

**BEFORE THE RAILWAY CLAIMS TRIBUNAL
CHENNAI BENCH**

Present:

**Shri Sanjeev Aggarwal, Hon'ble Member (J)
Shri Prasanta Kumar Sahu, Hon'ble Member (T)**

OA (II-U)/15/2021

(Application with delay filed on 19.11.2020, delay condoned on 12.02.2021
registered on 15.02.2021, heard & reserved on 05.10.2023 and decided on 10.10.2023)

1. Naresh Kumar, s/o Ganapathy (M/19)
Residing at: 164, Mela Street Karal,
Krishnan Kovil, Nagercoil
Kanyakumari District, Tamil Nadu- 629 001
(Applicant bedridden hence represented by his mother as co-applicant)
 2. Ramani w/o Ganapathy (F/49)
Residing at: 164, Mela Street Karal,
Krishnan Kovil, Nagercoil
Kanyakumari District, Tamil Nadu- 629 001
(Mother of applicant)
- ... Applicants

Versus

Union of India owning Southern Railway
Rep by General Manager,
Southern Railway, Chennai-3

... Respondent

Mr. Levis Senthil Kumar, Ld. Counsel for the Applicant
Mr. K. Vijayaprasad, Presenting Officer for the Respondent

Application under Section 16 of the Railway Claims Tribunal Act, 1987 r/w Section 123
(c)(2), 124-A & 125 of the Railways Act, 1989.

Claim for Rs.8,00,000/- with interest from the date of incident.

Judgement

Sanjeev Aggarwal, Member (Judicial)

1. According to the Injured Applicant in the OA, he was working as a labour in Madurai and had come to his home in Nagercoil. On 25.06.2019, after purchasing a journey ticket no.-UME 76378404 from Nagercoil to Madurai, he was travelling by Train No.-22628 Intercity Express. When the train reached at Vallyoor Rly Station he got down

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to take drinking water. While reboarding the train, the train suddenly started moving and he accidentally fell down between platform and the track. Both his legs got crushed as they were run over by the train. With the help of the public, he was taken by 108 ambulance to Govt. Medical College & Hospital, Kanyakumari for treatment where his both legs were amputated and he took treatment as in-patient. It was submitted that the he suffered injuries due to an untoward incident, therefore applicants are entitled for compensation.

2. The Reply Statement and DRM's report were filed by the Respondent wherein it was submitted that during the enquiry it was revealed that as per Station Master/ Valliyoor Railway Station on 25.06.2019 Train No.-22628 Trivandrum-Thiruchchirappalli Intercity Express arrived at platform no.-2 and departed at 14.02 Hrs. Suddenly the train was stopped. When he reached the spot he noticed that one passenger had fallen down in between platform and track and was badly injured. Immediately he was sent by 108 ambulance to Govt. Medical College & Hospital, Kanyakumari. It was further submitted that according to Vishnu, one of the co-passenger, injured victim had taken the alcohol, therefore, in this view, alleged incident had occurred when the victim was in the state of intoxication as such respondent railway is not liable and exempted to pay any compensation.

Based on documents placed on record as well as pleadings raised by both sides on 19.03.2021, following issues were framed:

- 1) Whether the Injured applicant was a bona fide passenger?
 - 2) Whether the incident in which the Injured allegedly sustained injuries is an untoward incident as defined under Sec.123(c)(2) of the Railway Act, 1989?
 - 3) Whether the Applicant is entitled for the claim and interest amount as prayed in the application? To what relief.
3. The Applicant, on 25.07.2023, appeared and deposed through video conferencing before the Tribunal and reiterated the facts pleaded in the original claim application and he was cross examined thereon. Applicant filed original Train Ticket, copy of Doctor's Intimation, copy of General Diary, Translation of General Diary, Discharge

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Summary, Bank Passbook and Photograph of Applicant, which were marked as Ex.A-1 to A-7 respectively. Respondent has filed DRM Report (Ex. R-1) along with copies of documents cited in it.

With consent of parties, heard both sides and proceeded to decide the matter as under:

Issue No.1 :

4. The Injured Applicant Naresh Kumar had filed original journey ticket no.-UME 76378404 from Nagercoil to Madurai (Ex.A-1). The Respondent vide their DRM's report have also admitted that the injured Applicant was a bona fide passenger. Hence, it is held that the Injured Applicant was a bona fide passenger of the said train. This issue is disposed of accordingly in favour of applicant.

