

रेलदावाअधिकरण,कोलकातान्यायपीठ

BEFORE RAILWAY CLAIMS TRIBUNAL, KOLKATA BENCH

Coram ::Shri Sanjay Singh Gehlot, Hon'ble Vice-Chairman, RCT/Kolkata.

Shri Rajeev Jain, Hon'ble Member (Judicial)/RCT/Kolkata.

Claim Application No.OA(Ilu)/KOL/2022/0131

Application filed on 28.06.2022 & registered on 28.06.2022

&

Decided on 18.12.2023.

1. Uttam Ray @ Roy, F/o late Subhajit Roy.
2. Anita Ray @ Roy M/o late Subhajit Roy.

Address:

Nazarganj,
Midnapore,
West Bengal,
Pin Code – 721 101

.... Applicants.

-VS-

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

..... Respondent

Application under Section 16 of Railway Claims Tribunal Act, 1987 in respect of claim for compensation for the death in untoward incident to a train.

Value of claim : Rs.8,00,000/-.

Recorded Advocate: Shri A.S. Molla, Ld. Counsel for the applicant.

Shri H.C. Mitter, Ld. Counsel for the Respondent.

निर्णय

JUDGEMENT

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 applicant for himself as well as on behalf of his wife, Anita Ray @ Roy as dependents for the death of their unmarried son, Subhajit Roy. It has been stated in the claim application that on 30.04.2018, the victim was travelling from Midnapur to Howrah with valid railway ticket. During the course of journey, the victim accidentally fell down between Birshibpur and Uluberia Railway Stations, sustained injuries and was taken to Uluberia S.D. Hospital with the help of GRPS staff and subsequently he has been carried to SSKM Hospital for better treatment where he died on 01.05.2018.

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2. The respondent, South Eastern Railway has contested the case filing a written statement denying all the material averments made in the claim application. The respondent in its 'WS' has averred that neither the alleged incident was an 'untoward incident' nor the victim was a *bona fide* railway passenger and it has finally prayed for dismissal of the case.

3. The instant case was filed delayed. The applicant filed a delay condonation petition which was allowed vide Order No.03 dated 27.06.2022.

4. Upon pleadings of the parties, following issues were framed on 16.12.2022:-

- 1) Whether the incident on account of which the victim is alleged to have died can be termed as an 'untoward incident', as defined under Section-123 (c) (2) of the Railways Act?
- 2) Whether on the date of alleged incident, the victim was a *bona fide* railway passenger?
- 3) Whether the applicants are the dependents of the deceased in terms of Section 123(b) of the Railways Act and are entitled to get any compensation from the respondent?
- 4) Relief, if any ?

5. To prove his case, the applicant, Uttam Ray @ Roy has affirmed an affidavit and produced himself as witness (AW/1) and has filed his Aadhaar Card which has been marked as Exhibit A/1. Subsequently, the applicant filed three Aadhaar Cards namely Uttam Ray, father of the victim, Anita Ray, mother of the victim and Subhajit Roy, victim which have been marked as Exhibits A/2 to A/5. During final hearing, Ld. recorded Counsel for the applicant was absent. Instead on his behalf his junior appeared and submitted that as per the documents available on record victim sustained injuries and died fell down from the train for which the applicants are entitled to get compensation.

6. 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)**.

7. Considered the pleadings of both sides, perused all the documents and evidence available on record and heard the submissions made by Ld. Counsels of both sides. Our decisions on the issues are as under :-

