

**BEFORE THE RAILWAY CLAIMS TRIBUNAL
CHENNAI BENCH**

Quorum : Shri Vijayant Singh, Hon'ble Member(Judicial)

OA (II-U) 46/2022

*(O.A. registered on 29.09.2022, heard & reserved on 26.12.2023;
decided on 04.01.2024)*

1. Mr. Panneerselvam (Father of the deceased),
2. Ms. Vadivukarasai (Mother of the deceased)

Both residing at –
No.63, Anna Nagar,
Glass Factory, Thiruvottiyur
Chennai - 600019

..... Applicants

Versus

Union of India through General Manager,
Southern Railway, Chennai.

.....Respondent

Shri G.Kandan, Ld. Counsel for Applicants
Shri S.Janarthanam, Ld. Counsel for Respondent

**Claim Application filed U/S 16 of the RCT Act, 1987
read with Section 123(C)(2), of the Railways Act, 1989.**

Claim for Rs.8,00,000/- with interest from the date of claim application till date of payment and with legal costs.

JUDGMENT

The present case has been preferred before this Tribunal by the applicants under Section 16 of the Railway Claims Tribunal Act, 1987 r/w Section 123 (c)(2), 124-A & 125 of the Railways Act, 1989, seeking compensation of Rs. 8,00,000/- together with interest on account of death of Porsevan (hereinafter referred as the deceased) in an alleged untoward incident.

2. In brief, it has been averred in the claim application that the deceased was studying Mechanical Engineering in Sri Durga Devi Polytechnic, Kavaraipettai. The deceased was a minor at the time of the untoward incident. The deceased used to commute in train to go to college. On 13.02.2019, while the deceased was travelling in the train, as reported from Nandhiyapakkam to Athipattu Railway station at about 500



meters from the station at around 16.30 hrs., the deceased had accidentally fallen down from the train due to overcrowding. The public pulled the chain to stop the train but the train only stopped at the upcoming station. Thereafter, the deceased's friends took the down lane train and arrived at the Nandhiyapakkam station and scaled the tracks and found him lying unconscious on his right side. The public had called 108 ambulance. The deceased in this impact sustained serious injuries in his right head and right ribs and was shifted to Stanley Govt. Hospital but succumbed to the injuries and died at 19.15 hrs. on the same day. The incident happened in Nandhiyapakkam to Athipattu Railway station route at around 16.30 hrs.

3. To establish their claim, the applicants have placed on record copies of FIR, Inquest Report, Death Certificate, Legal Hair Certificate, Post Mortem Certificate, RTI letter dt. 04.06.2019 addressed to Police, Reply from Police dt. 19.07.2019, Final Report, Reply from Police dt. 14.08.2019, Train season ticket with ID of 1st Applicant and Aadhar cards, Election ID cards & bank account passbooks of the Applicants.

4. Respondent Railway filed written statement along with the DRM's Report wherein Respondent submitted that 'the deceased, while travelling on footboard of the train, hit against electric pole, and thus the incident had occurred only due to adventurous act on the part of the deceased, and there was no lapse on account of Railway'.

5. Based upon the pleadings of the parties and material made available on record, the following issues were framed :

ISSUES

- 1) *Whether the deceased was a bona fide passenger as alleged?*
- 2) *Whether the incident in which the deceased allegedly lost life is an untoward incident as defined under Sec.123(c)(2) of the Railway Act, 1989?*
- 3) *Whether the Applicants are the only dependants of the deceased?*
- 4) *Whether the Applicants are entitled for compensation as claimed and other relief if any?*

6. Shri Panneerselvam, father of the deceased & Smt. P.Vadivukarasi mother of the deceased, in order to lead evidence, have filed their examination-in-chief affidavits as AW-1 & AW-2 respectively, in this case, and got the documents exhibited as A-1 to A-



[Handwritten signature]

11. The applicants have placed on record following documents relating to the incident as exhibits A-1 to A-11. Counsel for the Respondent had cross-examined the deponent as AW-1 who deposed her statement before this Tribunal.

1. Copy of FIR (Ex.A-1)
2. Copies of Aadhar cards, Election ID cards & bank a/c passbooks of Applicants (Ex.A-2)
3. Copy of Inquest Report (Ex.A-3)
4. Copy of Death Certificate (Ex.A-4)
5. Copy of Legal heir Certificate (Ex.A-5)
6. Copy of Post Mortem Certificate (Ex.A-6)
7. Copy of RTI letter dt. 04.06.2019 addressed to Police (Ex.A-7)
8. Copy of Reply from Police dt 19.07.2019 (Ex.A-8)
9. Copy of Final Report (Ex.A-9)
10. Copy of Reply from Police dt 14.08.2019 (Ex.A-10)
11. Copy of 1st Applicant's train season ticket with ID (Ex.A-11)

7. Respondent railway administration has filed DRM investigation report in this case as evidence, which is marked as Ex.R-1.

