

रेल दावा अधिकरण, कोलकाता न्यायपीठ
BEFORE RAILWAY CLAIMS TRIBUNAL, KOLKATA BENCH

Coram: Shri Sanjay Singh Gehlot, Hon'ble Vice-Chairman
Shri Rajeev Jain, Hon'ble Member(Judicial)

Claim Application No. OA(IIU)/KOL/2020/014

(Application filed on 07.01.2020 & decided on 21.05.2024)

1. Santosi Laha @ Santoshi Laha, wife of the deceased Ashok Laha @ Ashoke Laha
2. Pankaj Shaw, son of the deceased Bijay Shaw @ Bijoy Shaw
3. Sachin Shaw, son of the deceased Bijay Shaw @ Bijoy Shaw

All are residing at :
620, B.M. Road,
P.O. Baidyabati, P.S. Bhadreswar,
Dist. Hooghly,
Pin Code - 712 222

..... Applicants.

-VS-

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

...

Application under Section 16 of Railway Claims Tribunal Act, 1987 read with Sections 123(c)(2) and 124-A of Railways Act, 1989.

Claim for Rs.4,00,000/- with interest and costs

Shri R. N. Basu, Ld. Counsel for the applicant.
Shri S. M. Roy, Ld. Counsel for the respondent

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J U D G E M E N T:

Dictated by SANJAY SINGH GEHLOT, VICE-CHAIRMAN

1. This is an application under Section 16 of Railway Claims Tribunal Act, 1987 read with Sections 123(c)(2) and 124-A of the Railways Act, 1989 filed by the applicant for herself and also on behalf of her two sons as dependants of the deceased claiming compensation on account of the

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death of her husband Bijay Shaw @ Bijoy Shaw allegedly in an untoward train incident of accidental falling from a train. It is pleaded in the claim application that on 12.08.2015 the deceased was travelling from Baidyabati to Srirampore by a local train. During the course of his journey, at about 15.00 hrs. he fell down from the train due to overcrowding pressure and sudden jerk between Sheoraphuli and Srirampore and he died on the spot. Due to the incident, his personal belongings and the ticket could not be recovered.

2. The respondent railway has filed a Written Statement disputing and denying the averments made in the claim application. In the written statement, it was denied that the deceased was a bona fide passenger and that he fell down from the train while travelling. It was further stated therein that the deceased was run over while crossing the railway track.

3. On the basis of the pleadings of the parties, the following issues were framed :-

1. Was the victim a bona fide passenger having a valid railway ticket for his journey, as claimed?
2. Whether the victim died in an untoward incident as defined under Section 123(c)(2) of the Railways Act, 1989?
3. Whether the applicant is the dependent of the victim and whether the applicant is entitled to get compensation as per the provisions of 'untoward incident' as prayed for?
4. To what other relief, if any, is the applicant entitled?

4. The wife of the deceased filed her affidavit of evidence narrating the facts of the case and she was cross-examined as AW/1. The documents filed by the applicant were marked Exht.A/ to A/15(Aadhar card of Karmi Debi - A/1, Voter's card of Karmi Debi - A/2, Voter's card of Bijay Shaw - A/3, Aadhar card of Bijoy Shaw - A/4, Aadhar card of Pankaj Kumar Shaw - A/5, Voter's card of Pankaj Shaw - A/6, Aadhar card of Sachin Shaw - A/7, Death certificate of Bijoy Shaw - A/8, Death certificate of Budhan Shaw –

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A/9, cremation certificate of Lachho Devi - A/10, FIR - A/11, Railway memo - A/12, dead body handing over memo - A/13, Dead body challan - A/14 and P.M. report - A/15)

On the other hand, the respondent railway filed ADRM/HWH's report along with annexures which were marked Exht.R/1 collectively.

5. Ld. Counsels for the rival parties submitted their respective oral arguments. After appreciating the arguments and perusing the records, we determine the issues as under :-

Issue Nos. 1 & 2

6. For proper adjudication of the case, these two inter-related issues are taken up together.

6.1 In her affidavit of evidence, the applicant reiterated the facts of the case. She deposed(AW/1) that she did not see the incident and she heard about the incident. The deposition of the applicant established that her knowledge about the incident is based on hear-say.

6.2 Station Master of Shrirampur on 12.08.2015 issued a memo(Exht.A/12) to the OC/GRP-SRP & SHE and ASI/RPF/SRP mentioning that an unknown male person aged about 35 years was lying dead outside the Dn. M/L at Km 19/44-19/42 between SHE & SRP as reported by on duty GRP/SRP at about 15 hrs. on date. Sheoraphuli GRPS registered U/D case no.67/15 dated 12.08.2015 and held an inquest at the spot. Investigation report revealed that the deceased fell down from a train while travelling. Final Police Report stated that the cause of death of the victim was accidental in nature.