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DECISION WITH REASONS

Issue No. 1 :-

8.1 It appears that the averment of the applicant is based on the evidence of AW/1 and the documents available on record. The Railway Memo dated 30.04.2018 issued by SM/Uluberia addressed to Sr. SDMO/Uluberia Govt. Hospital annexed with DRM's Report stated that as per Memo of BSBP – one unknown male person aged about 30 years sustained head injury between ULB – BSBP Section, detained by 38442 at Uluberia and was sent the injured person to Uluberia Hospital for necessary treatment. Copy of Injury Report of SSKM Hospital dated 30.04.2018 available on record indicated the name of the patient as Subhojit Roy and in the column 'short history of case', it is mentioned that *HO fall from train at 3.00 p.m. on 30.04.2018 at Uluberia Railway Platform*. Copy of Post Mortem Report annexed with DRM's Report indicated the name of the victim as Subhajit Roy, aged 26 years and in the column 'informed furnished by police', it is mentioned that *H/o fall from train on 30.04.2018 at about 3.00 p.m. Admitted at SSKM Hospital on 30.04.2018 and expired on 01.05.2018 at 06.00 p.m.* In the said Post Mortem Report, the doctor who conducted the post mortem opined that death was due to effects of head injuries, as noted in the P.M. Report which was ante-mortem in nature.

8.2 In the DRM's Report (Exhibit – R/1) the respondent has concluded that as per RPF Report deceased person, Subhajit Ray was travelling in local train from Madpur to Howrah on 30.04.2018 and standing on the gate. Co-passenger, Anandiya Mondal was warned but Subhajit Ray was not adhered to his advice. When the said train was on run between BSBP – ULB Railway Stations, Subhajit Ray who was standing on the gate, suddenly lean out his mouth and dashed/hit by electric pole, resulting he fell down from running train by his own negligence. But it appears that in support of this contention, no corroborative evidence has been produced before the Tribunal by the respondent. No evidence has been led by the respondent to prove that the death of the victim occurred due to any of the exceptional clauses (a) to (e) of the proviso of Section 124-A of the Railways Act which would exempt the railways from the liability to pay compensation. It is, therefore, concluded that the victim was travelling in a train from which he fell and sustained injury

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which resulted in his death. In regard to the point made in the DRM's Report that the victim died due to his own negligence, the observation of Hon'ble Supreme Court's judgements in the cases of *Union of India - vs – Prabhakaran Vijaya Kumar & Ors. (2008) 9 SCC 527* and *Jameela and Ors – vs – Union of India (2010) 12 SCC 443* are very much relevant wherein the Hon'ble Apex Court has held that ***the liability of Railways is a strict liability even if there is negligence of a passenger i.e. unless and until the negligence is a criminal negligence or a case of suicide or self-inflicted injuries. Railways are held liable on account of 'untoward incident' which causes death of a passenger.***

8.3 Thus, in view of the above facts, circumstances, documents and judicial conspectus made available on record, we hold that the deceased, Subhajit Ray had an accidental fall from train on 30.04.2018 and was a victim of an 'untoward incident', as defined under Section 123©(2) of the Railways (Amendment) Act, 1994. Thus, this issue is decided in favour of the applicants.

Issue No. 2 :-

9.1 In regard to victim's *bona fide* as a passenger, no journey ticket of the victim on the date of alleged incident has been filed. The applicant, Uttam Ray @ Roy, father of the deceased has averred that the journey ticket was lost after the incident.

9.2 Considering the 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) TAC 26 (SC)* wherein the Hon'ble Apex Court has settled the principle and accordingly the relevant portion of the judgement is reproduced below :-

“17.4 ... 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.”

9.3 As per the directive of Hon'ble Supreme Court to discharge the initial burden of proof that the deceased of such case was a *bona fide* passenger, even though his/her ticket has been allegedly lost and could not be produced, the applicant has to file an affidavit for that purpose. In the instant case, it is construed that the affidavit sworn by the applicant has sub-served the purpose, as directed by the Hon'ble Supreme Court. 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.

9.4 Hence, on the basis of circumstantial evidence on record and the observation of Hon'ble Apex Court, we hold that the deceased, Subhajit Roy was a *bona fide* passenger of the train on the date of incident. Thus, this issue is also decided in favour of the applicant.

Issue Nos. 3 & 4 :

10.1 The applicant, Uttam Ray @ Roy in the original claim petition as well as in his affidavit has affirmed that he has preferred compensation for himself as well as on behalf of his wife, Anita Ray @ Roy, as dependents for the death of their unmarried son, Subhajit Roy in an untoward railway incident. In support thereof, the applicant, Uttam Ray @ Roy has furnished his Aadhaar Card (Exhibit A/1), Aadhaar Card of his wife, Anita Ray (Exhibit A/3) and Aadhaar Card of his deceased son, Subhajit Roy (Exhibit A/4). Respondent has not challenged this part of the claim. Thus, the Tribunal observes that the applicants are the dependents of the deceased under Section 123(b) of the Railways Act, 1989 and accordingly they are entitled to get compensation.

