

**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)/57/2022

(Application with delay filed on 09.06.2022, delay condoned on 29.09.2022
registered on 30.09.2022, heard & reserved on 03.11.2023 and
decided on 16.11.2023)

1. G. Kundhiyammal (Mother of deceased)
 2. Gowri. G (Wife of deceased)
 3. Nithisha. G (Daughter of deceased)
 4. Saikrithi. G (Daughter of deceased)
- (Applicants 3 & 4 are minors represented
by their mother & natural guardian)

all are residing at

No.1-109 School Opposite, Karipatti
Sarkar Natar Mangalam, Valapadi Tk
Salem District - 636 106

... Applicants

Versus

Union of India through General Manager,
Southern Railway, Chennai

... Respondent

Mr. S.V.Karthikeyan, Ld. Counsel for the Applicants
Mr. R.K. Gandhi, Ld. Counsel 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 at 12% per annum from the date of incident
till payment together with costs.

Judgement

Prasanta Kumar Sahu, Hon'ble Member (T)

1. Applicants are mother, wife and two minor daughters of Gothandan
(hereinafter referred as the deceased) and they have filed the present
Application seeking compensation for his death in an alleged untoward
incident.

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2. According to the Applicants in the OA, the deceased was working as a Rig Driver at Bilaspur for the past fifteen years and he used to visit his native place once in three months. Likewise, he came to his native and for returning to Bilaspur, came to Salem railway station on 14.02.2019 at 16.25 hrs. and boarded Train No.22648 Kochuveli- Korba Express along with his friend Thangarasu Veera. Both were travelling in a single reserved ticket bearing PNR No.4501298137 in berth nos.42, 43 in B-5 coach. During travel, the deceased while going to the toilet, stumbled near the door and fell down from the train between up & down line of railway track at km.279/02-04 between Morappur and Puttiredipatti railway stations, rolled on the track for some distance and sustained grievous injuries. Due to the impact, he died on the spot. It was submitted that the deceased died due to an untoward incident and the applicants, being the dependents of the deceased, are entitled for compensation.
3. The Reply Statement and DRM report were filed by the Respondent wherein it was concluded that the death was suspicious and there was no eye-witness to prove that the deceased fell down from the said train No.22648 Kochuveli – Korba Express. Hence, Railway is not responsible for the incident and the claim preferred was not genuine.
4. Based on documents placed on record as well as pleadings raised by both sides on 13.03.2023, following issues were framed:

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- 1) Whether the Applicants are the only dependants 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 Applicants are entitled for compensation as claimed and other relief if any?
5. The 2nd Applicant and wife of the deceased G. Gowri, AW-1 filed her proof affidavit on 13.06.2023 in evidence and reiterated the facts pleaded in the original claim application and was cross examined thereon. Applicants filed copies of SM's message, Report of Untoward Incident, FIR, Inquest Report, Seizure Mahazar, Ticket, Post Mortem Certificate, Final Report, Death Certificate, Legal Heir Certificate, Aadhar card and bank passbooks of the Applicants which were marked as Ex.A-1 to A-12 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 :

6. In order to prove their identity, applicants have filed their Aadhar cards and in support of dependency, filed the Legal Heir Certificate (Ex.A-10) issued by Tahsildar, Valapady. During the proceedings, no other person staked their claim for compensation. Therefore, it is held that the Applicants are the only dependents of the deceased. This Issue is decided in favour of the Applicant.

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Issue No.2 & 3 :

These issues, being inter-connected, are being taken up together for discussion.

7. As per the findings of the Investigation Report submitted by the Respondent, the male dead body was first noticed by the Keyman/Buddireddipatti at about 07.30 hrs. on 15.02.2019 on the right side of the down line track at km.279/2-4 between Morappur and Buddireddipatti railway stations. He informed the same to SM/Buddireddipatti. An FIR was filed by GRP/Salem PS based on the information from SM/Salem. Inquest was conducted from 13.30 hrs. to 14.30 hrs. on 15.02.2019 at km.279/02-04 between Morappur and Buddireddipatti railway stations. Seizure Mahazar was prepared in which it is mentioned that Aadhar card, Driving Licence and one Samsung mobile phone were recovered from the possession of the deceased. Post mortem was conducted on 16.02.2019 at Govt. M.K. Medical College Hospital, Salem and it was opined that the deceased would appear to have died due to effects of head injuries.
8. As per the statement given by V. Thangarasu, co-passenger of the deceased, forming part of the DRM report, he was working as a Cook in Arora Borewell Company, Bilaspur and he had come to his native place for Pongal festival. He received a phone call from the deceased informing him that their Company had booked tickets for both of them from Salem to Bilaspur in Korba Express and told him to come to Salem railway station on 14.02.2019

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at 18.00 hrs. Both of them boarded the said train at 19.15 hrs. They had their tickets reserved in B5 coach. While Thangarasu went to the upper berth, he saw the deceased speaking on the mobile and moving out of his seat. When the TTE came for checking the tickets twice, he told that the ticket was with the deceased Gothandan but he was not found in his berth. His phone was also switched off. The ticket was verified through the message on his mobile. After reaching Bilaspur, he was received by the owner of his company, who informed that the deceased Gothandan had fallen down from the train and died.

