal Jaisawal and his minor son, Raj Jaiswal, as dependants, for the death of his wife, Lila Devi and no other dependant of the deceased has been mentioned. It is seen that the applicants have filed Aadhaar Cards of the applicant Nos.1, 2, 4 & 5 and Death Certificate of the deceased, Lila Devi (Exhibits – A/3 to A/8) and photocopy of Aadhaar Card of the applicant No.3. From those documents it has been revealed that Tarkeshwar Jaisawal, Khusbu Jaisawal, Julee Jaisawal, Kajal Jaisawal and Raj Jaiswal are the husband, daughters and son of the deceased, Lila Devi. Thus, the Tribunal observes that all the applicants are the ‘dependants’ of the deceased under Section – 123(b) of Railways Act, 1989 and accordingly they are all entitled to get compensation.

Issue No. 4 - (Relief)

9.1 The applicant has 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, 2023. The applicants are, therefore, held entitled to the enhanced compensation of Rs.8,00,000/- plus *pendente lite* interest @ 9% p.a. on Rs.8,00,000/- from the date of registration of the case, i.e. from 08.05.2023 till the actual date of deposit of the awarded amount to the Account of RCT/Kolkata, since there was delay in filing the instant case and

after allowing its condonation the case has been registered *de novo*. Hence, the *pendente lite* interest to that extent is allowed. The decretal amount shall be shared among the applicants in equal shares as follows:

1) Tarkeshwar Jaisawal, husband of the deceased	--	Rs.1,60,000/-
2) Khusbu Jaisawal, daughter of the deceased	--	Rs.1,60,000/-
3) Kajal Jaisawal, daughter of the deceased	--	Rs.1,60,000/-
4) Julee Jaisawal, daughter of the deceased	--	Rs.1,60,000/-
5) Raj Jaiswal, minor son of the deceased	--	Rs.1,60,000/-

		Rs.8,00,000/-

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

आदेश
ORDERED

9.2 (i) That the claim application is hereby allowed for Rs.8,00,000/- (Rupees eight lakhs only) on contest in favour of the applicants along with *pendente lite* interest @ 9% p.a. on Rs.8,00,000/- from 08.05.2023 till the date of actual deposit of the amount with the Registry of this Bench.

(ii) The respondent railway is directed to deposit the amount awarded with the Registrar of this RCT within a period of 30 days from the date of communication of this Order.

(iii)(a) The *pendente lite* interest portion shall be allowed in favour of all the applicants proportionately on their respective shares and at a time to all the applicants. The applicant Nos.1 to 4 are permitted to withdraw 10% of the amount of compensation individually awarded to them along with the proportionate interest. After withdrawal of 10% of the decreed amount i.e. Rs.16,000/-, balance amount of Rs.1,44,000/- each shall be

split into 24 fixed deposits of Rs.6,000/- each and invested for a period of 01 to 24 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 husband and three daughters of the deceased.

- (b) As per the statement of the applicants and document available on record, the applicant No. 5 is minor son of the deceased. As such, his share of the compensation shall be credited to the Bank Account of his father (the applicant No.1) being natural guardian. The Branch Manager of the concerned bank is directed to invest this amount in fixed deposit scheme in his name (applicant No.5) till the period he attains majority. The applicant No.1 (Tarkeswar Jaisawal) is, however, at liberty to withdraw periodical interest which will be accrued on the said fixed deposits from time to time for the upkeep of his minor son till he attains majority.

- (iv) Directions contained in (iii) above are in conformity with the orders dated 21.04.2018, 24.05.2023 and 06.11.2023 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.
- (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 awarded 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 60 days from the date of communication of the award.
- (x) Directions contained above are in conformity with the Ministry of Railways (Railway Board) Notification dated 3rd June, 2023 under GSR 347 (E) which has come into effect on 1st day of January, 2023.
- (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, Tarkeshwar Jaisawal, husband of the deceased to his 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)/0115 Year 2023

1) Tarkeshwar Jaisawal

Date	Proceeding of the Bench	Notes of the Registrar
07 ----- 10.04.2024	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 @ 9% p.a. on Rs.8,00,000/- from 08.05.2023 till the date of actual deposit of the amount with the Registry of this Bench. The respondent railway shall deposit the payment with the Registry of this Bench within 30 days from the date of communication of this award. 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) Member(Judicial) (Sanjay Singh Gehlot) Vice-Chairman	

