

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/2020/0063

(Application filed on 24.02.2020 & decided on 01.03.2024)

1. Lalmohan Hembram @ Hamram, husband of the deceased Budoni Hemaram @ Bandana Hembram
2. Rakhi Hembram @ Hamram, daughter of the deceased Budoni Hemaram @ Bandana Hembram
3. Sumitra Hembram @ Hamram, daughter of the deceased Budoni Hemaram @ Bandana Hembram
4. Mathan Hembram @ Hamram, son of the deceased Budoni Hemaram @ Bandana Hembram

All are residing at :

Atgharia, Briddhapara, Astogoria Kalna – I,
Bardhaman,
West Bengal,
Pin Code – 713 405

..... Applicants.

-VS-

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

..... 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 N. Mittal, Ld. Counsel for the applicant.
Shri R. C. Guchhait, Ld. Counsel for the respondent

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JUDGEMENT:

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 himself and also on behalf of her two daughters and one son as dependants claiming compensation on account of the death of his wife Budoni Hemaram @ Bandana Hembram allegedly in an untoward train incident of accidental falling from a train. It is pleaded in the claim application that on 07.03.2018 the deceased was travelling ex. Bandel to Bagnapara by a train with a valid 2nd class ticket. For deboarding at Bagnapara, she was standing near the gate. Due to overcrowding and sudden jerk, she fell down from the running train at Bagnapara and sustained grievous injury. She was admitted at Kalna S.D. Hospital where she was declared dead. A police case was registered by Kalna P.S. vide U/D case no.47/2018 dated 08.03.2018.

2. The respondent railway has filed Written Statement disputing and denying the averments made in the claim application. In the written statement, it was denied that on 08.03.2018 the deceased was travelling by a train ex. Bandel to Bagnapara and fell down from it. Bona fide of the deceased also denied as no ticket was found from her.

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 sustained injuries & died is covered as an 'untoward incident' within the provision of Section 123(c)(2) of the Railways Act, 1989?

2. Whether 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 compensation, as prayed for?

4. To what other relief, if any, the applicants are entitled?

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 A/1 to A/12(Aadhar card of Rimpa Pal – A/1, Aadhar card of Joydeb Pal – A/2, Birth certificate of Ritika Pal – A/3, Death certificate of Joydeb Pal – A/4, Dead body challan – A/5, FIR – A/6, Railway memo of SM/BQD – A/7, Investigation report – A/8, railway ticket No.31684438 – A/9, Seizure List – A/10, P.M. report– A/11, and Final Police Report – A/12)

On the other hand, the respondent railway filed ADRM/Adra'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 Nos. 1 & 2

6. For proper adjudication of the case, these two inter-related issues are taken up together.

6.1 In her affidavit of evidence, the applicant reiterated the facts of the case as narrated in the claim application. In her cross-examination(AW/1) she stated that police authority informed her about the incident over phone at about 12.00 noon. The incident occurred on 10.11.2019. While her husband was returning home at Bankura, the incident occurred. Evidence of AW/1 established that her knowledge about the incident was based on hear-say.

6.2 It is seen from the record that Station Manager, Bankura on 10.11.19 issued a memo to OC/GRPS/Bankura(Exht.A/7) stating that dead body of a male person was lying on Dn. line between Chhatna and Bankura at Km 239/2-4. This memo was treated as a FIR(Exht.A/6) by Bankura GRPS and they registered U/D case no.75/19 dated 10.11.19. Investigation report of Bankura GRPS(Exht.A/8) revealed that while travelling the deceased fell down from a train and died at the spot. Post Mortem report(Exht.A/11) mentioned that the injuries which caused death to the victim were ante-mortem in nature. Final Police Report(Exht.A/12) mentioned that the cause of death of the victim was accidental in nature which was fall from a running train.

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6.3 ADRM's report(RW/1) contended that question of compensation is not justified for the alleged death of Joydeb Pal as there was no eye-witness to the incident and the allegation of sudden jerk and overcrowding in the train could not be established. However, ADRM's report admitted that at the time of the inquest, one ticket was found from the possession of the deceased by GRP in presence of RPF.

