

**BEFORE THE RAILWAY CLAIMS TRIBUNAL,
KOLKATA BENCH.**

Case No. O.A(IIu)/KOL/0211/2022

Date of Filing: 29.09.2022

Date of Judgement : 12. 09.2024

Pubali Bose Biswas, W/o late Milton Biswas @ Mrinmay Biswas.

... Applicant.

Resident of Lila Apartment, 3rd floor,
FC 4/4, Vidyasagar Pally near Jardabagan Bridge,
P.S: Rajarhat,
Dist: North 24 Parganas,
Pin Code – 700 059
Presently residing at: 54, Mallick Para Lane,
Bangur Avenue,
P.O: Bangur, P.S: Dum Dum,
Dist: North 24 Parganas,
Pin Code – 700 055
West Bengal

- *VERSUS* -

Union of India represented through Respondent.
General Manager, N.F. Railway, Maligaon.

Kalpana Biswas, M/o late Milton Biswas @ Mrinmay Biswas.

..... Proforma Respondent.

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

CORAM :-

1) Shri S.D. Sharma, Hon'ble Member (Judicial)/RCT/Kolkata..

Appearance :

Counsel for the Applicant : Shri R.K. Mishra.

Counsel for the Respondent : Shri P. Prasad.

Dictated by Shri S.D. Sharma, Member (Judicial)/RCT/Kolkata.

J U D G E M E N T

The claimant/applicant has preferred the present claim application, against the Railways/respondent, under Section 16 of the Railway Claims Tribunal Act, 1987, for seeking compensation, from the Railways/respondent, on account of the death of the husband of the applicant namely, late Milton Biswas @ Mrinmay Biswas (**the deceased**), who allegedly travelling by train on 13.10.2021, met with an accident and died on 14.10.2021.

1.1 It is alleged by the claimant that on 13.10.2021, the victim, Milton Biswas @ Mrinmay Biswas, since deceased along with Avik Saha and Miss Tumpa Das were travelling from Howrah to New Jalpaiguri railway stations by 02345 (Saraighat Express) in A.C. three tier coach with valid reserved ticket. It is further alleged that

Contd.../2

during journey, she talked with her husband over phone several times and lastly after 1.30 a.m., when she could not contact her husband, then she contacted one Shri Avik Saha, who allegedly accompanied her husband in the journey, who further told, that he reached New Jalpaiguri station, but could not locate her husband. Thereafter, finding no other alternative, on the next date i.e. 14.10.2021 at about 06.00 a.m in the morning, she along with her father and cousin brother-in-law went for New Jalpaiguri in order to search and locate the whereabouts of her husband. After crossing, Malda Town, her father received a call from her brother, who stays in Siliguri, told that they visited the Siliguri P.S. to search and locate her husband and from there they have received an information of one identical dead body, which was found under Chopra P.S. area. This is how the deceased was identified. Thereafter, the dead body of her husband was sent to Islampur Hospital for post mortem.

1.2 It is also alleged that the victim had a railway ticket having PNR No.665-7338196 dated 12.10.2021 Ex. Howrah to New Jalpaiguri.

1.3 Thus, alleging that the deceased was a *bona fide* passenger and a sufferer of an untoward incident, as such, the claimant is entitled to a compensation to the tune of Rs.8,00,000/- with interest from the Railways/respondent.

In Reply :

2.1 The respondent has denied and disputed the incident, as claimed.

2.2 The respondent has further submitted that for want of knowledge, the applicant is to provide strict proof thereof.

2.3 The respondent has strongly disputed the identity of the alleged victim along with relationship with the applicant, which should be proved by producing valid and proper documentary evidence.

Contd.../3

: 3 :
C.A. No.OA(IIu)/0211/2022
*** * ***

2.5. The respondent railway has finally prayed for the dismissal of the claim application.

3. I have pursued the claim application as well as the written statement filed by the Railways. Based on the above said pleadings, and material evidence placed on record, the following issues were framed for determination and adjudication in this case on 08.06.2023 :-

- 1) Whether the incident on account of which the deceased is alleged to have died can be termed as an 'untoward incident' within the provision of Section 123(c)(2) of the Railways Act ?**
- 2) Whether the victim was a *bona fide* railway passenger on the date of the incident in terms of Section – 2(29) of the Railways Act ?**
- 3) Whether the applicant is the dependent of the deceased in terms of Section – 123(b) of the Railways Act and is entitled to get any compensation from the respondent railway ?**
- 4) Relief, if any.**

4. In this case, the applicant, Pubali Bose Biswas, wife of the victim, appeared before the Tribunal filed her affidavit and tendered her evidence. She has submitted documents and has marked the same as Ex. A/1 to A/9 and has closed her evidence. The applicant, Pubali Bose Biswas was examined as AW/1 and was cross-examined by the Ld. Counsel for the respondent.

