

रेल दावा अधिकरण, कोलकाता न्यायपीठ
BEFORE RAILWAY CLAIMS TRIBUNAL, KOLKATA.
Claim Application No. O.A.(Ilu)/KOL/0124/2020

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

Date of filing of Case : 01.10.2020.
Date of Registration : 01.10.2020.
Date of Decision : 08.01.2024.

Sujal Sekh @ Sk.

..... Applicant.

Son of Khajumaddin Sekh
residing at Mondalpara, Mira Dakshinpara,
P.O. : Plassey, P.S. : Kaliganj,
Dist. : Nadia, W.B., PIN – 741 156.

-VS-

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

..... Respondent.

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

Presented : Shri T. Samanta, Ld. Counsel for the applicant.

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

निर्णय

J U D G E M E N T

The applicant, Sujal Sekh @ Sk. filed this claim petition 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 for the injuries sustained by him in person due to an alleged ‘untoward incident’ over railway. It has been stated in the amended claim application that on 28.11.2017 the applicant having valid journey ticket bearing No.66251303 was travelling from Plassey to Mecheda when he accidentally fell down from the running train between Abada and Nalpur R/S and sustained serious injuries. It is submitted that after the incident the victim was taken to Uluberia by railway staff wherefrom he was carried to Seababrata Nursing Home for treatment and thereafter was shifted to Apollo Gleneagles Hospital, Kolkata where he was in admission from 28.11.2017 to 27.12.2017. Initially the claim application was filed with delay and Tribunal has condoned that delay vide Order No.03 dated 30.09.2020.

2. The respondent, South Eastern Railway has contested the case filing written statement denying all the material averments made in the claim application. The respondent in their ‘WS’ have pleaded that due to absence of any eye-witness the actual cause of action

Contd...../2.

could not be ascertained. It has contended that in the absence of any supportive proof it is not proved that the applicant fell down from any train. Finally the respondent has prayed for dismissal of the case.

3. For proper adjudication of the case, the following issues were framed on 12.04.2021: `

- 1) Was the victim a *bona fide* passenger having a valid Railway ticket for his journey, as claimed?
- 2) Whether the victim sustained injury in an 'untoward incident', as defined under Section-123 (c) (2) of the Railways Act, 1989?
- 3) Whether the applicant is entitled to get any compensation as per the provision on 'Untoward Incident', as prayed for?
- 4) To what other relief, if any, is the Applicant entitled?

4. To prove his case, the applicant, Sujal Sekh @ Sk. has affirmed an affidavit and produced himself as witness (AW/1). That apart, Nasmina Jyasmin, wife of the applicant has also been produced as witness (AW/2). On behalf of the applicant the documents produced and marked as – (1) Aadhaar Card of Sujal Sk. (Exhibit – A/1), (2) Certified copy of G.D. Extract No.1047 dt. 28.11.17 (Exhibit – A/2), (3) Original Rly. Ticket UTS No.42QOBYK074 (Exhibit – A/3), (4) Disability Certificate (Exhibit – A/4) & (5) Aadhaar Card of Nasmina Jyasmin (Exhibit – A/5).

5. The respondent railway has not adduced any oral evidence and has filed DRM's Report with annexure (Exhibit – R/1) of the case.

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 evidences available on the record.

6.2 It appears that averment of the applicant is based on his own evidence (AW/1) and the documents available on record. On scrutiny of the record, it is seen that Guard Memo issued by on-duty Guard of Train No.38601 dt. 28.11.2017 addressed to on-duty SM/Nalpur, copy annexed with the DRM's Report, states that – “..... *Pl. note that while admitting NALR,*

Contd...../3.

I came to know that few passengers told me that a person (unknown) was dashed by a post near Up Gate/H/S/NALR and the body not noticed as the fact told at NALR Stn. on the eve of departure.....” Further, Extract copy of Station Diary Entry No.293 dt;. 28.11.2017 of Nalpur, copy annexed with the DRM’s Report states that – ‘*One unknown male person aged about 28 years fell at KM 19/21 between ABB-NLPR on Up line in injured condition outside the track as reported by some unknown passengers at 10.35 hrs. After giving first aid sent him to Uluberia State Hospital for further treatment.....”* It appears that in other relevant DRM’s Annexure also corroborated the fact that the victim fell down from train and sustained injuries. Copy of Discharge Summary of Apollo Gleneagles Hospital, Kolkata stated that – ‘this patient presented with history of fall from moving train leading to poly-trauma including head injury.’