9. The deceased and the co-passenger Thangarasu are said to have travelled in Train No.22648 Kochuvelli – Korba Express with reserved ticket bearing PNR No.450-1298137 in B5 coach berth Nos.42 & 43. The Respondent has not contested this claim. The Applicants have filed copy of the e-ticket bearing PNR No.450-1298137 in Train No.22648 Korba Express from Salem to Bilaspur with berth Nos.42 & 43 in B-5 coach. The ticket was verified by Data Processing Superintendent/Passenger Reservation/Southern Railway and was certified to be valid for the journey. The contention of the Respondent was that there was no eyewitness to prove that the deceased fell down from the said train and that there was suspicion about the incident.

10. It has been concluded in the GRP's Final Report that the deceased was travelling in Train No.22648 in B1 coach from Salem to Bilaspur with online

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reserved ticket and while going to the toilet, stumbled near the door and accidentally fell down from the train. In the impact, he sustained grievous injuries and died on the spot.

11. The Respondents have stated that the co-passenger Sri V. Thangaraju, noticed the missing of the deceased at about 00:30 on 15.02.2019 during ticket checking, but till the destination he didn't inform the matter to anyone which creates suspicion about the incident. From his statement it is clear that he, along with the deceased, had boarded the train and occupied their respective berths. Subsequently the body of the deceased was found by the Key-man of the respondent Railway at the spot of the incident. As such from all evidence on record, it is beyond doubt that the incident in which the deceased lost his life was an accidental fall from the running train.

12. Respondent's claim that they were not responsible for the incident is not sustainable in view of the fact that Respondent's liability is defined in section 124A, which reads as under:

"124A. **Compensation on account of untoward incident.** - 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 dependant 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:

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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.

Explanation - For the purposes of this section, "passenger" 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 added)

13. The Hon'ble Supreme Court of India in Union of India vs Prabhakaran Vijaya

Kumar, 2008 ACJ 1895 has observed in para-17:-

"Section 124-A lays down strict liability or no-fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124A it is wholly irrelevant as to who was at fault."

Further Hon'ble Supreme Court in case of Rina Devi in Civil Appeal No. 4945 of 2018 in para 16.1 concurred with aforesaid case and held:

".....In Prabhakaran Vijaya Kumar (supra) it was held that Section 124A lays down strict liability or no fault liability in case of railway accidents. Where principle of strict liability applies, proof of negligence is not required."

14. 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 in the death of deceased.

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15. 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 and the deceased was a bonafide passenger of the train in question. Accordingly, Issues No.-1 and 2 are decided in favour of Applicant.

Issue No. 4:

16. The Applicants are eligible for compensation under section 124(A) of the Railways Act, 1989. Hence, ordered.

ORDER

17. In the result, 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:

Name	Relationship	Amount
G. Kundhiyammal	Mother	Rs.2,00,000/-
Gowri G	Wife	Rs.4,00,000/-
Nithisha G	Minor Daughter	Rs.1,00,000/-
Saikrithi G	Minor Daughter	Rs.1,00,000/-

18. 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 Suitors money account being maintained by the Additional Registrar of

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this Tribunal, falling which 9% interest has to be paid after expiry of 60 days.

19. So far as disbursal 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"*

20. 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—

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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."

21. 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: -

22. The respondent railway shall deposit the awarded amount, along with 6% interest per annum, 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 and to the

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

23. 10% of the distributed share of compensation to each Applicant no.1 & 2 together with accrued interest on their proportionate share of award, shall be released forthwith by ECS/NEFT to them. For Applicant No.1, the remaining amount of 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. For Applicant No.2, the remaining amount of Rs.3,60,000/- (Rupees three lakhs sixty thousand only) each, shall be split into 72 fixed deposits of Rs.5,000/- (Rupees five thousand only) each and invested for a period of one to 72 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 respective Savings bank account of the Applicants.
24. The distributed share of compensation of Rs.1,00,000/- (Rupees one lakh only) to each Applicant no.3 & 4, minor daughters of the deceased, together with accrued interest on their proportionate share of award, shall be invested in FDR in a nationalized bank near their residence till they attain majority. On maturity, the amount payable to them along with accrued interest shall be transferred to their respective savings bank accounts.

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25. The dependants 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.
26. If Applicants are entitled to exemption of deduction of TDS they shall submit Form 15-G or Form 15-H, as the case may be, to the Presenting Officer of the Railway within a period of 15 days and in that case no TDS shall be deducted from the amount of compensation to be paid to the Applicants.
27. 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: -
- The Bank shall not permit any joint name(s) to be added to the applicant's savings account or fixed deposit account.
 - No loan, advance, withdrawal or pre-mature discharge be allowed from the fixed deposit without permission of the Tribunal.
 - 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.
 - 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.

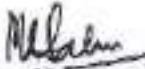
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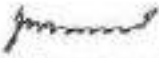
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28. The application is allowed in the above terms with no order as to costs.

29. Pronounced in the open court today on 16.11.2023.


(Prasanta Kumar Sahu)
Member (Technical)


(Sanjeev Aggarwal)
Member (Judicial)