Issue No.2 :

5. As per the Investigation Report viz. DRM report of the Respondent, the Applicant on 25.06.2019 was travelling by Train No.-22628 Trivandrum-Truchchirapalli Intercity Express which arrived at platform no.-2 of Valliyoor Rly Station. As per the guard of the train when, at 13.48 Hrs. he noticed that a person was trying to board moving train and had fallen down between platform and track. He immediately applied brake and stopped the train. SM/VLY arranged 108 Ambulance and sent the Injured to Medical College Hospital, Kanyakumari for further treatment.
6. The Respondent have concluded in the DRM report that the Injury was due to the carelessness and negligence of the victim as he was trying to board moving train.
7. Even if it is presumed that it was a case of negligence, it has no relevance in view of the principles laid down by the Hon'ble Apex Court in the rulings cited below:

(a) In **Jameela & others v. Union of India, AIR 2010 SC 3705**, the Hon'ble Supreme Court has laid down that even if it were to be assumed that a passenger fell down from the train due to his own negligence, it will not have any effect on the compensation payable under Section 124-A of Railways Act, 1989.

(b) In **"Union of India vs. Prabhakaran Naresh Kumara Kumar and others" ((2008) 4 MJ 323 (SC))**, Hon'ble Supreme Court stated that liability of the Railways is strict and it is irrelevant who was at fault.

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The ratio laid down in the above judgments is squarely applicable in the present case.

8. It was contended by the respondent railway during investigation RPF/ Nagercoil had recorded the statement of one Vishnu, co-passenger, of the injured victim. In his statement Vishnu had stated that when train reached at Valliyoor Rly Station Injured victim was drunk. He got down at the platform to get drinking water and while boarding the train he fell down and got injured. As alleged Incident had occurred when the victim was in the state of Intoxication as such respondent railway is not liable and exempted to pay any compensation.
9. On the perusal of the record, It is noticed that during investigation RPF/ Nagercoil also recorded the statement of Injured victim Naresh Kumar. In his statement Naresh Kumar had stated that he was travelling with his friends Mani and Kumarasen. During his deposition he specifically stated that he was travelling with his friends Mani and Kumarasen and no one with name of Vishnu had travelled with him. There is nothing to disbelieve the applicant. Moreover, respondent did not produce Vishnu before the court to prove his statement given to RPF/ Nagercoil. There is no evidence on record that applicant at the time of incidence was in the state of Intoxication.
10. Thus on holistic evaluation of evidences on record and attendant circumstances, we have come to the conclusion that the accidental fall of the victim was an 'untoward incident' within the ambit of provisions of section 123 (C) 2 of Railway Act, 1989. Accordingly, Issue No.-2 is decided in favour of Applicant.

Issue No. 3:

11. In order to prove the injuries the applicant has relied on the Discharge Summary (Ex-A5) of Department of Orthopaedics, Kanyakumari Medical College and Hospital, Asarpallam. Photo (Ex.A-7) of injured victim is also on record. Considering the evidence of the applicant, we are of the view that Applicants are entitled for compensation under Rule 3 Part-II (3) of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 "for double amputation through leg or thigh

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or amputation through leg or thigh on one side and loss of other foot" for which an amount of Rs. 8,00,000/- (Rs. Eight Lakh) has been prescribed under the schedule.

ORDER

12. In the result, the result, the claim application is, hereby, allowed and an award for Rs. 8,00,000/- (Rs. Eight Lakh), along with simple interest @ 6% per annum from the date of incident, is made in favour of the Applicant.
13. Accordingly, respondent Railway is directed to deposit the awarded amount of compensation within 60 days from the date of receipt of this judgment, in the Suits money account being maintained by the Additional Registrar of this Tribunal, failing which 9% interest has to be paid after expiry of 60 days.
14. So far as disbursement of the amount of award is concerned, we have heard the learned counsel for the parties. It is noticed that in *Geeta Devi v Union of India* [FAO 22/2015 & CMA 4501/2015] dated 24th May, 2019, Delhi High Court has *inter alia* observed that: -

"5. As Regards Amendment to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990

