

रेल दावा अधिकरण, नागपुर पीठ, नागपुर
BEFORE THE RAILWAY CLAIMS TRIBUNAL: NAGPUR BENCH, NAGPUR
QUORAM: SHRI SANJEEV AGGARWAL, HON'BLE MEMBER(JUDICIAL)/RCT/NGP
SHRI SYED NISHAT ALI, HON'BLE MEMBER (TECHNICAL)/RCT/NGP

CASE No.: OA (IIU)/NGP/131/2019

Date of filing - 06.05.2019.
Date of Judgement - 26.04.2024.

APPLICANT: 1. Laxman s/o Dnyaneshwar Katare
Aged 19 years, Occu.- Student

R/o Charthana, Tq.- Jintur,
Dist.-Parbhani- 431509.

V/s

RESPONDENT: Union of India, Represented by
General Manager, South Central Railway,
Secunderabad. (A.P.)

VALUE OF CLAIM: RS. 8,00,000/-

Applicant by Advocate R.G.Bagul on behalf of Adv. D.S.Latey.

Respondent by Advocate S.Thaoakar.

JUDGEMENT

1) The applicant has filed this claim application seeking compensation for alleged injuries sustained by him during the alleged train journey under Section 16 of the Railway Claim Tribunal Act, 1987 read with Section 124 and 125 of the Railways Act, 1989.

2) Applicant has filed this original application on the allegations that on 18.01.2018 he was travelling by train no. 57549 Hyderabad-Aurangabad Passenger train in last second general coach on a valid railway general ticket

bearing number APA-70582198 Ex.-Parbhani to Selu for Rs.10/- dated 18.01.2018 and boarded in the train from Parbhani Rly. Stn. For getting down at Selu Rly. Stn. the applicant was standing near the door of the train alongwith his bag however due to strong jerk and push of other passengers the he lost his balance and fell down in between Km no. 248/8-9 near signal and became unconscious. And due to the alleged incident he had sustained head injury, injury on his face and on his left elbow there was a fracture and for which the Applicant has claimed compensation.

3) Respondent railway appeared and filed its written statement and denied its liability. Respondent denied the bonafide passenger status of the applicant as no ticket was found with the injured at the site of incident. Respondent also denied the untoward incident and further submitted that there was no jerk in the train and alleged incident happened due to his own acts and conducts which disentitles applicant to claim compensation. While denying all the averments of the applicant as made in the claim application either being wrong or for want of knowledge, it is averred that the applicant is not entitled to any compensation. With these averments, a prayer is made to dismiss the claim application with costs.

From the pleadings of the both the parties following issues were framed:-

1. Whether applicant was a bona fide passenger of the alleged train on the relevant day, with valid journey ticket?
2. Whether the applicant proves that on the relevant day he sustained injuries in the train in an untoward incident in terms of section 123 (c) of the Railways Act, 1989?
3. What order? What relief?

4) The applicant no.1 Laxman s/o Dnyaneshwar Katore was examined as AW-1 and documents Exh. A-1 to A-9 were marked on behalf of applicants. From the side of Respondent, Shri Ridhesh Kumar, Assistant Loco Pilot, SECR, Raipur division was examined as RW-1 and documents Exh. R-1 and R-2 were marked on behalf of respondent. The respondent railway placed on record Statutory Investigation Report along with a number of documents as prepared during the course of such enquiry.

5) We have heard the Ld. Counsels for both the parties and carefully perused entire material placed on record. Our findings on the issues involved are as under:

ISSUE No.1 & 2:

Both these issues being inter-connected are being taken up together for discussion and decision.

6) As per Applicant he was travelling on a valid ticket from Parbhani to Selu whereas Respondent has denied bonafide passenger status of the applicant. To prove his case, the applicant has filed on record ticket, Exh.A-1, from Parbhani to Selu dated 18.01.2018 for one person and on oath deposed that he was travelling on the said ticket. Respondent cross examined witness at length but respondent has failed extract anything during cross examination in their favour. Though Respondent denied bonafide passenger status and has taken defense that the ticket is planted but fact remains that Respondent has failed to prove that ticket is forged, planted or not valid for the journey in question. No documentary or other evidence has been produced to prove that applicant was not a bona fide passenger. Nothing contrary has been shown on behalf of the respondent railway. In absence of any evidence, to contrary on strength of ticket, Exh.A-1 and keeping in view all the facts and

circumstances and in the light of Judgment of **Hon'ble Supreme Court in Rina Devi v/s Union of India**, we feel fair to accept contentions of applicant about travel on a ticket, as such, applicant is treated as bonafide passenger. Hence, this issue regarding the bonafide of the deceased is decided in favour of applicants.