10.2 The applicants have claimed compensation for Rs.8,00,000/-. Ministry of Railways (Railway Board) vide their Notification dated 22.12.2016 under GSR 1165(E) has amended the amount of compensation payable in respect of death in Railway Untoward Incident to Rs.8,00,000/- which has come into force on 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 case i.e. **28.06.2022** till the date of the

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judgement in the line of the Order of Hon'ble High Court in **FMAT No.197/2019** in the case of *Renu Begum & Ors – vs – Union of India* where the Hon'ble High Court has allowed interest @ 5% p.a. on the awarded compensation money from the date of accident. Hence, the *pendente lite* interest, as prayed for, is allowed. The decretal amount shall be shared among the claimants in the following proportion :-

- | | | | |
|----|--|-----|---------------|
| 1) | Uttam Ray @ Roy, father of the deceased. | ... | Rs.4,00,000/- |
| 2) | Anita Ray @ Roy, mother of the deceased. | ... | Rs.4,00,000/- |

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

ORDERED

- i) That the claim application is hereby allowed for Rs.8,00,000/- (Rupees eight lacs only) on contest in favour of the applicants with *pendente lite* interest @ 5% p.a. on Rs.8,00,000/- from the date of registration i.e. **28.06.2022** 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.
- iii) a) *Pendente lite* interest portion shall be distributed to the claimants i.e. father & mother of the victim proportionately. The applicant Nos.1 & 2 are permitted to withdraw 10% of the amount of compensation awarded to them. After withdrawal of 10% 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 1 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 Bank A/c of father and mother of the deceased.
- iv) Directions contained in (iii) above are in conformity with orders dated 21.04.2018, 24.05.2019 and 06.11.2019 passed by the 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 deductions 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.

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- vi) That the claimants are directed to open individual saving bank accounts 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 account 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 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 not be issued to the claimants without the permission of the RCT. 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 amount of the FDR 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 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 € 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.

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

- 11.** The Registry is directed to send the certified copy of this judgement directly to **Uttam Ray @ Roy, father of the victim** to his residential address.

(Rajeev Jain)
Member (Judicial)
RCT/Kolkata.

(Sanjay Singh Gehlot)
Vice-Chairman
RCT/Kolkata.

RAILWAY CLAIMS TRIBUNAL

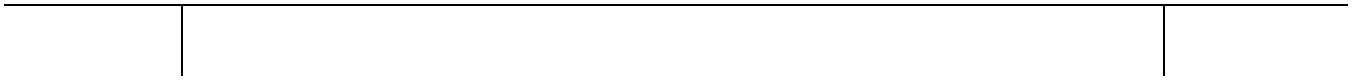
Kolkata Bench

ORDER SHEET

Nature of application _____ Number O.A.No.(IIu)/0131 Year 2022

Uttam Ray @ Roy & Anr. -Versus- **UOI/G.M/S.E. Railway**

Date	Proceeding of the Bench	Notes of the Registrar
12 06.12.23.	<i>Present: Smt. C. Banerjee, Ld. Jr. Advocate.</i> <i>Shri H.C. Mitter, Ld. Counsel for the respondent.</i> As fixed the case is taken up for arguments. Heard both sides. <i>Judgement is kept reserved.</i> <i>(Rajeev Jain)</i> <i>Member (Judicial.)</i> <i>(Sanjay Singh Gehlot)</i> <i>Vice-Chairman</i>	
13 18.12.23.	Record is put up for delivering judgment. Vide the Judgment delivered in separate sheets the O.A. is allowed, on contest, on its merit for Rs.8,00,000/- (Rupees eight lakhs) only with <i>pendente lite</i> interest @ 5% p.a. of Rs.8,00,000/- from the date of registration i.e. 28.06.2022 till the date of judgement. The respondent railway is directed to deposit the awarded amount 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 of Rs. 8,00,000/- plus <i>pendente lite</i> interest 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 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 I.D. Card. 3) Two sets of photographs and specimen signature of the claimant. After complete verification of the claimant, Registry of this Bench will release the payment of the decretal amount to the claimant within 60 days from the later 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 sides. <i>(Rajeev Jain)</i> <i>Member (Judicial.)</i> <i>(Sanjay Singh Gehlot)</i> <i>Vice-Chairman</i>	



