

रेल दावा अधिकरण, कोलकाता न्यायपीठ
BEFORE RAILWAY CLAIMS TRIBUNAL, KOLKATA.
Claim Application No. O.A.(IIu)/KOL/0226/2022

Coram :- Mr. Rajeev Jain, Hon'ble Member(Judicial)/RCT/Kolkata

Date of the incident : 27.11.2021.
Date of filing of the Case : 31.10.2022.
Date of Registration : 31.10.2022.
Date of the Decision : 21.05.2024.

1) Swapan Das, son of the deceased, Bistu Das Applicant.
residing at Bayere Chak, Ban Harishpur, Panchla,
Howrah, PIN – 711 322

-VS-

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

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

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

Shri T. K. Har, Ld. Counsel for the respondent.

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J U D G E M E N T

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 sole dependant, for the death of his father, Bistu Das. It has been stated in the claim application that on 27.11.2021 at about 12.30 hrs. his father, since deceased, after purchasing a valid journey ticket boarded a DN EMU local train from Sankrail to go to Howrah when his father fell down from the said running train between Sankrail and Andul R/S at KM Post No.15/29X and 15/31X and died on the spot. It is submitted that after the incident SM/Santragachi issued a Memo and with regard to death of the victim, one U.D. Case bearing No.73/21 dt. 27.11.2021 was registered at Shalimar/GRPS.

2. The respondent, South Eastern Railway has contested the case filing written statement denying all the material averments made in the claim

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application. In the 'WS' the respondent has averred that neither the deceased was a *bona fide* passenger nor the incident, as alleged, is an 'untoward incident' as defined under Section – 123 (c) (2) of the Railways Act. In the 'WS' it is pleaded that it was an incident of run over by train on 05.01.2022 whereas the alleged incident took place on 27.11.2021. It has finally prayed for dismissal of the case.

3. Upon pleadings of the parties and for proper adjudication of the case, the following issues were framed on 30.03.2023 :-

- 1) Whether the incident on account of which the deceased 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 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 sole dependant of the deceased in terms of Section – 123 (b) of Railways Act and is entitled to get any compensation from the respondent?
- 4) Relief, if any?

4. To prove his case, the applicant, Swapan Das has affirmed an affidavit and produced himself as only witness (AW/1). On behalf of the applicant the documents produced and marked as – (1) Railway Memo of SM/Santragachi (Exhibit – A/1), (2) FIR (Exhibit–A/2), (3) Investigation Report (Exhibit – A/3), (4) P. M. Report (Exhibit – A/4), (5) Police Final Report (Exhibit – A/5), (6) Dead Body Challan (Exhibit – A/6), (7) Aadhaar Card of Bistu Das (Exhibit – A/7), (8) Election I/Card of Bistu Das (Exhibit – A/8), (9) Death Certificate of Bina Das (Exhibit – A/9), (10) Aadhaar Card of Swapan Das (Exhibit – A/10), (11) Election I/Card of Swapan Das (Exhibit – A/11) & (12) Death Certificate of Bistu Das (Exhibit – A/12).

5.1 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)**.

5.2 In compliance with the summons issued by the Tribunal, one, Md. Kauser, ASI/RPF appeared and he was examined as witness (CW/1) and during examination the witness filed his Office I/Card and Rough Sketch Map which are marked as *Exhibits – C/1 & C/2* respectively.

कारणों सहित निर्णय

DECISION WITH REASONS

Issue No. 1 :-

6.1 Considered the pleadings of the parties and perused all the documents and evidence available on the record.

6.2 It appears that the averment of the applicants is based on the evidence of AW/1 and the documents available on record. In the Railway Memo (Exhibit – A/1) issued by Station Master, Santragachi which is treated as FIR (Exhibit – A/2) states that – “...As per information received from on-duty SS/SEL, Mr. S. Kumar at 14.10 hrs. vide his D.D. No.164 stating that one message received by on-duty RPF staff Md. Kauser at 13.40 hrs. that received from unknown passengers that one male dead body aged about 65 years lies outside Up main lline at KM 15/29X – 15/31X at SEL Central yard” It appears that both in the Police Investigation Report (Exhibit – A/3) and in the Final Police Report (Exhibit – A/5) there is mention that as per the opinion of the witnesses the deceased fell down from an unknown train and died on the spot.

6.3 It is seen that in the DRM's Report (Exhibit – R/1) the Inquiry Officer of RPF came into the conclusion that as per Loco Pilot of train No.38435 dt. 05.01.2022 that the deceased was run over by the said train whereas as per the pleadings, Rly. Memo, and GRP Reports the alleged incident took place on 27.11.2021. Therefore, it is very much clear that in the instant case DRM's Report has been prepared in a very casual and cursory manner. Accordingly, the Tribunal cannot place any reliance upon such a DRM's Report. As the DRM's Report filed on 15.12.2022 was defective, the respondent filed a fresh DRM's Report on 07.8.2023 which may have been accepted but it is not admissible as per the extant rule. Hence, the fresh DRM's Report is not taken up for adjudication.