5. On the other hand, the Railway has submitted the DRM report and has marked the same as Ex-R/1 and has not produced any witness.

6. In order to avoid repetition of appreciation of evidence, and for the purpose of brevity, Issue Nos. 1 & 2 are taken up together for the purpose of discussion and orders.

Contd.../4

Issue Nos. 1 & 2

7.1 It is pertinent to mention here that the averment of the applicant is based on the evidence of applicant, Pubali Bose Biswas (AW/1) and the documents available on record. During cross-examination, the applicant (AW/1) has stated that the deceased was her husband. Her husband was travelling along with two others and initially, she had the impression that her husband might have died being murdered by his co-passengers for which she had lodged an FIR before Chopra P.S. In her cross-examination (AW/1) further stated that after conducting the investigation, IC, Chopra P.S. intimated local P.S., Dum Dum that her husband died due to train accident. In reply to the question put to her by Court, the applicant (AW/1) stated that she does not remember whether Chopra P.S. where she had lodged an FIR intimated her about the exact reason of death of her husband in writing.

7.2 In support of his case in regard to the fact of this issue, Ld. Counsel of the applicant has relied upon the police documents namely, certified copy of FIR, certified copy of Dead Body Challan, certified copy of Surathal Report and certified copy of P.M. Report. Ld. Counsel for the applicant, during arguments submitted that in the DRM's Report, railway has admitted the incident. Thus, according to him, it is a case of 'untoward incident' within the provision of Section 123(c)(2) of the Railways Act for which the applicant is entitled to get compensation.

7.3 The respondent has filed the DRM's Report (Exhibit R/1) along with relevant Annexures. **In the DRM's Report it has specifically stated that on enquiry, it revealed that the deceased person Milton Biswas @ Mrinmoy Biswas was travelling in train no.02345 (Saraighat Express) from Howrah to New Jalpaiguri. His berth no.66 in Coach No.B-3 was confirmed with PNR**

Contd.../5

No.665-7338196. On 14.10.2021, when the train was running between Kishanganj and New Jalpaiguri, the deceased person accidentally fell down from the running train at KM No.41/02-01, between Mangurjan – Teen Mile Hat Railway Station and died on the spot. The DRM's Report also concluded that it is a case of 'untoward incident'.

6.4 Thus, from the above, it is clear that the railway administration has admitted that the incident, as alleged, was an 'untoward incident'. Therefore, based on the documentary and circumstantial evidence and admission made by the respondent in their DRM's Report, I 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 and the victim was a *bona fide* passenger on the date of incident.

7.8 In view of my above discussions, I feel that the applicant is able to prove that the deceased was a *bona fide* passenger and sufferer of an untoward incident. Accordingly, both the issues are decided in favour of the applicants and against the Railways.

7.9 Thus, on holistic evaluation of evidences on record and from attending circumstances, I have come to a conclusion that the accidental death of deceased was an 'untoward incident, within the ambit of provisions of section 123 (c) 2 of Railway Act, 1989, and the deceased was also a bona fide passenger. Accordingly, both the issues are decided in the favour of the applicant.

Issue No.3.

8.1 The applicant, Puali Bose Biswas in the claim petition has preferred compensation for herself, as dependent for the death of her husband, Milton Biswas @ Mrinmay Biswas in an untoward railway incident. The applicant in her claim petition has also impleaded, Smt. Kalpana Biswas, mother of the deceased, as

Contd.../6

as Proforma Respondent. During cross-examination, the applicant (AW/1) stated that Kalpana Biswas is her mother-in-law and she has made her proforma respondent. Presently she does not have any relation with her. In her cross-examination, the applicant (AW/1) further stated that she has no issue and she has not remarried. Her husband did not have any second marriage. In support thereof, the applicant has furnished her Aadhaar Card (Exhibit A/8) and marriage certificate (Exhibit A/9). Respondent has not challenged this part of the claim. Further, despite failing to bring the proforma respondent, the mother of the deceased for her personal appearance before the Tribunal, a notice was published in the Bengali newspaper to make aware of the deceased. However, the proforma respondent did not turn up. Thus, considering the circumstances of the case, the Tribunal observes that the applicant and the mother of the deceased, are dependents under Section 123(b) of the Railways Act, 1989 and accordingly they are entitled to get compensation.