रेलदावाअधिकरण,कोलकातान्यायपीठ

BEFORE RAILWAY CLAIMS TRIBUNAL, KOLKATA BENCH

Coram ::Shri Sanjay Singh Gehlot, Hon'ble Vice-Chairman, RCT/Kolkata.

Shri Rajeev Jain, Hon'ble Member (Judicial)/RCT/Kolkata.

Claim Application No.OA(Ilu)/KOL/2019/0203

Application filed on 02.9.2019& registered on 05.11.2019

&

Decided on 07.2023.

1. Shaw Ahalya Debi, W/o late Hikaet Shaw, M/o late Chandan Kumar Shaw.
2. Puja Shaw, W/o late Chandan Kumar Shaw.

Address:

10/11, Acharya Prafulla Chandra Road,

Kolkata – 700 009

West Bengal

.... Applicants.

-VS-

Union of India represented through

The General Manager, Eastern Railway,

Kolkata.

..... Respondent

Application under Section 16 of Railway Claims Tribunal Act, 1987 in respect of claim for compensation for the death in untoward incident to a train.

Value of claim : Rs.8,00,000/-

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Recorded Advocate: Shri A.K. Sahay, Ld. Counsel for the applicant.

Shri P. Prasad, Ld. Counsel for the Respondent.

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JUDGEMENT

:

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

applicant for herself as well as on behalf of her daughter-in-law, Puja Shaw as dependants for the death of her son, Chandan Kumar Shaw. It has been stated in the claim application that on 30.10.2018, the victim along with his brother, Mukesh Shaw while returning from Madanpur to Sealdah by Dn. a local train accidentally fell down between Naihati and Kankinara Railway Stations, sustained severe head injuries and was carried to Naihati State General Hospital for treatment. But after admission, the victim died on the same day at about 7.30 p.m.

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2. The respondent, Eastern Railway has contested the case filing a written statement denying all the material averments made in the claim application. The respondent in its 'WS' has averred that neither the alleged incident was an 'untoward incident' nor the victim was a *bona fide* railway passenger and it has finally prayed for dismissal of the case.

3. Upon pleadings of the parties, following issues were framed on 15.09.2020:-

- 1) Whether the incident on account of which the victim is alleged to have died can be termed as an 'untoward incident', as defined under Section-123 (c) (2) of the Railways Act?
- 2) Whether on the date of alleged incident, the victim was a *bona fide* railway passenger?
- 3) Whether the applicants are the dependents of the deceased and are entitled to get any compensation from the respondent?
- 4) Relief, if any?

4. To prove her case, the applicant, Shaw Ahalya Devi has affirmed an affidavit and produced herself as witness (AW/1). On her behalf, the documents produced and marked as – (1) Railway Ticket Nos. 90907534 & 90907535 (Exhibit – A/1), (2) Railway Memo dated 30.10.2018 (Exhibit – A/2), (3) GDE No.1084 dated 30.10.2018 of Naihati GRPS (Exhibit – A/3), (4) Report of Untoward Incident /SS/RRI Cabin/NH (Exhibit – A/4), (5) Death Certificate of Chandan Kumar Shaw (Exhibit A/5), (6) P.M. Report (Exhibit A/6) and (7) Aadhaar Card of Shaw Ahalya Devi. On behalf of the applicant, one Mukesh Kumar Shaw stated to be another son of the applicant has

affirmed an affidavit and produced himself as witness (AW/2). On his behalf he has produced his Voter I/Card (Exhibit A/8) and Aadhaar Card (Exhibit A/9).

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)**.