6.3 In Para – 6 & 7 of the DRM’s Report (Exhibit – R/1) it is concluded as well as opined that there is no proof that the victim had fallen down from any train, wife of the victim did not see the incident, although she was travelling with the victim and as per admission of the victim himself, he was travelling on footboard. Taking the above plea in the DRM’s Report the respondent railway has averred that the victim sustained self-inflicted injury and as such the claim is not admissible.

6.4 Looking into the facts and circumstances of the case, the Tribunal views that it is considered that the victim was travelling standing at the open door, as averred in the DRM’s Report, the Tribunal observes that it should be adjudicated on the basis of the principle laid down by Hon’ble Supreme Court in deciding the case of **Jameela & Others –vs- Union of India reported in 2011 (1) T.A.C. 10 (S.C.)** wherein Hon’ble Apex Court has observed that “....standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything, else, it is certainly not a criminal act...” Further the Tribunal also 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.”

6.5 In view of the above, it is concluded that injury sustained by the applicant, Sujal Sekh @ Sk. was caused by a fall from the train and consequently it can be termed as an “untoward incident” under Section-123(c) (2) of the Railways Act, 1989. Hence, this Issue is decided in favour of the applicant.

Issue No. 2 :-

7.1 In the claim application it has been stated that on the date of incident the applicant/the victim was travelling Ex- Plassey to Mecheda with a valid railway journey ticket bearing No. 66251303 and the said original ticket has been filed and marked as Exhibit – A/3. On the other hand it is seen that in the ‘WS’ there is no denial that the victim was a *bona fide* passenger. Rather in taking the plea that the victim was leaning out from the train, in the ‘WS’ the respondent has referred the victim as a passenger. It appears that during arguments Ld. Counsel for the respondent argued that the time of issue of the said ticket was 05.01 hrs. from Plassey and from the concerned Railway Time Table logically it is not possible for a person who travelled with that ticket to reach the accident spot within 10.25 hrs., the time when the incident was first reported. Ld. Counsel for the respondent therefore argued that so far the fact and circumstances reveled from the documents the applicant cannot be considered as a *bona fide* passenger having valid ticket and as such, the case should be dismissed. But at the same time it is evident that neither in the ‘WS’ nor in the DRM’s Report this plea has been taken and accordingly the Tribunal observes that this sort of submission made by the Ld. Counsel for the respondent at the final stage of arguments is purely an afterthought and accordingly it cannot be tenable.

7.2 Thus, it can be presumed on the basis of available evidences that the applicant was a *bona fide* passenger on the date of his accident. Hence, this issue is also decided in favour of the applicant.

Issue No. 3 :

8. The applicant has claimed compensation for an amount of Rs.8,00,000/- for the injuries sustained by him due to the said 'untoward incident' in railway. 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 and injuries in Railway Untoward Incidents which has come into force on the 1st day of January, 2017. The applicant is, therefore, held entitled to the enhanced compensation. It appears that in Para – 8 of the original claim application, the applicant has stated that he received temporal parietal compound depressed bone fracture with underlying right extradural hematoma contrusion, lung contusion and left proximal tibia fracture and subsequently during pendency filing an Amendment Petition the applicant has incorporated that he also lost vision of eye. It appears that the applicant has filed Disability Certificate (Exhibit – A/4) wherein the extent of disability has been assessed as 75%. The Tribunal considers that for proper adjudication of quantum of compensation, copy of Discharge Summary of Apollo Gleneagles Hospital, Kolkata and Disability Certificate (Exhibit – A/4) are the appropriate piece of evidence wherefrom it can be fairly concluded that left proximal tibia of the applicant got fractured. Thus, the relevant documents and evidence clearly show that fracture of tibia suffered by the applicant is covered under Sl. No.33 (*Fracture of Major Bone Femur Tibia one limb*) under Part– III of the Schedule of Railway Accidents and Untoward Incidents (Compensation) Amended Rules, 2016 for which the applicant is entitled to get Rs.80,000/- towards compensation.. That apart, looking into the gravity of the injuries sustained by the applicant which are non-schedule in nature, the applicant is also entitled to get Rs.1,60,000/- for as maximum compensational amount prescribed to be granted towards non-scheduled injury under Rule – 3, Sub-rule – 3 of the above Rules. The applicant has filed his Aadhaar Card and Disability Certificate (Exhibits – A/1 & A/4) which establish his identity and that he is also the victim in this case. The identity of the applicant has not been disputed by the respondent. Therefore, it is concluded that in this case the applicant (AW/1) is entitled to get compensation of total (Rs.80,000 + Rs.1,60,000) = Rs.2,40,000/- plus *pendente lite* interest @ 5% p.a. on Rs.2,40,000/- from the date of registration of the instant case i.e. from

