

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/2022/0002

(Application filed on 11.01.2022 & decided on 21.12.2023)

1. Arjina Khatun, wife of the deceased Sk. Saidul
2. Sk. Sakib, minor son of the deceased Sk. Saidul
3. Sk. Rosonara Bibi, mother of the deceased Sk. Saidul

All are residing at :
Vill. & P.O. Kanpur,
P.S. Penro,
Dist. Howrah,
West Bengal – 711 410

..... Applicants.

-VS-

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

..... 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.8,00,000/- with interest and costs

Shri T. Samanta, Ld. Counsel for the applicant.
Shri R. Chatterjee, Ld. Counsel for the respondent

J U D G E M E N T :

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 minor son and mother-in-law as dependants claiming compensation on account of the death of her husband Sk. Saidul allegedly in an untoward train incident of accidental falling from a train. It is pleaded in the claim application that on 24.03.2021 at noon the victim Sk. Saidul was travelling from Bagnan to Kharagpur with a valid ticket and during the course of his journey, he accidentally fell down from the running train between Deulti and Kolaghat and died on the spot. Uluberia GRPS registered an U/D case no.13/21 dated 24.03.2021 over the incident.

2. The respondent railway filed Written Statement disputing and denying the averments made in the claim application. In the written statement, it was denied that the victim was travelling by any train as a bona fide passenger and he fell down from the train between Deulti and Kolaghat. It was also contended that the death was due to the victim's negligent act.

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3. On the basis of the pleadings of the parties, the following issues were framed :-
1. Whether the incident on account of which the victim alleged to have died can be termed as an ‘untoward incident’ as defined under Section 123(c)(2) of the Railways Act, 1989?
 2. Whether on the date of the 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 compensation from the respondent?
 4. Relief, if any?

4. The applicant filed her affidavit of evidence and she was cross-examined as AW/1. In support of the case, the applicant has furnished the following documents, which were marked Exhibits :-

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|-----|-------------------------------------|---|------|
| 1. | Aadhar card of Arjina Khatun | - | A/1 |
| 2. | Aadhar card of Sk. Rosonar Bibi | - | A/2 |
| 3. | Voter's card of Sekh Raoshnara Bibi | - | A/3 |
| 4. | Birth certificate of Sk. Sakib | - | A/4 |
| 5. | Marriage certificate of Sk. Saidul | - | A/5 |
| 6. | FIR | - | A/6 |
| 7. | Inquest report | - | A/7 |
| 8. | Final Police Report | - | A/8 |
| 9. | Railway memo | - | A/9 |
| 10. | P.M. report | - | A/10 |

On the other hand, the respondent railway filed ADRM/KGP'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 No. 1

6. In her affidavit, the applicant reiterated the facts of the case, as narrated in the claim application. In her evidence (AW/1), she stated that she did not see the incident with her own eyes.

6.1 It is seen from the copy of FIR(Exht.A/6) that Station Manager, Bagnan on 24.03.2021 issued a memo to the IC/GRP/Bagnan stating that as per DTE D.E. No.511, dead body of a male person aged about 40 years was lying outside the track of Up line between Deulti and Kolaghat at KM Post No.52/31-53/01. On the basis of this information, Kharagpur GRPS registered U/D case no.13/21 dt.24.03.2021. In the Investigation report(Exht.A/7), the investigating officer opined that the deceased while travelling in a overcrowded train fell down and died at the spot. Post Mortem report(Exht.A/10) mentioned that the injuries which had caused the victim's death were ante-mortem in nature. Final Police Report(Exht.A/8) revealed that no foul play was detected behind the victim's death and it was case of railway accident in nature. As per summons issued, Kharagpur GRPS filed Case Diary, wherein it was stated that the deceased fell down from a running train.

