

**BEFORE THE RAILWAY CLAIMS TRIBUNAL,
MUMBAI BENCH, MUMBAI**

Claim Application No: OA (II U) /MCC/41/2020

1. Lavanya wd/o Shankaraiah Eligeti
Age: 39 Years,
(Widow of the deceased)
2. Vennela d/o Shankar Eligeti
Age: 19 Years,
(Daughter of the deceased)
3. Ravali d/o Shankar Eligeti
Age: 17 Years,
(Daughter of the deceased)
R/at: 1-4-34, Venkampet, Sircilla,
Karimnagar, Telangana- 505301.

... APPLICANTS

Versus

Union of India,
Through the General Manager,
Western Railway, Churchgate,
Mumbai.

... RESPONDENT

Appearances:

Mr. Pramod Salve : Advocate for Claimant

Ms. Jyoti Panwalkar : Advocate for Respondent

Date of Institution: 17.12.2019

Date of Judgement: 04.03.2024

**CORAM: Shri. K. K. Sonawane, Vice Chairman (J) &
Shri. Ved Prakash, Member (T)**

JUDGEMENT

1. This Claim Application is filed by the applicants u/s. 16 of the Railway Claims Tribunal Act, 1987 r/w. sec. 123 (c)(2) & sec. 124 - A of the Railways Act, 1989 for compensation arising out

of an alleged untoward incident occurred during the course of working a Railway involving a death of deceased Mr. Shankaraiah.

The factual matrix of the matter in nut-shell is as below:

2. It is stated that, the Shankaraiah s/o Jagannatham Eligeti, (hereafter referred as deceased), aged 40 years, resident of Telangana was doing labour work for livelihood. The Applicant No. 1 is the widow of Shankaraiah. Applicant No. 2 & 3 are his daughter. On 04.04.2019 the deceased Shankaraiah s/o Jagannatham Eligeti was travelling from Varangal to Surat Railway Station by train No. 12656, Navjivan Express. When the train reached near Nandurbar Yard the deceased accidentally fell down from the running train near Platform No. 1 at Km No. 156/09 in front of Loco Pilot office. The Applicants stated that the deceased was in possession of a second class Railway ticket from Varangal to Surat Railway Station dated 04.04.2019. However, the same was misplaced in the untoward incident. It has been contented that the deceased was the bona-fide passenger and died in untoward incident occurred on 04.04.2019.

3. In response to notice – Railway Authority appeared and opposed the claim application. The respondent filed Written statement and also produced on record the DRM reports pertains to investigation conducted by IPF/RPF/Nandurbar, accompanied with other relevant police papers marked as “R-1”. It has been contented that on 04.04.2019 at about 11.40 am, when train no. 12656 UP Navjeevan Express (Chennai Ahmedabad Express) departed from platform no. 1 of Nandurbar, the SM/Nandurbar received information by an unknown person, that one unknown person had fallen down from the train at Km No. 156/09 and his head was cut. On receiving the information

the train was halted by the SM and the track was cleared with the help of RPF/ Nandurbar and Pointsman. The SM/Nandurbar issued a memo in this regard to the GRP/Nandurbar. The GRP registered the case as ADR/No. 13/2019 u/s 174 Cr. PC dated 04.04.2019. The neck and left hand from the shoulder of the deceased was cut due to which he died on the spot. The SM revealed in his memo that the deceased had fallen down on platform No. 1 of Nandurbar Railway station from train no. 12656 Chennai-Ahemdabad Express while boarding the train and his head was separated from his body. It is further mentioned that no ticket was recovered from the possession of the deceased. Hence, the deceased cannot be considered as a bonafide passenger. The incident occurred due to this negligence of the deceased for which Railway administration is not responsible.

4. In view of pleading of both parties, and relevant documents produced on record, this Tribunal framed the following issues on 11.01.2021 for just and proper adjudication of Claim Application on merit within ambit of law.

Issues		Answer
I.	Whether the deceased was travelling on valid Railway ticket and was a bonafide passenger of the train, in question, at the relevant time?	Yes
II.	Whether the applicants prove that death of the deceased had occurred as a result of a untoward incident as alleged in the Claim Application and the present case is covered under section 123 (e)(2) of Railway act 1989?	Yes
III.	Whether the Applicants prove that they are the dependents of the deceased within the meaning	Yes

	under section 123 (b) Railway Act, 1989?	
IV.	To what Order/ Relief?	Application Allowed

5. That, in order to establish the claim, the Applicant No.1 Lavanya wd/o Shankaraiah Eligeti, stepped into the witness-box and filed her Affidavit in lieu of examination-in-chief on record. She produced the following documents