6. Considered the pleadings of both sides, perused all the documents and evidence available on record and heard the submissions made by Ld. Counsels of both sides. Our decisions on the issues are as under :-

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C. A. No. OA(IIu)/KOL/0203/2019

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DECISION WITH REASONS

Issue No. 1 :-

7.1 It appears that the averment of the applicant and Mukesh Kumar Shaw are based on the evidence of AW/1 and AW/2 and the documents available on record. The Railway Memo dated 30.10.2018 issued by SM/Nalhati (Exhibit – A/2) stated that as reported by Mr. Animesh Das, RPF/NH – *one unknown male person aged about 32 years fall down and injured at KM No.37/8 – 37/10 between NH – KNR Dn. sub-line & common line outside the track.* An extract copy of Naihati GRPS GDE No.1084 dated 30.10.2018 (Exhibit A/3) corroborated the same fact as stated in the Railway Memo. Surathal Report available on record annexed with DRM's Report stated that on preliminary investigation and the persons who signed alongside, it transpired that on 30.10.2018 at about 05.30 p.m. Chandan Kumar Shaw after falling from the train near Naihati Station at KM Post No.37/18 – 37/10 run over and sustained serious injuries and was taken to Naihati State General Hospital with the help of local persons, GRPF and RPF staff where the doctor declared him dead at 07.30 p.m. on the same day. Post Mortem Report (Exhibit-A/6) indicated the name of the victim as Chandan Kumar Shaw aged 34 years and the doctor who conducted the post mortem opined that the death was due to effects of head injuries which was ante-mortem in nature.

7.2 In the DRM's Report (Exhibit – R/1) the respondent has concluded that after submission of RPF enquiry report it was revealed that the victim now deceased died due to his own negligence. In the DRM's Report it is further stated that in this context statement of on duty Hd. Constable of RPF/Post/Naihati now posted at Loco/KPA was recorded where he stated that on 30.10.2018, he was detailed for "C" shift duty at Naihati Yard from 14.00 hrs. to 22.00 hrs. under RPF/Post/NH. During his duty period at about 18.30 hrs. while he was checking the yard area, some unknown people reported to him that one male person fell down from an unknown train. On an immediate basis, he attended the spot and found one male aged about 30 years lying in injured condition in the main

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line outside the track at KM No.37/10 – 37/08 between Bamkin Bridge and RRI/Cabin. Immediately, he informed the matter to the on duty TA of RPF/Post/Naihati over mobile phone. He also informed the same to RRI/Cabin for necessary action. Further, the injured person was taken to State General Hospital/NH with the assistance of GRPS/NH and RPF/NH.

7.3 Thus, from the above, it is clear that the railway administration has admitted that the incident, as alleged, was an 'untoward incident'. In regard to the point made by the respondent in their DRM's Report that the victim sustained injuries and died due to his own negligence, the observation of Hon'ble Supreme Court's judgements in the cases of *Union of India - vs – Prabhakaran Vijaya Kumar & Ors. (2008) 9 SCC 527* and *Jameela and Ors – vs – Union of India (2010) 12 SCC 443* relevant wherein the Hon'ble Apex Court has held that ***the liability of Railways is a strict liability even if there is negligence of a passenger i.e. unless and until the negligence is a criminal negligence or a case of suicide or self-inflicted injuries. Railways are held liable on account of 'untoward incident' which causes death of a passenger.*** Further in the case of the Union of India –vs- Prabhakaran Vijaya Kumar and Others reported in **2008 TAC 777 (S.C.)** The Hon'ble Supreme Court 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.” Thus, based on the documentary and circumstantial evidence and considering the findings of Hon’ble Apex Court, we have concluded that the victim died as a result of fall from a train and that it is a case of ‘untoward incident’, as defined under Section – 123 (c) of Railways Act. Hence, this Issue is decided in favour of the applicant.