8.2 Accordingly, this issue is also decided in favour of the applicant and against the Railways/Respondent.

Issue No.4

9.1 In view of my above discussions, I feel that the applicant, Pubali Bose Biswas, wife of the deceased and Kalpana Biswas, proforma respondent as well as mother of the deceased are entitled to an amount of compensation from the Railways to the tune of Rs.8,00,000/- with interest. This issue is also decided accordingly in favour of the claimants and against the Railways.

9.2 As such, the application is allowed and it is ordered that Respondent will pay Rs.8,00,000/- (Eight Lakhs only), to the applicant and proforma respondent with interest at the rate of 6% p.a from the date of filing the claim application, i.e, 29.09.2022, till the date of judgement. The amount is distributed among the claimants in the following manner;

- 1. Pubali Bose Biswas (the wife of the deceased) will get Rs.4,00,000/- (Four Lakhs only)**
- 2. Kalpana Biswas (the mother of the deceased) will get Rs.4,00,000/- (Four Lakhs only)**

9.3 Respondent is directed to deposit the awarded compensation amount in the "Suitor's account" of this Tribunal within a period of 30 days from the date of this order, failing which, a simple interest at the rate of 9% p.a. will be payable, for the subsequent delays on the total amount awarded to all the applicants.

9.4 So far as the disbursal of the award is concerned, I have heard the learned counsels for the parties.

9.5 Therefore, relying upon the judgement rendered by the Hon'ble Delhi High Court in the case of Geeta Devi (supra) and in pursuance of Rule 5, in the present case, the amount of award shall be disbursed to the claimants in the following manner:-

This follows the direction of the Hon'ble High Court in Geeta Devi vs. Union of India in FAO No.22/2015 and ordered the Principal Bench to be applied all across the Benches in India. **The monthly payments as provided in Geeta Devi's case, was indeed the mode of payment that was approved by the Hon'ble Supreme Court in M.R.Krishna Murthi vs. New India Assurance Company (Appeal Nos.2476 & 2477 of 2019 decided on 5.3.2019) for all claims relating to the motor accidents.** The Hon'ble Delhi High Court has directed the scheme as approved for motor accident victims, will also be applied for train accident victims.

9.6 It is already within the knowledge of all the Benches that in Patna, crores of rupees of the claimants were usurped by a few agents and some advocates. Criminal case was lodged and the matter was already handed over to CBI, but still

the claimants did not get the money back from some unscrupulous persons and agents. As I have discussed, this special arrangement is made to protect the money of the poor litigants. I feel that the very purpose of this Tribunal will fail if the Tribunal is not able to protect the money of the poor people and ensure that the money reaches them.

9.7 It is ordered that only 10 % of the total compensation amount be released to claimants and the remaining amount shall be invested in the shape of fixed deposits for a period of 5 years. This special arrangement is done to protect the money of the applicants from the middlemen and from other unscrupulous people, who had been grabbing the money of poor claimants earlier and matters were brought to the notices of tribunals.

9.8 ADR/RCT will verify the details of the bank account of the claimant, Pubali Bose Biswas before making payment. Further to that, the bank should also be directed not to allow any loan, advance, or withdrawal or premature discharge on the fixed deposit without the permission of this Tribunal.

9.9. The share of compensation amount of proforma respondent, Kalpana Biswas, the mother of the deceased be kept in the 'suiter account' of RCT/Kolkata and will be released after her personal appearance and proper verification of her proof of identity.

9.10 The bank account of the claimants should be in a Nationalised Bank nearest to the place of their permanent residences, the ADR will ensure it. The ADR is further directed to contact the Branch Manager of the bank before sending the amount, telephonically and will give them noting qua this, on the file.

9.11 Additional Registrar of this Tribunal is directed to do the needful. The bank manager of the concerned bank will be personally responsible, if the money of the claimants is misappropriated in any manner.

9.12 The copy of the Judgment will be sent to the applicants free of cost.

The application is allowed in the above terms. No order as to cost.

(S.D. Sharma)
Member (Judicial)
RCT/Kolkata.

RAILWAY CLAIMS TRIBUNAL
Kolkata Bench

ORDER SHEET

Nature of application _____ Number OA(IIu)/0211 Year 2022

Pubali Bose Biswas -Versus- GM/N.F. Railway

Date	Proceeding of the Bench	Notes of the Registrar
14 12..9.24	Record is put up for delivering judgment. Application of the applicant is allowed vide my separate orders dated 12/9/2024. File be consigned to records in accordance with the consignment rules. <i>Let a free copy of this order be served to both sides.</i> (S.D. Sharma) Member (Judl.)	