Sr No.	Particulars	Exhibit
1	SM Memo Pan Card of Applicant No. 1	A-1
2	Accidental Death Report	A-2
3	Spot Panchnama	A-3
4	Inquest Panchnama	A-4
5	Police Report	A-5
6	Letter to the Hospital	A-6
7	Post Mortem Report	A-7
8	Receipt of possession of the body	A-8
9	Statement of Applicant No. 1	A-9
10	Form No.1	A-10

6. Applicant No. 1 Lavanya wd/o Shankaraiah Eligeti (AW/1) in her Affidavit dated 23.02.2022 (Exb. AW 1/1) deposed that, on 04.04.2019 the deceased Shankaraiah s/o Jagannatham Eligeti was going to see his sister to Udhana. The deceased had given information on phone to his sister that he is coming to see. He was travelling from Varangal to Surat Railway Station by train No. 12656, Navjivan Express. When the train reached near Nandurbar Yard the deceased accidentally fell down from the running train near Platform No. 1 at Km No. 156/09 in front of Loco Pilot office.

7. In the cross-examination of Applicant No.1 Lavanya wd/o Shankaraiah Eligeti, it was suggested on behalf of Respondent- Railway, that the deceased was not a bonfide passenger, the incident occurred due to negligence of the deceased. But, the AW-1 Lavanya wd/o Shankaraiah Eligeti, turned-down these allegations put forth on behalf of Respondent.

8. The Ld. Counsel for the Respondent stated that, The SM disclosed in his memo that the deceased had fallen down on platform No. 1 of Nandurbar Railway station from train no. 12656 Chennai-Ahemdabad Express while boarding the train and his head was separated from his body. It is further mentioned that no ticket was recovered from the possession of the deceased. Hence, the deceased cannot be considered as a bonafide passenger. The incident occurred due to the negligence of the deceased for which Railway administration is not responsible.

9. We have heard the Ld. Counsels appearing for the Applicants and Respondent. We have also gone through the entire documents produced on record. It is not put into controversy that the victim succumbed to injuries received to him during the course of Railway accident. Before embarking into the merits of the matter, it would be profitable to set-forth the relevant provisions of the Railways Act 1989 as below:

- (i) Sec. 2 (29) defines "passenger" as under:
"passenger" means a person travelling with a valid pass or ticket".
- (ii) Sec. 123 (c)(2) defines "untoward incident" as under:
"(c) "untoward incident" means-
a. xxxxx
(2) the accidental falling of any passenger from a train carrying passengers."
- (iii) 124-A. Compensation on account of untoward incidents.-

“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 :

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 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.*

In the backdrop of aforesaid legal provisions, we proceed to scrutinize the evidence produce on record. It is also imperative to bear in mind that the provisions of Evidence Act as well as Procedural law are not strictly applicable to the proceeding before this Tribunal

ISSUE NO. 1 & 2

10. Both these issues being interconnected are taken up together for better appreciation of evidence on record.

We have carefully perused the SM/Nandurbar’s memo issued to the GRP/NDB, wherein, it is stated that the deceased had fallen down on platform No. 1 of Nandurbar Railway station from train no. 12656 Chennai-Ahemdabad

Express while boarding the train and his head was separated from his body. The Inquest Panchnama has demonstrated that the deceased lost his balance while boarding the train and had fallen down from Train No. 12656, Up Chennai Ahemdabad Navjivan Express. The DRM report filed by Respondent reflects that the neck and left hand from the shoulder of the deceased was cut due to which he died on the spot. The SM revealed in his memo that the deceased had fallen down on platform No. 1 of Nandurbar Railway station from train no. 12656 Chennai-Ahemdabad Express while boarding the train. It is further alleged that no ticket was recovered from the possession of the deceased. Hence, the deceased cannot be considered as a bonafide passenger. The incident occurred due to this negligence of the deceased

11. In the case of Union of India vs. Prabhakaran Vijaya Kumar (2008) 9 SCC 527, the Hon'ble Supreme court has held that

" It will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In either case it amounts to an 'accidental falling of a passenger from a train carrying passengers. Hence it is an 'untoward incident' as defined in Sec 123(c) of the Railways Act, 1989. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence the interpretation i.e. the one which advances the object of the statute and serves its purpose should be preferred."

12. It is settled proposition that provisions of section 124-A are based on the principle of strict liability or no fault liability and it is mandated that the railway administration is bound to pay the compensation regardless of any wrongful act, negligence or default on the part of the railway administration.

The Railways can escape the liability to pay the compensation only when the said injury comes within the exception clauses (a) to (e) of the proviso to Section 124-A of the Railways Act, 1989, which are reproduced as below.

13. In this case Ld. Counsel for the Respondent did not lead any evidence to show that the act of the deceased, leading to his death was as a result of any exceptional clauses as contemplated under Section 124-A of Railway Act, 1989.

