

रेलदावाअधिकरण,कोलकातान्यायपीठ

BEFORE RAILWAY CLAIMS TRIBUNAL, KOLKATA BENCH

Coram ::**Tanveer Ahmed, Hon'ble Member (Technical), RCT/Guwahati**
holding Circuit Bench at RCT/Kolkata

Claim Application No.OA(IIu)/KOL/2020/0005

Application filed on 17.12.2019 & registered on 01.01.2020
&

Decided on 15.12.2022

1. Dhiren Mandal, H/o late Tua Mandal, since deceased.
2. Pradip Mandal, S/o late Tua Mandal, since deceased.
3. Peyali Mondal, D/o late Tua Mandal, since deceased.
4. Rina Naskar, M/o late Tua Mandal, since deceased.

Address:

Vill: Bagdia, P.O: Daluabari,
P.S: Dhantala,
Dist: Nadia,
Pin Code – 741 504
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 S. Sinha, Ld. Counsel for the applicant.

Shri B. Adhikary, 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 : 09.08.2019
 - b. Person died : Tua Mandal
 - c. Relationship of the claimant with the deceased : Husband, Son, Daughter & Mother.
 - d. Train involved : 31527 (Sealdah – Shantipur local) train.

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e. Untoward incident narrated : On 09.08.2019, the victim, Tua Mandal, since deceased along with her husband and daughter was travelling from Sealdah to Aranghata Railway Stations by 31527 (Sealdah – Shantipur) local train. During the course of journey, the victim accidentally fell down from the running train between Chakdah and Payarandanga Railway Stations at KM Post No.63/21 – 63/23 and died on the spot.

f. Place of occurrence of untoward incident: Between Chakdah and Payarandanga Rly. Stns.

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. Four issues were framed on 19.02.2021 :-

(1) Whether the incident on account of which the victim 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 on the date of alleged incident, the victim was a *bona fide* railway passenger ?

(3) Whether the applicant and others are the dependants of the deceased and are entitled to get any compensation from the respondent?

(4) Relief, if any.

3. The applicant, Dhiren Mandal, husband of the victim appeared as (AW/1) and has furnished certain documents which were marked as Exhibits as under :-

- | | | | |
|----|--|-----|-------------|
| 1) | Voter I/Card in the name of Dhiren Mandal. | ... | Exhibit A/1 |
| 2) | Aadhaar Card in the name of Pradip Mandal. | ... | Exhibit A/2 |
| 3) | Voter I/Card in the name of Tua Mandal. | ... | Exhibit A/3 |
| 4) | Certified copy of FIR | ... | Exhibit A/4 |
| 5) | Certified copy of Investigation Report. | ... | Exhibit A/5 |
| 6) | Certified copy of Railway Memo. | ... | Exhibit A/6 |
| 7) | Certified copy of G.D. Extract of Ranaghat GRPS. | ... | Exhibit A/7 |
| 8) | Certified copy of Dead Body Challan. | ... | Exhibit A/8 |
| 9) | Certified copy of P.M. Report. | ... | Exhibit A/9 |

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10)	Certified copy of Final Police Report.	...	Exhibit A/10
11)	Aadhaar Card in the name of Rina Naskar.	...	Exhibit A/11
12)	Aadhaar Card in the name of Peyali Mondal.	...	Exhibit A/12
13)	Aadhaar Card in the name of Tua Mandal.	...	Exhibit A/13
14)	Aadhaar Card in the name of Dhiren Mandal.	...	Exhibit A/14
15)	Death Certificate of Rabin Naskar.	...	Exhibit A/15
16)	Birth Certificate of Peyali Mandal.	...	Exhibit A/16

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. During final argument, Ld. Counsel for the applicant was absent and on his behalf written argument has been filed. Considered the pleadings of both sides, perused all the documents and evidence available on record and seen the written argument filed on behalf of the applicant. My decisions on the issues are as under :-

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DECISION WITH REASONS

Issue No. 1 :-

6.1 The applicant, Dhiren Mandal, husband of the victim in his 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, Tua Mandal was his wife. The incident took place on 09.8.2019 and it was Friday. In his cross-examination, the applicant (AW/1) has further stated that at the time of incident, he was also in the same train compartment. But, he was not an eye-witness of this incident. In his cross-examination, the applicant (AW/1) has also stated that his wife was returning from Mumbai. He along with his daughter, Peyali Mandal went to Howrah Station for receiving his wife who was coming from Mumbai. From Howrah Station, he along with his wife and his daughter came to Sealdah by bus. From Sealdah, they boarded Shantipur local.