Issue No. 2 :-

8.1 To substantiate the plea that the victim was travelling with valid 2nd class journey railway ticket Ex- Madanpur to Sealdah, the applicant has filed two original Railway Journey Tickets bearing No.90907534 & 90907535 dated 30.10.2018 (Exhibit – A/1). The applicant, Shaw Ahalya Devi in her affidavit has affirmed that 30.10.2018 after purchasing valid journey ticket bearing nos. 90907534 & 90907535 dated 30.10.2018 Ex. Madanpur to Sealdah, her two sons

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namely Chandan Kumar Shaw, since deceased and Mukesh Kumar Shaw boarded a Dn. local train from Madanpur to get down at Sealdah. Shri Mukesh Kumar Shaw (AW/2), another son of the applicant during his cross-examination has stated that at the time of incident he was travelling with his deceased brother by train. Their tickets were purchased at about 04.55 p.m. from Madanpur on 30.10.2018. On the other hand, though in the ‘WS’ there is a routine denial that the victim was a *bona fide* railway passenger, but in the DRM’s Report there is no specific denial about the *bona fide* of the victim as a passenger. No contrary evidence has been filed by the respondent against the veracity of the original journey tickets filed in this case.

8.2 Thus, on the basis of available documents and evidence, it is concluded that the victim was a *bona fide* passenger on the date of his fatal accident within the provision of Section – 2 (29) together with Section – 124-A of the Railways Act. Hence, this issue is also decided in favour of the applicant.

Issue Nos. 3 &4 :

9.1 The applicant, Shaw Ahalya Devi in the original claim has stated that she has preferred compensation for herself as well as on behalf of her daughter-in-law, Puja Shaw as dependents for the death of her son, Chandan Kumar Shaw in an untoward railway incident. In support thereof, the applicant, Shaw Ahalya Devi has furnished her Aadhaar Card (Exhibit A/1) and death certificate of her deceased son, Chandan Kumar Shaw (Exhibit A/5). Respondent has not challenged this part of the claim. Thus, the Tribunal observes that the applicants are the dependents of the deceased under Section 123(b) of the Railways Act, 1989 and accordingly they are entitled to get compensation.

9.2 The applicants have claimed compensation for Rs.8,00,000/-. Ministry of Railways (Railway Board) vide their Notification dated 22.12.2016 under GSR 1165(E) has amended the amount of compensation payable in respect of death in Railway Untoward Incident to Rs.8,00,000/- which has come into force on 1st day of January, 2017. The applicants are, therefore, 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 case i.e. **05.11.2019** till the date of the

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judgement in the line of the Order of Hon'ble High Court in ***FMAT No.197/2019*** in the case of *Renu Begum & Ors – vs – Union of India* where the Hon'ble High Court has allowed interest @ 5% p.a. on the awarded compensation money from the date of accident. Hence, the *pendente lite* interest, as prayed for, is allowed. The decretal amount shall be shared among the claimants in the following proportion :-

- | | | | |
|----|---|-----|---------------|
| 1) | Shaw Ahalya Devi, mother of the deceased. | ... | Rs.4,00,000/- |
| 2) | Puja Shaw, wife of the deceased. | ... | Rs.4,00,000/- |

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

ORDERED

- i) That the claim application is hereby allowed for Rs.8,00,000/- (Rupees eight lacs only) on contest in favour of the applicants with *pendente lite* interest @ 5% p.a. on Rs.8,00,000/- from the date of registration i.e. **05.11.2019** 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.
- iii) a) *Pendente lite* interest portion shall be paid to applicants i.e. mother & wife of the victim. The applicant Nos.1 & 2 are permitted to withdraw 10% of the amount of compensation awarded to them. After withdrawal of 10% 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 1 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 Bank A/c of the mother and wife of the deceased.
- iv) Directions contained in (iii) above are in conformity with orders dated 21.04.2018, 24.05.2019 and 06.11.2019 passed by the 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 deductions 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.

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- vi) That the claimants are directed to open individual saving bank accounts in a nationalised 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 account 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 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 not be issued to the claimants without the permission of the RCT. 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 amount of the FDR 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 premature 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 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 € 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.

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

10. The Registry is directed to send the certified copy of this judgement directly to **Shaw Ahalya Devi, mother of the victim** to her residential address.

(Rajeev Jain)

Member (Judicial)

RCT/Kolkata.

(Sanjay Singh Gehlot)

Vice-Chairman

RCT/Kolkata.