- 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.

14. In the above premises, we have no doubt that the victim during the course of travelling accidentally fallen down from the train and sustained fatal injury. He succumbed to the injuries received in train accident. It is an clear case of an accidental falling down from train and died due to untoward incident as defined in sec. 123 (c) (2) of Railway Act. 1989 and Respondent cannot be exempted from the liability to pay compensation under section 124 A of Railways Act, 1989.

15. Hon'ble Supreme Court in case of Union of India Vs Rina Devi in Civil Appeal No. 4945 of 2018 has dealt with the issue" Burden of proof when ticket was not recovered in an untoward incident". In the said judgment the burden casted upon the applicant not so heavy compare with the Respondent to rebut the presumption. The relevant portion of the judgement in

case of Union of India V/s Rina Devi (Supra), is reproduced as under:-

"Mere absence of ticket with such injured or deceased will not negative the claim that he was a bonafide 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".

16. It is evident that the fact of falling down of the deceased from a train has been established and Respondent failed to prove that the victim was not a bonafide passenger at the time of alleged incidence, however, the Applicant have discharged their burden casted on them. Therefore, considering the attending circumstances on record and in view of the of the judgement of Apex Court in UOI Vs Rina Devi (Supra), there is no impediment to conclude that the deceased was a bonafide passenger at the time of incidence and his ticket might have lost in, the post incident events.

17. In the backdrop of facts and circumstances of this case and preponderance of evidence on record, we have no hesitation to come to the conclusion that the deceased Shankaraiah s/o Jagannatham Eligeti, on 04.04.2019, while travelling as a bonafide Railway passenger from Varangal to Surat Railway station, had accidentally fallen down from a running train, sustained serious injuries and died. Accordingly, the incident would be an "untoward incident" as defined under Section 123 (c) (2) read with Section 124-A of the Railways Act, 1989. Hence, we answer the issue No.1 & 2 in affirmative.

ISSUE NO. 3

18. The Applicant No. 1 categorically deposed in her Affidavit by way of examination-in-chief that all the applicants are the dependants of victim Shankaraiah s/o Jagannatham Eligeti. The Applicants produced the Aadhar card, Ration Card to establish array of dependents of the deceased. It is not in dispute that the Applicant No. 1 is the widow of Shankaraiah. The Applicant No. 2 & 3 are the daughters of the victim. The Applicant No. 1 deposed in her affidavit that the parents of the deceased are no more. The Respondent did not put this factual aspect in controversy. Therefore, there is no impediment to hold that all the Applicants are the dependents of victim Shankaraiah as contemplated under sec. 123 (b) of Railways Act, 1989.

ISSUE NO. 4

19. Since the incident leading to death of the deceased was an “untoward incident” as defined under sec. 123 (c) of the Railway Act 1989, therefore, in view of part - I of the Schedule appended to Rule 3 of Railway Accident and Untoward Incident (compensation) Rules, 1990, the applicants are entitled for compensation from Respondent – Railway.

The date of incident i.e. 04.04.2019, therefore, in view of the norms laid down by Hon’ble Supreme court in the case of Union of India V/S Rina Devi 2018 ACJ 1441, the aforesaid dependents of the deceased are entitled for compensation of Rs. 8,00,000/- (Rupees Eight Lakh only) (revised compensation effective from 1st January 2017), plus interest @ 9% from the date of incidence till the date of award as a

compensation to the Applicants on account of death of Shankaraiah s/o Jagannatham Eligeti, in an Untoward Incident. Hence we pass the following order.

ORDER

- a) The Claim Application filed under section 16 of Railway claims Tribunal Act 1987, is hereby allowed.
- b) The respondent shall pay **Rs.8,00,000/- (Rupees Eight Lakh only)** to the Applicants as a compensation with interest @ 9% p.a. from the date of incident till date of this order.
- c) The Respondent shall deposit entire amount of award in the office of Additional Registrar, RCT Mumbai within 30 days from the date of receipt of this order.
- d) In case of default in payment within the stipulated period of 30 days as referred above, the Respondent shall pay the further interest @9% per annum from the date of receipt of this order till the date of deposit of payment in RCT.
- e) As per the guidelines delineated by the Ministry of Railways (Railway Board) vide notification dated 3rd June, 2020 under GSR 347 (E) which came into effect from 1st day of January, 2020, after considering the status of the Applicants and to protect the amount from being frittered away, the amount of Rs. 8,00,000/- (Eight Lakhs only) plus accrued interest shall be disbursed in the following manner:
 - i. Applicant No. 1 Lavanya wd/o Shankaraiah Eligeti shall be permitted to withdraw an amount of Rs. 40,000/- (Rupees Forty Thousand only), Applicant No. 2 Vennela d/o Shankar Eligeti and Applicant No. 3 Ravali d/o Shankar Eligeti shall be permitted to withdraw an amount of Rs. 20,000/- (Rupees Twenty Thousand only) each from their Saving Bank Account through NEFT/RTGS, from

the total awarded compensation amount of Rs. 8,00,000/- (Rupees Eight Lakh only).

