

रेल दावा अधिकरण, कोलकाता न्यायपीठ

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(IIu)/KOL/2022/0248

Application filed on 05.12.2022 & registered on 07.12.2022
&

Decided on 27.12.2023.

1. Promila Biswas, W/o late Subal Chandra Das.
2. Supriyo Biswas, S/o late Subal Chandra Das.
3. Mandira Biswas, D/o late Subal Chandra Das.
4. Anjali Biswas, M/o late Subal Chandra Das.

Address:

Arabindra Sarani Circular,
K/4, Jorakuthi Housing,
Krishnanagar,
Dist: Nadia,
Pin Code – 741 101
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/-.

Recorded Advocate: Shri D.G. Thakurata, Ld. Counsel for the applicant.

Ms. Ranjana Chatterjee, Ld. Counsel for the Respondent.

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J U D G E M E N T

I. Basic details relating to accident as contained in the application :

- a. Date of accident : 03.10.2022
- b. Person died : Subal Chandra Das.
- c. Relationship of the claimant with the deceased : Wife, Son, Daughter & Mother.
- d. Train involved : Kolkata -Lalgola Passenger.

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e. Untoward incident narrated : On 03.10.2022 at about 14.25 hours, the victim, Subal Chandra Biswas, since deceased was travelling with valid monthly ticket. When the victim attempted to board 03193 Up, Kolkata-Lalgola Passenger train at the platform no.3 of Dum Dum Station, unfortunately he could not grip the handle of the train and fell down between the gap of the train and platform and died on the spot. It is pleaded that the victim was having monthly ticket which was seized by Dum Dum GRPS.

f. Place of occurrence of untoward incident: Platform no.3 of Dum Dum Rly. Stn.

g. DRM's Report. : Filed.

h. Averments in reply : The deceased was not a *bona fide* passenger and death of the deceased did not occur in any 'untoward incident' under the provision of Section 123(c)(2) of the Railways Act. They have prayed for dismissal of this case.

2. Upon pleadings of the parties, the following issues were framed on 12.06.2023 :-

- (1) Whether the deceased was a *bona fide* passenger of the train, in question ?
- (2) Whether the death of the victim was caused in an 'untoward incident' coming under the purview of Section 123©(ii) of the Railways Act ?
- (3) Whether the applicants are entitled to get compensation, as prayed for?
- (4) Relief.

3. The applicant, Promila Biswas, wife of the deceased appeared as (AW/1) and has furnished certain documents which were marked Exhibits as under :-

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|-----|--|-----|--------------|
| 1) | Copy of Aadhaar Card of Subal Chandra Biswas. | ... | Exhibit A/1 |
| 2) | Copy of Aadhaar Card of Promila Biswas. | ... | Exhibit A/2 |
| 3) | Copy of Aadhaar Card of Supriyo Biswas. | ... | Exhibit A/3 |
| 4) | Copy of Aadhaar Card of Mandira Biswas. | ... | Exhibit A/4 |
| 5) | Copy of Aadhaar Card of Anjali Biswas. | ... | Exhibit A/5 |
| 6) | Certified copy of Investigation Report. | ... | Exhibit A/6 |
| 7) | Certified copy of P.M. Report. | ... | Exhibit A/7 |
| 8) | Certified copy of Dead Body Challan. | ... | Exhibit A/8 |
| 9) | Certified copy of Final Police Report. | ... | Exhibit A/9 |
| 10) | Copy of Death Certificate of Subal Ch. Biswas. | ... | Exhibit A/10 |

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4. Respondent railway has not adduced any oral evidence and has filed DRM's Report along with relevant Annexures which have been marked as Exhibit R/1 (collectively).

5. Considered the pleadings of both sides and perused all the documents and evidence available on record. Our decisions on the issues are as under :-

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DECISION WITH REASONS

Issue No. 2 :-

6.1 For the sake of cogency, Issue No.2 is taken up first for taking the issues in seriatim.

6.2 The applicant, Promila Biswas, wife of the deceased, in her affidavit has affirmed the same fact as stated in the original claim petition. During cross-examination, the applicant (AW/1) has stated that the victim, Subal Chandra Biswas was her husband. The incident took place on 03.10.2022. She got the information about the incident over phone from Dum Dum GRPS. In reply to the question put to her by Court, the applicant (AW/1) has stated that her husband was travelling from Park Circus to Krishnanagar. Her husband had a Monthly Season Ticket and police informed her that the journey ticket was recovered from the possession of her husband.

6.3 In support of his case in regard to the fact of this issue, Ld. Counsel of the applicant has relied upon the evidence of the applicant (AW/1) and police documents namely, certified copy of Police Investigation Report (Exhibit A/6), certified copy of Dead Body Challan (Exhibit A/8), certified copy of P.M. Report (Exhibit A/7) and certified copy of Final Police Report (Exhibit A/9).