01.10.2020 till the date of judgement in the line of the Order of Hon'ble High Court, Calcutta in **FMAT No.197/2021** in the case of Renu Begum & Ors. –vs- Union of India where Hon'ble High Court has allowed interest @ 5% on the awarded compensation. Thus, the *pendent lite* interest, as prayed for, is allowed. Hence, this issue is decided accordingly.

Issue No. 4 (Relief) :-

9.1 The claim of the applicant is hereby allowed, on contest, but without any cost or interest; hence,

आदेश
ORDERED

- 9.2** (i) That the claim application is hereby allowed for Rs. 2,40,000/- (Rupees two lakhs and forty thousand only) on contest in favour of the applicant along with *pendente lite* interest @ 5% p.a. on Rs.2,40,000/- from 01.10.2020 till the date of judgement. No other cost.
- (ii) The respondent, South Eastern 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 award.
- (iii) The applicant (AW/1) is permitted to withdraw 10% of the amount of compensation (Rs.2,40,000/-) awarded to him excluding the interest amount. After withdrawal of 10%, i.e. Rs.24,000/- balance amount of Rs.2,16,000/- shall be split into 36 fixed deposits of Rs.6,000/- 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 the applicant (the victim) of this case.

Contd...../7

- (iv) Directions contained in (iii) above are in conformity with the orders dated 21.04.2017, 24.05.2020 and 06.11.2020 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 claimant is entitled to exemption of deduction of TDS, he 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 claimant is directed to open individual savings bank account in a nationalized bank near the place of his 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 claimant i.e. the savings bank accounts of the claimant 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 award amount and the bank shall freeze the account of the claimant so that no debit card is issued in respect of the account of the claimant from any other branch of the bank. The bank should make an endorsement on the passbook of the claimant to the effect that no cheque book and/or debit card shall be issued to the claimant 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 claimant is directed to permit the claimant to withdraw money from her savings bank account by means of a withdrawal form only. The claimant is 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 claimant. The monthly interest to be credited by ECS in the savings bank account of the claimant near the place of his residence. The maturity amounts of the FDRs be credited by ECS in the savings bank account of the claimant near the place of his 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 claimant shall be entitled to interest @ 9% per annum on the sum of Rs.2,40,000/- 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 claimant as per the directions contained in para (iii) to (viii) above within 60 days of the full verification of the claimant 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 applicant stands disposed of.

The Registry is directed to send the certified copy of this Judgement directly to the applicant, Sujal Sekh @ Sk., the injured/the victim in this case, 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)/0124 Year 2020
Sujal Sekh @ Sk. -Versus- GM/S. E. Railway

Date	Proceeding of the Bench	Notes of the Registrar
12 ----- 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.2,40,000/- along with <i>pendente lite</i> interest @ 5% p.a. on Rs.2,40,000/- from 01.10.2020 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 claimant shall be entitled to interest @ 9% per annum on Rs.2,40,000/- plus <i>pendente lite</i> interest @ 5% p.a. on Rs.2,40,000/- from 01.10.2020 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 applicant will appear in person before the Registry/RCT/Kolkata along with the following for verification : 1) Bank Account details opened near his 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 claimant. 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>	