6.4 Further considering the fact that the DRM's Report (Exhibit – R/1) filed in this case is useless, for proper adjudication the Tribunal issued summons for personal appearance of Md. Kauser, ASI/RPF whose name does appear in the Railway Memo (Exhibit – A/1). The said Md. Kauser appeared and adduced evidence as witness (CW/1). It is seen that the witness CW/1 during examination stated that he was informed about lying of a dead body near the railway track by a passerby lady and according to the witness (CW/1) that lady told him that the victim was a local resident. But the witness (CW/1) could not give the details of that informant lady. Therefore, it is crystal clear that the witness (CW/1) is not an eye-witness of the incident and as such, I cannot place any reliance upon his evidence.

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6.5 Considering the averment made in the DRM's Report that the incident occurred due to own negligence of the victim, the Tribunal observes that 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 been 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 It is, therefore, concluded that the reason of death of the deceased, Bistu Das was a fall from a train and consequently it can be termed as “untoward incident” within the provision of 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 deceased had a valid railway journey ticket and in Para – 4 of the affidavit sworn by the applicant (AW/1) it is clearly stated that the victim purchased the journey ticket and the original ticket has been lost. On the other hand, the respondent in their 'WS' has taken a plea that the victim was not a *bona fide* passenger.

7.2 Looking into 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) T.A.C. 26 (S.C.)** the relevant portion of which is reproduced below :

“17.4 We thus hold that 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. This will have to be dealt with from case to case on the basis of facts found”

7.3 In the instant case, it is construed that the affidavit sworn by the witness AW/1 stating the relevant facts has sub-served the purpose, as directed by the Hon’ble Apex 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 and was a ticketless traveller.

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

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Issue No. 3 :-

8. The applicants in the claim application as well as in the affidavit sworn on 24.05.2023 by the applicant has stated that he has preferred compensation for himself, as sole dependant for the death of his father, Bistu Das stating that his mother is a pre-deceased he is the only son of his parents and no other dependant of the deceased has been mentioned. The applicant (AW/1) has also stated during his cross-examination that he is the only son of his father. It is seen that the applicant has filed his Aadhaar Card and Voter I/Card (Exhibits – A/10 & A/11). From those documents, it has been revealed that Swapan Das is the son of the deceased, Bistu Das. Thus, the Tribunal observes that the claimant is the sole ‘dependant’ of the deceased under Section -123(b) of Railways Act, 1989 and accordingly he is entitled to get the entire compensation. This issue is, thus, answered accordingly.

Issue No. 4 - (Relief)

9.1 The applicants have claimed compensation of Rs.8,00,000/-. Ministry of Railways (Railway Board) vide their notification dated 22nd December, 2266 under GSR 1165 (E) has amended the amount of compensation payable in respect of death in Railway Untoward Incidents to Rs.8,00,000/- which has come into force on the 1st day of January, 2017. The applicants are, therefore, held entitled to the enhanced compensation of Rs.8,00,000/- plus *pendente lite* interest @ 9% p.a. on Rs.8,00,000/- from the date of the incident of the case, i.e. from 27.11.2021 till the date of actual deposit of the awarded amount to Registrar, RCT/Kolkata in the line of the Judgement passed by Hon’ble Supreme Court in the case of **Union of India –vs- Rina Devi reported in 2018**

(3) T.A.C. 26 (S.C.) wherein the interest has been allowed from the date of the incident till the date of payment. Hence, the *pendente lite* interest to that extent is allowed. The decretal amount shall be awarded in the following manner:

- 1) Swapan Das, son of the deceased -- Rs.8,00,000/-

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

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ORDERED

- 9.2 (i) That the claim application is hereby allowed for Rs.8,00,000/- (Rupees eight lakhs only) on contest in favour of the applicant along with *pendente lite* interest @ 9% p.a. on Rs.8,00,000/- from 27.11.2021 till the date of actual deposit of the awarded amount to Registrar, RCT/Kolkata.
- (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 Order.
- (iii) The *pendente lite* interest portion shall be allowed in favour of the applicant. The applicant is permitted to withdraw 10% of the amount of compensation awarded to him. After withdrawal of 10% of the decreed amount Rs.80,000/- balance amount of Rs.7,20,000/- shall be split into 72 fixed deposits of Rs.10,000/- each and invested for a period of 01 to 72 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 Bank Account of only son of the deceased.

- (iv) Directions contained in (iii) above are in conformity with the orders dated 21.04.2268, 24.05.2022 and 06.11.2022 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.
- (vi) That the claimants are directed to open individual savings bank account 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 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 should make an endorsement on the passbook of the claimants to the effect that no cheque book and/or debit card shall

be issued to the claimants 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 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 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 the sum of 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, 2022 under GSR 347 (E) which has come into effect on 1st day of January, 2022.
- (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.

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, Swapan Das, only son of the deceased to his residential address.

(Rajeev Jain)
Member(Judicial)

रेल दावा अधिकरण,
कोलकाता न्यायपीठ
RAILWAY CLAIMS TRIBUNAL
Kolkata Bench

ORDER SHEET

Nature of application _____ Number OA(IIu)/0226 Year 2022

Swapan Das -Versus- GM/S.E. Railway

Date	Proceeding of the Bench	Notes of the Registrar
13 ----- 21.05.2024	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.8,00,000/- along with <i>pendente lite</i> interest @ 9% p.a. on Rs.8,00,000/- from 27.11.2021 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 applicants will appear in person before the Registry/RCT/Kolkata along with the following for verification : 1) Bank Account details opened near her 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 claimants. 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>	