6.4 The respondent's side did not lead any oral evidence, though it has filed DRM's Report (Exhibit – R/1) along with relevant Annexures. The DRM's Report (Exhibit – R/1) as well as Inquiry Report of RPF, contained therein, narrated the incident and in the DRM's Report it was concluded that the victim tried to board the train in running condition and during boarding he was unable to hold the handle of the gate and slipped down the train and accident happened. Ld. Counsel for the respondent argued that police documents available on record are based on the opinion of the Investigating Officer (IO) is merely a presumption. According to the Ld. Counsel

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for the respondent, the incident happened due to own negligence of the applicant for which the respondent railway is not liable to pay compensation.

6.5 At the outset it appears from the evidence of (AW/1) that she was not an eye-witness of the incident. No other witness has been produced by the applicant.

6.6 Out of the documents available on record Police Investigation Report (Exhibit A/6) available on record indicated that on preliminary investigation and according to the opinion of the witnesses, the deceased died fell down from Up Kolkata-Lalgola train due to excessive rush of the passengers in the compartment. Certified copy of Final Police Report (Exhibit A/9) submitted by SI of Dum Dum GRPS corroborated the same fact as to the cause of the death as mentioned in the Police Investigation Report. Certified copy of P.M. Report (Exhibit A/7) indicated the name of the victim as Subal Chandra Biswas, aged about 46 years and in the column 'information furnished by police', it is mentioned that *on 03.10.22 at about 15.00 hours the deceased fell down from crowded train and was dashed by a train and his body was recovered from inside railway track near platform no.3 of Up main train line at K.M. Post No.6/28Q and 6/29Q near Dum Dum Railway Station.* In the said P.M. Report, the doctor who conducted the post mortem report opined that death was due to effects of injuries as noted in the Post Mortem Report which was *ante-mortem* in nature. On the other hand, Railway Memo annexed with DRM's Report stated that as reported by Guard of Train No.03193 one unknown male aged about 38 years being knocked down and killed at KM No.06/25Q to 06/29Q Up main line at Platform no.3. The body was lying inside the track. On perusal, it is seen that respondent took the statements of both Driver and Guard of train no.03193 Up (Kolkata – Lalgola Passenger). In his statement, duty Train Guard has stated that on 03.10.2022, he was booked for train manager of Train No.03193 Up (KOAA – Lalgola Passenger). During his duty period at about 14.26 hrs., the train stopped at platform no.3 of Dum Dum Station and some passengers informed him one male person slipped away under the train. Then he deboarded from the train and noticed that one person aged about 50 years struck in a wheel of coach no.ER-218508, 6th compartment from the engine side. Thereafter, he informed to SM/Dum Dum through *walkie-talkie*. On duty Loco Pilot of Train No.03193 Up in his statement also stated

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that on 03.10.2022, he was booked to drive the Train No.03193 Up (KOAA – Lalgola Passenger). During his duty period at about 14/26 hours the train stopped at platform no.3. After sometime intimation received from on duty Guard through *walkie-talkie* about one male person slipped away under the train while entering the train in running condition at platform no.3 of Dum Dum Station. From the statements of Driver and Guard, it is clear that they did not mention that the victim died being knocked down by train. Further, the DRM's Report (Exhibit R/1) prepared under Railway Passengers (Manner of Investigation of Untoward Incident) Rules 2020 and submitted by the respondent concluded that the victim was trying to board the running train in his negligence and attracted life risk resulting to death by own mistake on his part. It is obvious from the above that deceased fell down from the train while trying to board the train and was knock down. Boarding a train in motion is a negligent act or a rash act, but this can preclude the railway from its liability to pay compensation under Section 124A of the Act. Respondent has argued that the Railway Memo clearly stated that the deceased died being knocked down by train. The Police Investigation Report available on record has been disputed and denied by the respondent on the grounds that so called witnesses were not the eye-witness and the opinion of the Investigating Officer (IO) is merely a presumption. In this regard the judgement of **Hon'ble Allahabad High Court in the case of Sundari Devi & Ors. -Vs – Union of India through General Manager, North Eastern Railway** is very much relevant wherein the Hon'ble High Court have observed that *.....unless the contents of document has been proved by producing the person/authority who had written the said document, and examined as per the provisions of Indian Evidence Act in order to prove the contents of the said document, the said act has not been done in the present case..* In the same case, it has also been stated that no contrary evidence has been brought on record by the Railway Authorities to prove that the contents of the police documents are not correct. In the present case too, the respondent was free to examine the GRP official who prepared the police documents, if they had serious doubt about the contents of those documents which has not been done. Therefore, reliance can be placed upon the version of the documents filed on behalf of the applicant i.e, Police Investigation Report and Final Police Report. Section 123(c (2) of the Railways Act stipulated that 'untoward incident' means – the accidental falling of any passenger from a train

carrying passengers. It is, therefore, concluded that the victim was travelling in a train from which he fell and sustained injury which resulted in his death. That apart, the observation of Hon'ble Supreme Court's judgement passed in the case of Union of India –vs- Rina Devi reported in 2014 (3) T.A.C. 26 (S.C.) wherein it has been held that – death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will not fall under the proviso to Section – 124-A merely on the plea of negligence of the victim as a contributory factor. Further in the Judgement reported in 2008 TAC 777 (S.C.) in the case of Union of India –vs- Prabhakaran Vijaya Kumar and Others, 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.”*

6.7 Thus, in view of the above facts, circumstances, documents and judicial conspectus made available in this case, we hold that the deceased, Subal Chandra Biswas had an accidental fall from train on 03.10.2022 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 applicant.