1.1. Many of the claimants are drawn from rural areas with low levels of literacy and lower levels of making appropriate decision for the use of amounts guaranteed under the awards. There are several instances of their exploitation by middlemen and touts operating in the field. The scope for such exploitation is itself one of the incentives for fomenting bogus claims, fabricated documents and duplicate claims in different Benches of the Tribunal for the same cause of action. The availability of bulk funds in the name of an ill-informed claimant is also a cause for exploitation. A scheme for protection of the amount due to such a claimant is the need of the hour. Earlier, this Court has involved 21 Nationalized Banks in dialogue to evolve a scheme of annuities for disbursement of claims. They have been ordered already to be implemented in this case, vide directions passed on 22nd February, 2019. This scheme as applied to motor accident claims has been approved by the Supreme Court in its order dated 05th March, 2019 in *Krishnamurthi vs New India Insurance Company*, SLP (C) No.31521-31522 of 2017. A statutory rule backing will, therefore, best serve the interest of the litigant"

15. In pursuance of the orders passed by the Delhi High Court, Government of India has issued a Notification No. GSR (E) 347 dated 3rd June, 2020 amending Railway

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Accidents and Untoward Incidents (Compensation) Amendment Rules, 2020, amended Rule 5 reads as under:

"5. Mode of payment—

5.1 The Tribunal may, in order to protect the sum awarded to the claimant, having due regard to the illiteracy or other disabling factors impairing the judicious use of such sum, issue directions for disbursing the award in terms of annuities, fixed deposits or other suitable mode as shall subserve justice.

5.2 If any of the claimants is a minor or person of unsound mind, the Tribunal may give liberty to the guardian ad litem to use the interest accruals on the deposit that shall be made during the minority for maintenance.

5.3 Nothing in this Rule shall limit the power of the Tribunal to make modifications of the mode of disbursement for reasons to be stated in writing depending on the exigencies requiring liquidation of any corpus created for annuity or premature closure of fixed deposit, for the benefit of the claimant.

5.4 The orders dated 21st April, 2017, 24th May, 2019 and 6th November, 2019 of Hon'ble High Court of Delhi in FAO No. 22/2015 and CM Application No. 4501/2015 in *Geeta Devi Vs Union of India*, relating to disbursement of compensation shall be read as part of this Rule."

Therefore, considering factors impacting judicious use of the awarded sums, like age, marital status and level of dependency of the claimants and in compliance of Rule 5 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 as amended vide Notification of 3rd June, 2020, in the present case, the amount of award shall be disbursed in the following manner: -

16. The respondent railway shall deposit the awarded amount, along with interest, in the Suits money account of this Tribunal maintained by the Additional Registrar within a period of 60 days from the date of receipt of this order. While depositing the awarded amount along with interest, the respondent railway shall send notice by registered post to the applicants with a copy of the same to the Additional Registrar

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and to the counsel for the opposite party giving complete details of the payment such as UTR number, calculation of interest etc.

17. Out of amount of compensation a sum of Rs. 1,00,000/- (Rs. One Lakh), together with accrued interest, shall be released forthwith by ECS/NEFT to the Applicant. The remaining amount of Rs.7,00,000/- (Rupees seven lakh only) shall be split into 140 fixed deposits of Rs.5,000/- (Rupees five thousand only) each and invested for a period of one to 140 months in ascending order. The bank shall release the amount with accumulated interest upon maturity of each of these deposits to the credit of the Savings bank account of the Applicant.
18. The applicant is hereby directed to submit details of his Individual Bank account of a nationalized Bank situated near the place of his residence to the Additional Registrar of this Tribunal.
19. In pursuance of Rule 5.4.4 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 as amended by GSR 347 (E) dated 03.06.2020, following conditions are imposed in respect to the fixed deposits: -
 - (i) The Bank shall not permit any joint name(s) to be added to the applicant's savings account or fixed deposit account.
 - (ii) No loan, advance, withdrawal or pre-mature discharge be allowed from the fixed deposit without permission of the Tribunal.
 - (iii) The Bank shall not issue any cheque book and/or debit card to the applicants. However, in case the debit card and/or cheque book have already been issued, bank shall cancel the same before the disbursement of the award amount.
 - (iv) The bank shall make an endorsement on the passbook of the applicants to the effect that no cheque book and/or debit card have been issued and shall not be issued without the permission of the Tribunal and the applicant shall produce the passbook with the necessary endorsement before the Additional Registrar of this Tribunal.

M. S. Srinivasan

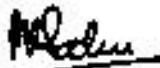


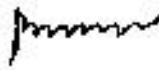
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OA (II-U)/15/2021

20. The application is allowed in the above terms with no order as to costs.

21. Pronounced in the open court today on 10.10.2023.


(Prasanta Kumar Sahu)
Member (Technical)


(Sanjeev Aggarwal)
Member (Judicial)

