

**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)/MAS/51/2020

*(Application filed with delay condonation petition on 15.09.2020,
OA registered on 05.11.2020, heard on 19.10.2023 and decided on 02.11.2023)*

1. M.Mariyam Bee, (mother of the deceased) - died
No.9, Savariyar Koli Street,
Varaganery, VTC,
Tiruchirappalli - 620 008.
2. Sulekha, (daughter of deceased Applicant No. 1)
3. Samsudeen, (son of deceased Applicant No. 1)
4. Noorjahan, (daughter of deceased Applicant No. 1)
5. Najeera, (daughter of deceased Applicant No. 1)
6. Naeer.M, (son of deceased Applicant No. 1)
7. Naseema, (daughter of deceased Applicant No. 1)
8. Subedha, (daughter of deceased Applicant No. 1)

Applicant Nos.2 to 8 are residing at:

No.9, Saveriyar Koli Street,
Varakanery, VTC,
Tiruchirappalli - 620 008.

...Applicants

Versus

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

...Respondent

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

Shri G.Kandan, Counsel for Applicants

Shri J.Harikrishna, Counsel for Respondent

JUDGMENT

Prasanta Kumar Sahu, Member (T)

Present Application was originally filed by mother of M.Ansar, hereinafter referred to as deceased, claiming compensation for his death in an alleged untoward incident.

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During the trial, the Applicant, mother of the deceased, did not appear to adduce oral evidence citing old age and illness. Subsequently she died on 28.01.2022. An Application was filed by 7 children of the Applicant for substituting the original sole Applicant with them, being children and her legal representatives, which was allowed, on contention.

2. According to the Applicants on 04.08.2019 night the deceased purchased a ticket to Tambaram and boarded Arnyodaya Express from Madurai Railway station. During the travel, the deceased accidentally fell down from the running train between Kodaikkanal Road and Vadipatti Railway stations and sustained grievous injuries. With the help of Railway staff, the deceased was taken to Government Hospital, Dindigul, by 108 ambulance. Thereafter, he was admitted in Shri Ranyaa Multi Speciality Hospital, Tiruchirappalli, for 4 days. Due to financial situation, he was shifted to Government Hospital, Tiruchirappalli, where he succumbed to the injuries. Submitting that the deceased was a bona fide passenger and the incident in which he died was an untoward incident, Applicants prayed for granting compensation of Rupees Eight lakhs with 8% interest from the date of incident till the date of deposit.

3. Respondent filed Reply statement along with statutory investigation report, known as DRM report. Respondent admitted that the deceased was a bona fide passenger. Respondent contested the case on the grounds that due to carelessness and negligence of the deceased the incident had occurred.

4. Based on the pleading raised and documents placed on record, the following issues were framed on 07.07.2021:

- 1) Whether the applicant is the only dependant of the deceased?
- 2) Whether the deceased was a bona fide passenger as alleged?
- 3) 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?
- 4) Whether the applicant is entitled for compensation as claimed and other relief if any?

5. Applicant No.3, son of the original sole Applicant and brother of the deceased, filed Proof Affidavit and deposed as AW-1 on 13.10.2023. Applicants filed copies of FIR,

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Accident Register entry at Government Hospital, Dindigul, Accident Register entry at Shri Ramya Multi Speciality Hospital, Tiruchirappalli, Accident Register entry & death intimation at Government Hospital, Tiruchirappalli, Inquest Report, Post-mortem certificate, Death Certificate of the deceased, Legal Heir certificate of the deceased, train ticket, Station Master's message, Aadhar Card of original sole Applicant, Death certificate of original sole Applicant, Aadhar Cards of Applicant Nos.2 to 8, Legal Heir Certificate of original sole Applicant and Bank pass books of Applicants, which were marked as Ex.A-1 to A-15, respectively. Respondent has filed DRM report along with copies of documents cited in it, which was marked as Ex.R-1.

6. Heard both sides, perused the entire material on record. The following are the findings on the issues:

Issue No.1

7. Applicant Nos 2 to 8, have filed Aadhar cards in support of their identity (Ex.A-13), and Identity of original sole Applicant (Ex.A-11) and Legal Heir Certificate of the deceased dated 09.12.2019 issued by Tahsildar, Tiruchirappalli Taluk & District (Ex.A-8), listing original sole Applicant, and showing her relationship with the deceased, as the only surviving legal heir of the deceased. Applicants have also submitted Death Certificate of original sole Applicant dated 10.02.2022 issued by Registrar (Birth & Death), Tiruchirappalli City Corporation Ward 20 (Ex.A-12), wherein the date of her death was mentioned as 28.01.2022. Applicants have also submitted Legal Heir Certificate of original sole Applicant dated 05.04.2022 issued by Tahsildar, Tiruchirappalli Taluk & District (Ex.A-14), listing Applicant Nos.2 to 8 as surviving legal heirs of the original sole Applicant. Substitution of legal heirs of the original sole Applicant, who died subsequent to filing of the Original Application in the Railway Claims Tribunal, was allowed, on contest. Apart from the Applicants mentioned herein, no other claimant came forward during the pendency of this case. Hence, it is held that Applicant No.1 was the sole dependant of the deceased and subsequently on her death her legal heirs i.e Applicant No.- 2 to 8.