6.3 ADRM's report stated that the victim died due to his own negligence as he might have been standing near the door of the train compartment, subsequently he lost his balance and fell down. Therefore, ADRM's report admitted the victim's travelling by a train but defended the case on the ground of negligence of the deceased. As regards falling down of a person from a train due to his/her negligence, Hon'ble Apex Court in a case reported in AIR 2010 Supreme Court 3705 (Jameela & Ors. Vs. Union of India) has held that "***Even if it were to be assumed that the deceased fell from the train to his death due to his own negligence it will not have any effect on the compensation payable under Section 124A of the Act.***" In view of such decision of the Hon'ble Supreme Court, it is held that the victim died due to fall from a running train, which comes under the ambit of Section 123(c)(2) of the Railways Act.

6.4 Ticket of the deceased is stated to have been lost after the incident. ADRM's report says that no ticket was found from the possession of the deceased. Ld. Counsel for the respondent disputed the bona fide of the victim as there is no proof of evidence to this effect. Hon'ble Supreme Court in Civil Appeal No.4945 of 2018(Union of India Vs. Rina Devi) has held in para. 17.4 that "***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.***" In the instant case, the applicant has affirmed in his affidavit that the 2nd class ticket of the deceased was lost. It has already been decided in the aforesaid para. that the death of the victim was caused in an untoward incident. Respondents

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have not been able to bring any evidence to prove that the victim was detected as a ticketless traveller in course of his journey by train. Further, it is not the case of the applicant that except for his journey ticket, his other personal belongings were recovered. It is, therefore, concluded that the victim in this case was a bona fide railway passenger in a train.

These two issues go in favour of the applicants.

Issue Nos.3 & 4

7. These two issues are taken up together. The claim application has been filed by the wife of the deceased for herself and also on behalf of her two sons. Documents on record establish the relationship of the claimants with the deceased. The applicant filed documents in support of the death of her parents-in-law. Hence, the claimants are entitled to get the enhanced compensation of Rs.8,00,000/- from the respondent as dependants of the deceased as per provision of Section 123(b) of the Railways Act, 1989, which will be shared amongst them in the following proportion :-

1. Karmi Devi @ Karmi Debi, wife of the deceased	- Rs.5,00,000.00
2. Pankaj Shaw, son of the deceased	- Rs.1,50,000.00
3. Sachin Shaw, son of the deceased	- Rs.1,50,000.00
	<u>Rs.8,00,000.00</u>

The applicant has prayed for pendente lite interest. The accident took place on 12.08.2015 i.e. before enhancement of compensation. On the date of accident, the prescribed amount of compensation for the death of a person was Rs.4,00,000/-. Therefore, as per the judgement passed by the Hon'ble Apex Court in the case of Union of India Vs. Rina Devi in Civil Appeal no.4945 of 2018, the applicant is not entitled to any pendente lite interest. Hence,

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ORDERED

8.0 (i) That the claim application is hereby allowed for Rs.8,00,000/- (Rupees eight lacs only) on contest in favour of the applicant.

(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 award.

(iii)(a) The applicant No.1 is permitted to withdraw 10% of the compensation awarded to her. After withdrawal of 10% i.e. Rs.50,000/-, balance amount of Rs.4,50,000/- shall be split into 30 fixed deposits of Rs.15,000/- each and invested for a period of 1 to 30 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 applicant No.1.

(b)The applicant Nos.2 & 3 are permitted to withdraw 10% of their respective share of compensation. After withdrawal of 10% i.e. Rs.15,000/-, balance amount of Rs.1,35,000/- in each case shall be split into 15 fixed deposits of Rs.9,000/- each and invested for a period of 1 to 15 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/Cs of the applicant Nos.2 & 3.

Directions contained in (iii) above are in conformity with the orders dt. 21.04.2017, 24.05.2019 and 06.11.2019 passed by Hon'ble High Court of Delhi in "FAO 22/15 and CMA No.4501/15 in Geeta Devi Vs. Union of India."

(iv) 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.

(v)The claimants are directed to open individual savings bank account 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 account of the claimants i.e. the savings bank account of the claimants shall be an individual savings bank account and not a joint account.

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(vi) 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 is directed to make an endorsement on the passbook of the claimant to the effect that no cheque book and/or debit card have been issued and shall not be issued to the claimant without the permission of the RCT. The concerned bank of the claimant is directed to permit the claimant 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.

(vii) 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 the bank to the claimant. The monthly interest to be credited by ECS in the savings bank account of the claimant near the place of their residence. The maturity amounts of the FDRs are credited by ECS in the savings bank account of the claimant 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 Bench.

(viii) 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 decretal amount shall carry simple interest @ 9% p.a. from the date of default till the date of payment.

(ix) Directions contained above are in conformity with the Ministry of Railways (Railway Board) Notification dt. 3rd June, 2020 under GSR 347(E) which has come into effect on 1st day of January, 2020.

(x) Registry will release the payment of the decretal amount to the claimant as per the directions contained in para. (iii) 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.

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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 to her residential address.

(Rajeev Jain)
Member(Judicial)

(Sanjay Singh Gehlot)
Vice-Chairman