6.4 Investigation report revealed that a ticket bearing no.31684438 ex. Jharsuguda to Bankura of 09.11.2019 was found from the possession of the deceased. The recovery of the ticket has been mentioned in the Case Diary by Bankura GRPS, which was submitted by Bankura GRPS before the Court. Bankura GRPS submitted the original ticket and the original seizure List. The applicant also filed certified copies of the ticket and seizure List, marked as Exht.A/9 and A/10. His body was found between Chhatna and Bankura and a valid railway ticket was found from his possession. This fact proves that had he not travelled by a train, his body could not have been there. The injuries mentioned in the post mortem report(Exht.A/11) i.e. lacerated wound, fracture and abrasion which were ante-mortem in nature, as per opinion of autopsy surgeon, do not suggest that he was run over by a running train. As per proviso to Section 124A of the Railways Act, no compensation shall be payable by the respondent if any passenger dies due to reasons mentioned therein. In the case in hand, the respondent has not cited any cause of death of the victim falling under the proviso to Section 124A of the Act. Bankura GRPS in their statutory reports(Inquest report & Final Report) have specifically stated the cause of death of the victim as fall from a train. Evidence of the applicant (AW/1) could not be dislodged by the respondent Counsel. The respondent did not adduce any evidence to counter the police reports of Bankura GRPS.

In the light of the above discussion, it is held that the victim was a bona fide passenger and he died due to fall from a running train, which comes under the ambit of Section 123(c)(2) of the Railways Act.

These two issues are decided in favour of the applicants.

Issue Nos.3 & 4

7. These two issues are taken up together. The claim application has been filed by the wife of the deceased for herself and also on behalf of her minor daughter. Documents(Exht.A/1 & A/3) establish their relationship with the deceased. The applicant deposed that he got remarried. She further deposed that her parents-in-law are alive. In the claim application it was averred that parents of the deceased, namely Narayan Pal and Mangala Pal are not interested to the receive the compensation from the railways and so they have been impleaded as proforma respondents in the claim application. A notice was sent to the parents of the deceased

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requiring their presence. But during the pendency of the case, they did not turn up before the Court. On 08.06.23 Ld. Counsel for the applicant submitted that despite making several attempts, he could not produce parents of the deceased before the Court. As per provision under Section 123(b)(ii) of the Railways Act, 1989, the parents of the deceased are also the dependants. Death certificate of Joydeb Pal(Exht.A/4) revealed that Narayan Pal and Mangala Pal are the parents of the deceased. As such, they are also held entitled to get compensation for the death of their son. Parents of the deceased are directed to furnish the proof of their relationship with the deceased before the Registry of this Bench at time of compliance of the decree. The applicants and the parents of the deceased are 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 share :-

1. Rimpa Pal, wife of the deceased	-	Rs.1,00,000.00
2. Ritika Pal, daughter of the deceased	-	Rs. 4,00,000.00
3. Narayan Pal, father of the deceased	-	Rs. 1,50,000.00
4. Mangala Pal, mother of the deceased	-	Rs. 1,50,000.00
		Rs.8,00,000.00

The applicant has prayed for pendente lite interest. 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. The claim application was filed beyond the statutory period of limitation. Vide order dated 09.04.2021 the delay in filing the claim application was condoned. Hence, the pendente lite interest, as prayed for, is allowed from 09.04.2021. Respondent is directed to calculate pendente lite interest from 09.04.2021 till the date of judgement. The pendent lite interest is to be distributed amongst the decree holders in their share of compensation. Hence,

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ORDERED

- 8.0 (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 pendent lite interest @ 5% p.a. on Rs.8,00,000/- from 09.04.2021 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

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compensation. After withdrawal of 10% i.e. Rs.10,000/- balance amount of Rs.90,000/- shall be split into 09 fixed deposits of Rs.10,000/- each and invested for a period of 1 to 09 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 applicant No.1.

(b) The applicant No.2 is a minor as per her birth certificate. As such her share of compensation shall be deposited in the bank account of the applicant No.1, being the natural guardian. The branch manager of the bank is directed to invest her share of compensation of Rs.4,00,000/- in a fixed deposit scheme in the minor's name till the period she attains majority. However, the applicant No.1, her mother, is entitled to withdraw periodical interest to be accrued on the minor's fixed deposit for rearing up of her minor daughter.

(c) The applicant Nos.3 & 4 are permitted to withdraw 10% of their respective share of compensation. After withdrawal of 10% i.e. Rs.15,000/- in each case, balance amount of Rs.1,35,000/- shall be split into 09 fixed deposits of Rs.15,000/- each and invested for a period of 1 to 09 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/Cs of the applicant Nos.3 & 4.

Directions contained in (iii) 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."

(iv) 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.

(v)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.

(vi)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

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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.

(vii) 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 Bench.

(viii) 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.

(ix) 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.

(x) 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 his residential address.

(Rajeev Jain)
Member(Judicial)

(Sanjay Singh Gehlot)
Vice-Chairman