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6.2 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 the police documents namely certified copy of FIR (Exhibit A/4), certified copy of Investigation Report (Exhibit A/5), certified copy of Railway Memo (Exhibit A/6), certified copy of G.D. Extract of Ranaghat GRPS (Exhibit A/7), certified copy of Dead Body Challan (Exhibit A/8), certified copy of P.M. Report (Exhibit A/9) and certified copy of Final Police Report (Exhibit A/10).

6.3 The respondent's side did not lead any oral evidence, though it has filed DRM's Report (Exhibit – R/1) along with relevant Annexures. Ld. Counsel for the respondent referring to the DRM's Report argued that that victim died being knocked down by train due to dashed with the OHE Mast and this was happened due to negligence of the victim for which the respondent railway is not liable to pay compensation.

6.4 It appears from the evidence of the applicant (AW/1) that he was not the eye-witness of this incident. No other witness has been produced by the applicant.

6.5 Out of the documents, one Railway Memo dated 09.8.2019 issued by SM/Chakdaha which is treated as FIR (Exhibit A/4) states that – *one female aged about 35 years fallen from 31527 Up within KM 63/21 – 23 or 63/22-24 between CDH & PDX and expired.* The Memo further mentioned that *dead body is lying between Up & Dn. track (outside the track).* Certified copy of GD Extract of Ranaghat GRPS (Exhibit A/7) corroborates the same fact as stated in the FIR as to the cause of the death of the victim. In the said GD Extract, Extract, it is mentioned that over this written information, Ranaghat GRPS started an U.D. Case No.81/19 dated 09.8.2019. Certified copy of Investigation Report U/s 174 Cr.P.C. (Exhibit A/5) available on record indicates that as per the opinion of the witnesses who signed alongside, the victim died fell down from running train. Certified copy of P.M. Report (Exhibit A/9) indicates the name of the victim as Tua Mandal, aged 34 years and the doctor who conducted the post mortem opined that death was due to the effect of injuries as noted in the post mortem report which was ante-mortem in nature. On the other hand, in the DRM's Report (Exhibit R/1) filed on behalf of the respondent concluded that the victim died being knocked down due to dashed with OHE Mast while travelling in train having no.31527 Up at KM No.63/21-23, between CDH – PDX, as the victim was travelling at the door step of the compartment.

The DRM's Report further stated that the incident happened due to negligence of the victim herself. Thus, from the DRM's Report it is clear that the victim died dashed by OHE Mast. In regard to the point made by the Respondent in their DRM's Report that the victim died due to her own negligence, I am guided by the observation of Hon'ble Supreme Court's judgements in the cases of *Union of India - vs - Prabhakaran Vijaya Kumar & Ors. (2008) 9 SCC 527* and *Jameela and Ors - vs - Union of India (2010) 12 SCC 443* wherein the Hon'ble Apex Court has held that ***the liability of Railways is a strict liability even if there is negligence of a passenger i.e. unless and until the negligence is a criminal negligence or a case of suicide or self-inflicted injuries. Railways are held liable on account of 'untoward incident' which causes death of a passenger.***

6.6 Thus, in view of the above facts, circumstances, documents and judicial conspectus made available on record, I hold that the deceased, Tua Mandal had an accidental fall from train on 09.08.2019 and was a victim of an 'untoward incident', as defined under Section 123(c)(2) of the Railways (Amendment) Act, 1994. Thus, this issue is decided in favour of the applicant.

Issue No. 2:

7.1 In the claim petition, it has been averred by the applicant, Dhiren Mandal that on 09.08.2019, he along with her wife, Tua Mandal, since deceased and his daughter Peyali Mandal purchasing a single journey ticket boarded Ranaghat bound 31527 (Sealdah – Shantipur) local from Sealdah to Aranghata Railway Stations. It is further averred by the applicant that tickets were kept in his money purse which was lying in his pant. During cross-examination, the applicant (AW/1) has stated that his wife, Tua Mandal was returning from Mumbai. He along with his daughter, Peyali Mandal went to Howrah Station for receiving his wife who was coming from Mumbai. From Howrah Station, he along with his wife and his daughter came to Sealdah Station by bus. From Sealdah, they boarded Shantipur local train. Though the applicant has not filed the original or copy of the journey ticket, but in the Railway Memo, G.D. Extract and the Investigation Report, it has been especially mentioned that the victim fell down from 31527 Up train. Further in the DRM's Report, it has also been concluded that the victim was travelling at the door step of the compartment. Thus, from the circumstantial evidence, it can be concluded that the victim was a *bona fide* passenger on the date of the incident. Hence, this issue is also decided in favour of the applicant.