FINDINGS

8. We have carefully gone through the pleadings of the parties, material made available on record, evidences adduced on behalf of applicants and heard the arguments advanced on behalf of rival parties by their counsels.

9. Our findings on the issues are as under :-

Issue No.1:

10. The deceased was a minor and a student at the time incident. On 13.02.2019, he travelled by a train and fallen down from running train between Nandhiyapakkam and Athipattu stations. The deceased's friends found the deceased was lying unconscious on the track, called 108 ambulance and shifted the deceased to Government Stanley Hospital, Chennai where he died at 19.15 hrs. on the same day.

11. The only contention of Respondent through its DRM report (Ex.R-1) is that the deceased was not a bonafide railway passenger and that he was not in possession of any valid travel authority. Inquest (Ex.A-3) was conducted by GRP/Korukkupettai from



07.00 hrs. to 09.00 hrs. of 14.02.2019 at the mortuary of Government Stanley Hospital/Chennai wherein there is no mention about recovery of ticket from the corpse of the deceased at the time of inquest. Apart from mentioning that the deceased was wearing a blue & white half hand shirt and ink blue colour pants, no other things were said to have found on the deceased's body.

12. Hon'ble Supreme Court in UOI v. Rina Devi In Civil Appeal No.4945 of 2018 decided on 09.05.2018, while specifically considering the issue of burden of proof when body found on Railway premises - Definition of Passenger held as under:

"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. The legal position in this regard will stand explained accordingly".

(emphasis supplied)

13. In the present case, father of the deceased (Applicant No.1) - filed Proof Affidavit dated 08.06.2023 and deposed before this Tribunal that he had purchased return ticket for his son from Thiruvattiyur to college. This statement has been corroborated by mother of the deceased (Applicant No.2) by filing proof affidavit dt. 06.07.2023 and also deposed that her husband (father of the deceased) purchased ticket for his son from Tiruvattiyur to Kavarapettai, on the date of incident.

14. Respondent did not file any evidence to counter the statement of parents of the deceased to establish that the deceased was not a bona fide passenger. Further, it is seen from the Inquest Report (Ex.A-3), Post-mortem Certificate (Ex.A-6), that deceased sustained serious injuries in his right head and right ribs. Hence, in such a situation there is possibility of a ticket, to get lost.

15. The ratio of above Judgment is squarely applicable in the present case also. Thus, considering the facts and circumstances of the case, benefit of the doubt is



extended to the deceased and it is considered that he was a bona fide passenger. Hence, It is held that the deceased was a bona fide passenger and that he lost his life due to injuries suffered in an untoward incident, as defined under section 123(c)(2) of the Railways Act, 1989.

16. In view of the above, this Tribunal is of the view that the deceased was undertaking his journey from Tiruvattiyur to Kavarapettai on the date of incident, as a bona fide passenger as defined under Section 2 (29) read with Section 124 A of the Railways Act, 1989. We hold that the deceased was a bona fide passenger and Issue No.1 is decided in favour of the applicants, accordingly.

Issue No. 2:

17. On the basis of FIR lodged at GRP/Korullupettai, Inquest (Ex.A-3) was conducted – wherein para XXII clearly indicates that 'the deceased was a first year Mechanical Engineering student of Sri Durgadevi Polytechnic College, Kavarapettai, and used to travel from Tiruvotriyur railway station to Kavarapettai railway station, who while returning from college as usual by train on 13.02.2019, from college to house, was standing near footboard and in between Nandiambakkam and Athipattu railway stations, while the train was coming in Up line, fell down with grave injuries on the right side of the head, right side rib broken and in serious condition, was admitted to Stanley Government Hospital, and died. Respondent attributed that the incident had occurred only due to the adventurous act of the part of the deceased.

18. The Hon'ble Apex Court in the case of Union of India Vs Prabhakaran Vijaya Kumar & others reported In 2008 ACJ 1895, has held that:

"Section 124 A of the Railways Act, 1989 casts strict liability on the Railway even if the deceased died due to his own fault. Then also, Railway is liable to pay amount of compensation."

19. In the case of Union of India Vs Rina Devi reported In 2018 AIR (SC) 2362, the Hon'ble Apex Court has held that :

"Victim will be entitled to compensation and will not fall under proviso to Section 124A merely on plea of negligence of victim as contributing factor."



20. In our view, the principles of law laid down by the Apex Court would clearly apply to the facts of this case. It can also be said that the Respondent could not lead any evidence who/which leads the case against the Applicants.

21. It is not the case of respondent railway that deceased died due to any exceptions provided under proviso to Section 124-A of the Act. Thus, based on above facts, we have no legal impediment in concluding that the accidental fall of deceased was an 'untoward incident' which resulted into death of deceased.

22. Thus, on holistic evaluation of evidences on record and attendant circumstances, we have come to conclusion that the accidental fall of deceased was an 'untoward incident' within the ambit of provisions of section 123 (C) 2 of Railway Act, 1989. Accordingly, Issues No.2 is decided in favour of Applicants.