Issue No. 1:

7.1 The applicant in her claim petition has stated that her husband, since deceased had 2nd class Monthly Ticket bearing no.86473745 Ex. Park Circus to Krishnanagar valid from 14.9.2022 to 13.10.2022 and the said ticket was seized by Dum Dum GRPS. In support of his contention, the applicant has filed a copy of Monthly Ticket bearing no. UTO 86473745 Ex. Park Circus to Krishnanagar valid from 14.9.2022 to 13.10.2022 along with its I/Card bearing no.UTT 61524756. The applicant has also filed a Seizure List wherein it is mentioned that one Railway Monthly Ticket bearing no.UTO 86473745 valid from 14.09.2022 to 13.10.2022 from Park Circus to Krishnagar City and one I/D Card bearing UTT No.61524756 which was recovered from the possession of the deceased. Respondent in their DRM's Report has not been specifically disputed about the journey ticket filed on behalf of the applicant. Rather in the DRM's Report, it is certified that I.D. Card No.UTT – 61524756 and Monthly Season Ticket No.UTO 86473745 found to be

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authentic and issued from Park Circus. Thus, on the basis of the documents and the averment made by the applicant and the journey ticket which has been seized by police and the same has not been disputed by the respondent, it is concluded that the victim was a *bona fide* passenger on the date of incident. Hence, this issue is also decided in favour of the applicants.

Issue Nos. 3 & 4 :

8.1 The applicant, Promila Biswas has claimed compensation for herself as well as on behalf of her son, Supriyo Biswas, daughter, Mandira Biswas and mother-in-law, Anjali Biswas, as dependents on account of death of her husband, Subal Chandra Biswas in an untoward railway incident. In support thereof, the applicant, Promila Biswas has furnished her Aadhaar Card, Aadhaar Cards of his son, Supriyo Biswas, daughter, Mandira Biswas and mother-in-law, Anjali Biswas. (Exhibits A/2 to A/5). The applicant has also furnished Aadhaar Card and death certificate of her deceased husband, Subal Chandra Biswas (Exhibits A/1 & A/10). Respondents have not challenged this part of the claim. This Tribunal is, therefore, inclined to accept and hold that Promila Biswas, wife of the deceased and others are the dependents as well as legal heirs of the deceased, Subal Chandra Biswas.

8.2 The applicant has 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 07.12.2022 till the date of the 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 :-

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1)	Promila Biswas, wife of the deceased.	...	Rs.2,00,000/-
2)	Supriyo Biswas, son of the deceased.	...	Rs.2,00,000/-
3)	Mandira Biswas , minor daughter of the deceased.	...	Rs.2,00,000/-
4)	Anjali Biswas, mother of the deceased.	...	Rs.2,00,000/-

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 of the case i.e.07.12.2022 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 all claimants proportionately. The applicant Nos.1, 2 & 4 are permitted to withdraw 10% of the amount of compensation awarded to them. After withdrawal of 10% i.e. Rs.20,000/- each balance amount of Rs.1,80,000/- each shall be split into 18 fixed deposits of Rs.10,000/- each and invested for a period of 1 to 18 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 wife, son and mother of the deceased.
- b) As per the statement of the applicant and document available on record, applicant no.3 namely Mandira Biswas is a minor daughter of the deceased. As such, her share of compensation shall be credited to the Bank Account of her mother (the applicant no.1) being natural guardian. The Branch Manager of the concerned bank is directed to invest the amount in Fixed Deposit Scheme in her name (applicant no. 3) till the period she attains her majority. The applicant no.1 (Promila Biswas) is, however, at liberty to withdraw periodical interest which will be accrued on the said fixed deposit from time to time for the up-keep of her minor daughter till she attains majority
- (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".

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- (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 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 (E) which has come into effect on 1st day of January, 2020.

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- (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.

9. The Registry is directed to send the certified copy of this judgement directly to **Promila Biswas, wife of the victim** to her 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)/0248 Year 2022

Promila Biswas & Ors. -Versus- UOI/G.M/E. Railway

Date	Proceeding of the Bench	Notes of the Registrar
10	Record is put up for delivering judgment.	
27.12.23	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 of the case ie. 07.12.2022 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 claimant 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. (Rajeev Jain) Member (Judicial.) <u>RCT/Kolkata.</u> (Sanjay Singh Gehlot) Vice-Chairman <u>RCT/Kolkata.</u>	