6.2 ADRM's report stated that the deceased was standing at the gate of the train and he fell down from the running train due to his own negligence. 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) , Hon'ble Apex Court has held that **"Standing at open doors of the compartment of a running train may be a negligent act or even rash act, but it is certainly not a criminal act and negligence of a passenger does not have effect on liability of railways.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.

This issue is, therefore, answered in favour of the applicant.

Issue No.2

7.0 As per claim application, the deceased had a 2nd class ticket bearing No.77575766 dated 24.03.2021 ex. Bagnan to Kharagpur. Investigation report(Exht.A/7) mentioned that a ticket bearing no.77575766 of 24.03.3021 was found from the possession of the deceased and the same was also mentioned in the Case Diary. Along with the Case Diary, Kharagpur GRPS filed certified copy of the Seizure List and certified copy of the ticket. ADRM's report stated that the ticket was verified. In the circumstances, it is held that the deceased was a bona fide passenger. This issue is decided in favour of the applicant.

Issue Nos.3 & 4

8.0 These two issues are taken up together. The claim application has been filed by the wife of the deceased along with her minor son and mother-in-law. The applicant deposed that her father-in-law already died. As per documents on record, the relationship of the claimants with the deceased are established. The applicants are, therefore, entitled to get 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. Arjina Khatun, wife of the deceased Sk. Saidul	-	Rs.5,00,000.00
2. Sk. Sakib, minor son of the deceased Sk. Saidul	-	Rs.1,00,000.00
3. Sk. Rosonara Bibi, mother of the deceased Sk. Saidul	-	Rs. 2,00,000.00
		Rs.8,00,000.00

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The applicant has claimed pendente lite interest. It is pertinent to mention the case of *Union of India – Vs. Rina Devi in Civil Appeal No.4945/2018* wherein the Hon'ble Supreme Court has allowed interest from the date of accident and also the order of Hon'ble High Court in *FMAT No.197/2021, Renu Begum & Ors. – Vs. Union of India* where the Hon'ble High Court has allowed interest @ 5% p.a. on the awarded compensation. Hence, the *pendente lite* interest, as prayed for, is allowed from the date of registration of the case i.e. 13.01.2022. Respondent is directed to calculate *pendente lite* interest from the date of registration of the case till the date of judgement. Hence,

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ORDERED

9.0 (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 of the case till the date of judgement.

(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 her respective share of compensation. After withdrawal of 10% i.e. Rs. 50,000/- plus entire pendente lite interest 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 wife of the deceased.

(b) The applicant No.3 is permitted to withdraw 10% of her respective share of compensation. After withdrawal of 10% i.e. Rs. 20,000/-, balance amount of Rs.1,80,000/- shall be split into 15 fixed deposits of Rs.12,000/- 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/C of the mother of the deceased.

(c) Son of the deceased (Applicant No.2) is a minor as per his birth certificate. As such, his share of compensation to be credited to the bank account of his mother (the applicant no.1) being a natural guardian. The branch manager of the concerned bank is directed to invest his share of compensation in a fixed deposit scheme in the name of the minor till the period he attains majority. The applicant no. 1 is, however, at liberty to withdraw periodical interest which will accrue on the said fixed deposit for bringing up her minor ward as a natural guardian.

(iv) Directions contained in (iii)(a) & (2) 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."

(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.

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(vi) 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 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 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 is directed to make an endorsement on the passbook of the claimants to the effect that no cheque book and/or debit card have been issued and 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 amounts of the FDRs are 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 Bench.

(ix) The respondent railway is directed to deposit the awarded amount plus the *pendente lite* interest 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 from the date of default till the date of actual deposit of the amount with the Registry.

(x) 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.

(xi) Registry will release the payment of the decretal amount to the claimants as per the directions contained in para. (iii) 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 applicant stands disposed of.

The Registry is directed to send the certified copy of this judgement directly to the applicant to her residential address.

(Rajeev Jain)
Member(Judicial)

(Sanjay Singh Gehlot)
Vice-Chairman