Issue No. 3

23. The Applicants are father and mother of the deceased are the only dependents of the deceased. Their relationship with the deceased was brought in through Legal Heir Certificate (Ex.A-5) Issued by the Tahsildar, Thiruvottiyur Taluq, Chennai district, which is a sufficient ground to hold that the applicants are the only dependents of the deceased. Moreover, no evidence has been adduced on behalf of the respondent to rebut the case of the applicants on the issue of dependency. Besides, during pendency of the claim application, none else appeared before the Tribunal claiming himself/herself as one of the dependents or the sole dependent of the deceased. Therefore, Applicants 1 & 2 are dependents of the deceased. Issue No.3 is decided accordingly in favour of the Applicants.

Issue no. 4

24. In view of our findings on Issue no. 1, 2 & 3, the Applicants together, are entitled to get compensation of Rs.8,00,000/- as prescribed under part-I of the Schedule appended to Rule 3 (3) of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 as amended on 22.12.2016. This issue is decided accordingly.

We pass the following order :-



ORDER

25. The application is allowed. The Respondent shall pay to the applicants a sum of Rs.8,00,000/- (Rs. Eight Lakhs only) along with simple interest @ 9% per annum from the date of Incident (13.02.2019) till the date of this judgment, as compensation as per apportionment given below within 60 days from the date of this order. If the Respondent Railway fails to pay the amount within above stipulated time (60 days), the awarded sum will carry simple interest @ 9% per annum from the date of Incident till the date of payment.

26. The claimants are directed to submit Form 15G or Form 15H (for senior citizen) to the Presenting Officer of the Railway (as applicable under sub-section (2) of section 19 of the Railway Claims Tribunal Act, 1987) within the 60 days from this order otherwise the Railway Administration may deduct the applicable TDS as per the provisions of the income tax act.

27. The Respondent Railway administration is directed to deposit the whole amount along with interest with the Registry of RCT/Chennai within a period of 60 days from date of the order. Further, the Respondent is directed to place the proof of awarded amount on record with up to date interest along with the calculation sheet.

28. Registry is directed that the awarded amount shall be kept in the bank as detailed below :

Applicants Name	Awarded Amount	Amount to be given through ECS/NEFT/RTGS	Amount to be invested under Annuity Scheme
Panneeriselvam, Applicant No.1 (Father of deceased)	Rs.4,00,000/-	Rs.40,000/- plus proportionate share of interest	Balance amount of Rs.3,60,000/- (Rs. Three lakhs sixty thousand) shall be split into 72 fixed deposits of Rs.5,000/- each and invested for a period of 1 to 72 months in the ascending order. The bank shall release the amount monthly with accumulated interest upon maturity of each of these deposits to the credit of the Bank Account of the Applicant.



Vadivukarasi Applicant No.2 (Mother of deceased)	Rs.4,00,000/-	Rs.40,000/- plus proportionate share of interest	Balance amount of Rs.3,60,000/- (Rs. Three lakhs sixty thousand) shall be split into 72 fixed deposits of Rs.5,000/- each and invested for a period of 1 to 72 months in the ascending order. The bank shall release the amount monthly with accumulated interest upon maturity of each of these deposits to the credit of the Bank Account of the Applicant.
---	---------------	--	---

29. The applicants are hereby directed to furnish the particulars of their savings bank account of a Nationalized bank near to their permanent place of residence (if not furnished in the claim application) along with a copy of Aadhar Card, PAN card, two photographs and pass book of the bank with necessary endorsement of the bank that no debit card/Cheque book has been issued, with the Registry of this Bench.

30. Further we deem it proper to direct the concerned bank that:

- Bank shall not permit any joint name to be added in the saving bank account or fixed deposit amount of the claimants i.e. saving bank account of the claimants shall be an individual bank account and not joint account.
- The bank shall not issue any cheque book and debit card to the claimants. However, in case the debit card or cheque book has already been issued, bank shall cancel the same before the disbursement of the award amount.
- No loan, advance, withdrawal or premature discharge be allowed on fixed deposit without the permission of the court.
- The bank shall make an endorsement on the passbook of the claimants to the effect that no cheque book and/or debit card have been issued.

31. The Registry is directed to defer the disbursement of awarded amount till passbook of savings bank account of the claimants in a bank near to the place of their permanent residence is not produced along with necessary endorsement.

32. The Registry is further directed to ensure that the statement containing FDR number/FDR amount/ date of maturity and maturity amount shall be furnished by the bank to the claimants.



33. Registry is directed to send a free certified copy of this judgment to the parties in view of Rule 34 (3) of the Railway Claims Tribunal (Procedure) Rules, 1989.

34. In the above facts and circumstances of the case, there is, however, no order as to costs.


(Vijayant Singh)
Member (Judicial)

RCT/MAS

Judgment pronounced, signed and sealed in open Court today i.e. on 04.01.2024.


(Vijayant Singh)
Member (Judicial)

RCT/MAS

Date: 04.01.2024
Place: Chennai