7) So far as the factum of untoward incident is concerned, memo (Exh. A-2) issued by Station Master, Selu on 18.01.2018 at 12.00 hrs only states that as per the information by two person, one male person is lying beside the track at Signal post (starter signal). Respondent has examined RW-1, Shri Ridhesh Kumar Assistant Loco Pilot of alleged train and it has come out that the alleged train 57549 reached at Selu station at 11.30 hrs. on the day of incident. Considering the timing of arrival of alleged train at Selu station corroborates with the timing of noticing of the body of injured. The applicant has proved railway ticket and during the proceedings it has come that applicant was travelling by standing at the door of the coach of the alleged train. Though that is not permissible but that would not be in itself sufficient to push this case in the exceptions of Section 124 (A) of Railways Act. There is no direct evidence about accidental fall but circumstantial evidence and statement of applicant on oath would lead to a conclusion that applicant is accidentally fell down from the running train no. 57549 and respondent has failed to prove on record that said fall was due to any criminal negligence on part of applicant. So, this case would come within the ambit of untoward incident.

8) In view of the above it is held that applicant was a bonafide passenger having a valid ticket and accidentally fell down from the train which covered under Section 123 (c) (2) of the Railways Act as an untoward incident. Accordingly, the issues No. 1 and 2 are decided in favour of the applicant.

ISSUE No. 3

9) In view of our findings on issue No. 1 and 2, we hold that the deceased was a bonafide passenger for his journey on the date of the incident and he had got injured in an untoward incident.

10) Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 as amended vide G.S.R. 1165 (E) dated 22.12.2016 which provides a maximum of Rs. 1,60,000/- for unscheduled injuries. Considering the medical records and nature of injuries sustained by the applicant an amount of Rs. 30,000/- (Rs. Thirty Thousand only) is deemed proper as compensation to the applicant with interest @ 6% p.a. from the date of incident till the date of actual payment. This issue is disposed of accordingly.

ORDER

11) In the result, the O.A. is allowed on contest and merits against the respondent. The Respondent Railway shall pay to the applicant a sum of Rs. 30,000/- (Rs. Thirty Thousand only) as compensation along with simple interest @ 6% per annum from the date of accident till the date of judgement **except the interest for the period from 04.11.2022 to 22.03.2023 shall be waived of as per the order dated 22.03.2023 passed by this Tribunal.** The Respondent Railway is given 60 days to pay the compensation amount. If the Respondent Railways fails to pay the compensation amount to the applicants within 60 days, the applicants shall be entitled to get 9% interest on their compensation amount from the date of this order till the date of payment.

12) 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 this Tribunal, failing which 9% interest has to be paid after expiry of 60 days. The compensation amount is distributed as follows:-

Name of Applicant	Compensation Amount	Disbursement of Compensation Amount	
		Cash	Annuity/ Fixed Deposit
Shri Laxman s/o Dnyaneshwar Katare	Rs. 30,000/-	Rs. 30,000/- + interest	----

13) 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

14) 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 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 amounts of award shall be disbursed in the following manner:-

15) The respondent railway shall deposit the awarded amount, along with 6% interest per annum, in the Suitors 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 counsel for the opposite party giving complete details of the payment such as UTR number, calculation of interest etc.

16) The compensation amount to Applicant of Rs.30,000/- (Rs. Thirty Thousand only), with interest on award, if any, shall be released forthwith by ECS/NEFT in his Savings Bank account in a nationalized bank near place of his residence.

17) 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.

18) If the Applicants are entitled to exemption of deduction of TDS, they shall submit Form 15-G or Form 15-H (for senior citizen) to the Presenting Officer of the Railway within 15 days from the date of this order and in such case no TDS is to be deducted by the respondent railway.

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.

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

File be consigned to the record-room.

(Syed Nishat Ali)
Member (Technical)

(Sanjeev Aggarwal)
Member (Judicial)

Pronounced in open Court.

Nagpur.

Date: 26.04.2024.

/SW/