Issue Nos.2 & 3

8. Both these issues are taken together for the sake of convenience.

M. K. Selvam



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9. According to Applicants, the deceased, a TV and A/c mechanic, in order to purchase material for his work, boarded Antyodaya Express from Madurai on 04.08.2019 night and travelled towards Tambaram on a valid ticket. During the travel, the deceased accidentally fell down from the running train between Kodai Road and Vadipatti Railway stations and sustained injuries. He was taken to Government Hospital, Dindigul, and subsequently undergone treatment at various Hospitals. However, he succumbed to the injuries, without responding to the treatment, on 15.08.2019. Applicants have submitted copy of train ticket No.UMD 89808793 issued at 19.56 hrs on 04.08.2019 for travel of one person from Madurai Jn to Tambaram in Antyodaya train (Ex.A-9), as proof of deceased's travel authority.

10. Respondent admitted that the deceased was a bona fide passenger. Respondent submitted that the deceased lying injured, presumed to be dead, between Kodaikanal Road and Vadipatti Railway stations, was seen by a Keyman of Respondent Railway. Based on the information furnished by the Keyman, Station Master of Kodaikkanal Road, conveyed the same to all concerned. Based on the said information, Government Railway Police reaches the spot and upon finding the person in injured condition, rushed him to a private Hospital in Ammalanayakkanur and after first aid, shifted him to Government Hospital, Dindigul. As per Accident Register entry of the Hospital, he was admitted at 02.35 pm on 05.08.2023 (Ex.A-2). As per Accident Register entry of Shri Ramyaa Multi Speciality Hospital, Tiruchirappalli, he was admitted at 01.00 hrs on 06.08.2019 (Ex.A-3). As per Accident Register entry of Government Hospital, Tiruchirappalli, he was admitted on 09.08.2019 and as per death intimation attached with it, he expired at 21.00 hrs on 15.08.2019 (Ex.A-4). Entries in the Accident Registers of these Hospitals mentioned that he suffered injuries due to fall from a train. FIR was registered by Government Railway Police, Kodai Road, at 16.08.2019 at 02.00 hrs based on a written complaint filed by brother of deceased, Applicant No.3 herein, narrating the sequence of events about travel of the deceased in a train, fall and subsequent developments. He further submitted that the deceased passed away at 21.00 hrs on 15.08.2019, while undergoing treatment in the Intensive Care Unit of Government Hospital, Tiruchirappalli (Ex.A-1). Inquest was conducted from 10.00 hrs to 11.30 hrs on 18.08.2019 in the Mortuary of Government Hospital, Tiruchirappalli (Ex.A-

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5). Post-mortem was conducted on the same day at the same Hospital (Ex.A-6). Post-mortem Certificate recorded various injuries suffered by the deceased and the opinion of the Doctor that 'the deceased would appear to have died due to the effects of multiple injuries'. Final Report was prepared by the Government Railway Police on 15.11.2019. Inquest Report and Final Report recorded details of the journey of the deceased and that the deceased suffered injuries due to fall from Antyodaya Express. In the message from the Station Master of Kodaikanal Road, it was mentioned that the injured passenger had a valid ticket. Final Report mentioned the ticket number too.

11. In the DRM Report, the Respondent admitted that the deceased had a valid ticket. Respondent further submitted that there was no eyewitness to the incident and contended that there was a possibility that the deceased had travelled on the footboard / doorways of the train and due to his carelessness and negligence the incident of fall happened, resulting him suffering injuries, ultimately leading to his death.

12. As admitted by the Respondent, there was no eyewitness to the incident and it was only a presumption on the part of the Respondent that carelessness and negligence on the part of the deceased resulted in his falling down from the running train. It is pertinent to refer to Section 124A of the Railways Act, 1969, which deals with granting of compensation on account of untoward incident, which is reproduced below:

"When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependent of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident."

Provided that no compensation shall be payable under this Section by the railway administration if the passenger dies or suffers injury due to:-

- (a) suicide or attempted suicide by him;
- (b) self-inflicted injury;
- (c) his own criminal act;
- (d) any act committed by him in a state of intoxication or insanity;
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

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Explanation:- For the purpose of this section, "passengers" includes –

- (i) a railway servant on duty; and
- (ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident."