- ii. The balance amount of Rs 7,20,000/- (Rupees Seven Lakh Twenty Thousand only) plus interest if any accrued till date, be kept in the name of Applicant No. 1 Lavanya wd/o Shankaraiah Eligeti, Applicant No. 2 Vennela d/o Shankar Eligeti and Applicant No. 3 Ravali d/o Shankar Eligeti in FDR account in any nationalised Bank located nearer to the permanent residential address of Applicant no.1, in the manner described below.

Applicant's name.	Amount to be disbursed in favour of Applicant(s) by NEFT/RTGS	Amount to be invested in FDR account in Nationalized Bank and annuity scheme
Lavanya wd/o Shankaraiah Eligeti (Widow) (Applicant No. 1)	Rs 40,000/- (Rupees Forty Thousand only)	Rs.4,60,000/- (Rs. Four Lakh Sixty Thousand only) plus accrued pro-rata interest in Annuity scheme on similar line as MACAD with monthly payment of Rs.10,000/- (Rupees Ten Thousand only) till entire deposit amount is exhausted.
Vennela d/o Shankar Eligeti (Daughter) (Applicant No. 2)	Rs 20,000/- (Rupees Twenty Thousand only)	Rs.1,30,000/- (Rupees One Lakh Thirty Thousand only) plus accrued pro rata interest. This amount will be kept in the form of Fixed Deposit for a period of 3 years.

Ravali d/o Shankar Eligeti (Daughter) (Applicant No. 3)	Rs 20,000/- (Rupees Twenty Thousand only)	Rs.1,30,000/- (Rupees One Lakh Thirty Thousand only) plus accrued pro rata interest. This amount will be kept in the form of Fixed Deposit for a period of 3 years.
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After maturity the entire amount including interest shall be credited in the Individual Savings Account of the Awardee.

iii. The Claimants are directed to open an individual Savings Bank Accounts in any Nationalized Bank located nearer to the place of permanent residence of Applicant no. 1. This Savings Accounts will be linked with Annuity (term) Deposit Account on similar line as of MACAD (Motor Accident Claim Annuity (Term) Deposit Account).

iv. The Bank is hereby directed not to permit any joint name(s) to be added in the Savings Bank Accounts or Fixed Deposit Accounts of the Applicants i.e. the Savings Bank Accounts of the Applicants shall be an individual Savings Bank Account and not a Joint Account. The concerned Bank is further directed not to issue any Cheque Book and/or Debit Card in the name of Applicant for the above referred S.B. account. If the same are issued, the concerned Bank authority is directed to take step to cancel/revoke the same before making any payment of awarded amount to the Applicant. Moreover, the concerned Bank shall take care for not issuing any Debit Card relating to above referred S.B. account of the Applicant by any other branch of the Bank. The Bank shall put an endorsement on the Passbook issued in favour of

Applicant to the effect that no Cheque Book and/or Debit Card shall be issued to the Claimants without the permission of this Tribunal.

v. The concerned Bank of the Claimants is directed to permit the Claimants to withdraw money from their Savings Bank Accounts by means of a withdrawal form only. The Claimants are directed to produce the copy of this order before the concerned Bank for requisite endorsement in the Passbooks.

vi. The FDR/MACAD, the Original Fixed Deposits receipts 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 Applicants. The maturity amount of the FDR's be credited by ECS in the Savings Bank Accounts of the Applicant operated in the nationalised Bank located nearer to the place of permanent residence of Applicant No. 1.

vii. The Bank shall not grant any loan, advance, withdrawal or pre-mature discharge on the Annuity Deposits without permission of this Railway Claims Tribunal.

viii. The Claimants are directed to produce the original Bank Passbook with the necessary endorsement as well as Aadhaar Card and PAN Card before the Additional Registrar, RCT, Mumbai. The ADR shall take the following documents on record from the Claimants before releasing the awarded amount for disbursement as mentioned above.

- (a) Details of the Bank Accounts of the Claimants near to the place of their permanent residence with necessary endorsement.

- (b) Aadhaar Card and PAN Card or any other appropriate ID card; and
 - (c) Two sets of photographs and specimen signatures of the Claimants.
- ix. There shall be no order as to cost.
- x. The certified copy of this judgement be given to Applicants free of cost.
- xi. Accordingly, the application stands disposed off in above terms.

(Ved Prakash)
Member (Technical)

(Kishor. K.Sonawane)
Vice Chairman (Judicial)

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