Issue Nos. 3 & 4 :

8.1 Though initially the applicant in the claim petition has preferred compensation for himself as well as on behalf of his minor son, Pradip Mandal and his minor daughter, Peyali Mondal on account of death of his wife, Tua Mandal in an incident over railway, but during the course of the proceeding, Ld. Counsel for the applicant filed a petition and prayed for impleading the name of Rina Naskar, biological mother of the victim. The prayer of the said petition was allowed by the Bench of this Tribunal vide Order dated 26.10.2022. In support thereof, the applicant has furnished his Aadhaar Card and Voter I/Card, Aadhaar Card of his son, Pradip Mandal, Aadhaar Card and Birth Certificate of his daughter, Peyali Mandal, Aadhaar Card of Rina Naskar and Aadhaar Card of Voter I/Card of his wife, Tua Mandal. Respondents have not challenged this part of the claim. This Tribunal is, therefore, inclined to accept and hold that the applicant, Dhiren Mandal and others are the dependants as well as legal heirs of the deceased, Tua Mandal.

8.2 The applicant has claimed compensation for Rs.8,00,000/- for himself as well as others as dependants as well as legal heirs on account of death of his wife, Tua Mandal in the railway incident.

8.3 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. As such, as per provision of Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 2016 and in view of the principle laid down by the *Hon'ble Apex Court in Rathi Menon – vs – Union of India 2001 SC 664*, **the applicant, Dhiren Mandal and others being dependants as well as legal heirs of the deceased are entitled to get compensation of Rs.8,00,000/-(Eight lakh) only in the following proportion :-**

1)	Dhiren Mandal, husband of the deceased.	...	Rs.2,00,000/-
2)	Pradip Mandal, minor son of the deceased.	...	Rs.2,00,000/-
3)	Peyali Mondal, minor daughter of the deceased.	...	Rs.2,00,000/-
4)	Rina Naskar, mother of the deceased.	...	Rs.2,00,000/-

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8.4 In regard to the interest, I find that the applicant has prayed for *pendente lite* interest from the date of filing of application. In this connection, it will be 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 money from the date of accident. Hence, the *pendente lite* interest, as prayed for, is allowed. Respondent is directed to calculate *pendente lite* interest from the date of incident till the date of judgement.

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. of Rs.8,00,000/- from the date of incident 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 1/4th of the amount of compensation awarded to him. After withdrawal of 1/4th i.e. Rs.50,000/- plus the full interest, balance amount of Rs.1,50,000/- shall be split into 15 fixed deposits of Rs.10,000/- 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 husband of the deceased.**
- (b) **The applicant No.4 is permitted to withdraw 1/4th of the amount of compensation awarded to her. After withdrawal of 1/4th i.e. Rs.50,000/- plus the full interest, balance amount of Rs.1,50,000/- shall be split into 15 fixed deposits of Rs.10,000/- 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 mother of the deceased.**

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- c) As per the statement of the applicant available on record, applicant nos. 2 & 3 are minor son and minor daughter of the deceased. As such, their shares of the compensation shall be credited to the Bank Account of their father (the applicant no.1) being natural guardian. The Branch Manager of the concerned bank is directed to invest these amounts in Fixed Deposit Schemes in their names (applicant nos.2 & 3) till the period they attain their majority. The applicant no.1 (Dhiren Mandal) is, however, at liberty to withdraw periodical interest which will be accrued on the said fixed deposits from time to time for the up-keep of his minor children till they attain their majority.
- (iv) Directions contained in (iii) above are in conformity with orders dated 21.04.2021, 24.05.2021 and 06.11.2021 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".
- (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.

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- (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 of Rs. 8,00,000/- plus pendente lite interest** 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, 2021 under GSR 347 (E) which has come into effect on 1st day of January, 2021.
- (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 **Dhiren Mandal, husband of the victim** to his residential address.

(Tanveer Ahmed)
Member (Tech.)/RCT/Guwahati
at RCT/Kolkata

RAILWAY CLAIMS TRIBUNAL
Kolkata Bench

ORDER SHEET

Nature of application _____ Number O.A.No.(IIu)/0005 Year 2020

Dhiren Mandal & Ors. -Versus- **UOI/G.M/E. Railway**

Date	Proceeding of the Bench	Notes of the Registrar
11	Record is put up for delivering judgment.	
15.12.22	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 incident 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 claimants 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. (Tanveer Ahmed) <u>Member (Tech.)/RCT/Guwahati</u> <u>at RCT/Kolkata</u>	