(emphasis supplied)

From Section 124A it is quite clear that Railways' liability is a 'no fault' liability. Proviso to this Section also lists the situations and circumstances under which Railway administration is exempted from paying compensation. Hence, once it is established that the deceased was a bona fide passenger and that he fell down from the train in which he was travelling, unless the reason for the incident was due to any of the provisos (a) to (e) of this Section, the Railway is liable to pay compensation.

13. Further, negligence on the part of a passenger has already been examined by the Hon'ble Apex Court and it was held in the following rulings that it has no bearing on the liability of the Railways.

(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 Vijaya Kumar and others"* ((2008) 4 MLJ 323 (SC)) Hon'ble Supreme Court stated that Section 124A lays down strict or no fault liability in case of railway accidents and where strict liability applies, proof of negligence is not required. Hence, it is irrelevant who was at fault.

14. Thus, from the facts and circumstances of the case, it is very much evident that the deceased was a bona fide passenger and the incident in which the deceased lost his life was an untoward incident. 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.

Issue No.4

15. Having held that the deceased was a bona fide passenger, who died in an untoward incident and Applicant No.1 was the sole dependant of the deceased and Applicant Nos.2 to 8, are the only legal representatives of the original sole Applicant, who died subsequent to filing the Claim Application in the Tribunal, they are entitled for compensation. Hence, ordered.

M. S. Srinivasan



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ORDER

16. The claim application is, hereby, allowed and an award for Rs.8,00,000/- (Rupees Eight lakhs only), along with simple interest @ 6% per annum from the date of Incident is made in favour of the Applicants and the compensation amount is apportioned as follows:

Applicant No.2	Sulekha (daughter of deceased Applicant No.1)	Rs.1,00,000/-
Applicant No.3	Samsudeen (son of deceased Applicant No.1)	Rs.2,00,000/-
Applicant No.4	Noorjahan (daughter of deceased Applicant No.1)	Rs.1,00,000/-
Applicant No.5	Najeera (daughter of deceased Applicant No.1)	Rs.1,00,000/-
Applicant No.6	Nasar M (son of deceased Applicant No.1)	Rs.1,00,000/-
Applicant No.7	Naseema (daughter of deceased Applicant No.1)	Rs.1,00,000/-
Applicant No.8	Subedha (daughter of deceased Applicant No.1)	Rs.1,00,000/-
Total:		Rs.8,00,000/-

17. Accordingly, Respondent Railway is directed to deposit the awarded amount of compensation with 6% simple interest from the date of the Incident within 60 days from the date of this judgment, in the Suitors' money account being maintained by the Additional Registrar of this Tribunal, failing which 9% interest has to be paid after expiry of 60 days.

18. 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

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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

19. 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 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 impacting 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, occupation 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: -

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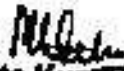
20. The Respondent Railway shall deposit the awarded amount, along with interest, in the Suits money account of this Tribunal maintained by the Additional Registrar within a period of 60 days from the date of this order. While depositing the awarded amount along with interest, the Respondent Railway shall send notice by registered post to the Applicants with a copy of the same to the Additional Registrar and to the counsel for the opposite party giving complete details of the payment such as UTR number, calculation of interest etc.
21. 10% of the distributed share of compensation to Applicants, together with interest accrued on their proportionate shares of award, shall be released forthwith by ECS/NEFT to them, separately. The remaining amount of award in respect of Applicant No.3, i.e. Rs.1,80,000/- (Rupees one lakh eighty thousand only), shall be split into 36 fixed deposits of Rs.5,000/- (Rupees five thousand only) each and invested for a period of one to 36 months in ascending order in favour of Applicant No.3. The bank shall release the amount with accumulated interest upon maturity of each of these deposits to the credit of the bank account of Applicant No.3.
22. The remaining amounts of award in respect of Applicant Nos.2, 4, 5, 6, 7 & 8, i.e. Rs.90,000/- (Rupees ninety thousand only) each, shall be split into 18 fixed deposits of Rs.5,000/- (Rupees five thousand only) each and invested for a period of one to 18 months in ascending order in favour of each of these Applicants separately. The bank shall release the amount with accumulated interest upon maturity of each of these deposits to the credit of the bank accounts of the respective Applicants.
23. The Applicants are hereby directed to submit details of their individual Bank accounts of a nationalized Bank situated near the place of their residence to the Additional Registrar of this Tribunal.
24. In pursuance of Rule 5.4.4 of the Railway Accidents and Unlawful 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.

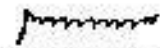
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- (ii) No loan, advance, withdrawal or pre-mature discharge be allowed from the fixed deposit without permission of the Tribunal.
 - (iii) The Bank shall not issue any cheque book and/or debit card to the applicants. However, in case the debit card 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.
25. The application is allowed in the above terms with no order as to costs.
26. Pronounced in the open court today on 02.11.2023.


(Prasanta Kumar Sahu)
Member (Technical)


(Sanjeev Aggarwal)
Member (Judicial)

