

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

CASE No.: OA (IIU)/NGP/22/2023

Date of filing - 14.12.2022.
Date of Judgement - 28.01.2025.

- APPLICANTS:**
1. Abhilasha wd/o Aman Patil
Aged about 20 years, Occu.-Housewife.
 2. Shri Prakash Bapurao Patil
Aged about 50 years, Occu.-Labour.
 3. Anusaya w/o Prakash Patil
Aged about 48 years, Occu.-Households.

All R/o Utkarsha Vachnalaya, Motha Indora, Bhim
Chauk, Nara Road, Jaripatka, Nagpur-440014.

V/s

RESPONDENT: Union of India,
Through General Manager,
Central Railway, CST Mumbai.

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

None for the Applicants.

Respondent by Advocate N.Ramteke.

JUDGEMENT

1) The applicants have filed this claim application seeking compensation on account of death of Shri Aman s/o Prakash Patil 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.

The case was listed for argument today i.e. on 01.01.2025 but despite repeated calls, the applicants and the counsel remained absent and the case was heard from respondent side. Hence, the matter was taken under rule 18 (1) of Railway Claims Tribunal Act.

18(1) Action on application for applicant's default – (1) Where on the date fixed for hearing of the application or on any other date to which such hearing may be adjourned, the applicant does not appear [when the application is called] for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.

The matter taken up today. Even after repeated calls neither the applicant nor their Counsel are present to submit their case. Hence, the case is decided on merits as per Section 18(1) of the Act after hearing the arguments advanced by respondent and perusing the documents filed by both sides.

2) Applicants have filed this original application on the allegations that on 12.10.2021 the deceased with his friends were travelling from Nagpur to Mumbai CST by train no. 02190 Nagpur-Mumbai Duronto Express by purchasing a valid E-reservation ticket bearing PNR no. 8442792432 in coach no. S-6 berth no.55. When the said train was passing from Kalyan Rly. Stn. from platform no.6, Dist.-Thane, the deceased went to toilet but as the train was in high speed it received sudden jerk due to which the deceased lost his balance and fell down from running train from the open door of the train and sustained severe injuries and he died during the course of his medical treatment at the hospital. It is further contended that the deceased was having valid journey ticket and he was a bonafide passenger of the alleged train and died in an untoward incident, hence the applicants are entitled to claim compensation.

3) The respondent-railway has contested the claim application by filing the written statement, wherein by way of preliminary objections, it is averred that no such incident causing death of the deceased within the meaning of the provision of Section 123 (c) read with Section 124-A of the Railways Act had taken place and as such, the claim application is not maintainable and further Respondent denied the bonafide passenger status of the deceased. The alleged incident of accident is due to own fault, negligence and criminal act of the deceased. The incident will come under self-inflicted injury. While denying all the averments of the applicants as made in the claim application either being wrong or for want of knowledge, it is averred that the applicants are not entitled to any compensation. With these averments, a prayer is made to dismiss the claim application with costs.

Based on the pleadings of the parties following issues were framed:-

- 1. Whether Applicants are the dependents of the deceased within the meaning of Section 123 (b) of the Railway Act?**
- 2. Whether deceased was a bona fide passenger of the train on the relevant day, with valid journey ticket?**
- 3. Whether the death of the deceased had occurred as a result of an untoward incident as alleged in the claim application within the meaning of Section 124-A r/w 123 (c) (2) of the Railway Act?**
- 4. To what order/relief?**

4) The applicant no.1, Abhilasha Aman Patil was examined as AW-1 and filed documents Exh.A-1 to A-12 on record and deposed on oath. From the side of the Respondent no witness was examined. The respondent-railway placed on record DRM's enquiry report along with a number of documents as prepared during the course of such enquiry.

5) We have heard the Ld. Counsel from Respondent and carefully perused entire material placed on record. Our findings on the issues involved are as under:-

Discussion on the issues with reasoning:

ISSUE No. 1:

6) The applicant No.1 is the widow of the deceased, applicant no. 2 and 3 are the parents of the deceased. The applicants have filed on the record the copies of Aadhar card of deceased, Aadhar cards of applicants no. 1, 2 and 3 (Exh.A-12 to Exh.A-14) respectively. On perusal, these documents prove the relationship between the applicants and the deceased.

AW-1 appeared before the court and on oath has deposed that she does not want share in compensation amount on her own free will. She does not have any child from the wedlock with the deceased and she has no objection if her name is deleted from the claim application. She is presently staying with her parents and she is getting remarried therefore she does not need the compensation. The same fact is also mentioned in her affidavit that she does not want her share of compensation and that the entire amount of compensation may be given to father & mother of the deceased in equal shares. The prayer of applicant no.1 is allowed and, thus, Applicant no.1 shall not be granted the share of compensation amount. During the proceedings, no other person staked claim as dependent of the deceased. Even Railway has failed to dispute *inter se* relation of applicants and their relationship with the deceased. Thus, we hold that the applicants are the dependents on the deceased within the definition of Section 123 (b) of the Railways Act, 1989. Hence, this issue is answered accordingly in favour of the applicants.

ISSUE No. 2 & 3:

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

8) The applicants have filed on record a copy of reservation E-ticket as Exh.A-1, bearing PNR no. 8442792432 for the train no. 02190 NGP-CSMT Durgam Cheruvu Express Ex. Nagpur to CSMT of for 01 adult person, on which the name of the deceased is mentioned and he was allotted his seat in S-5 coach on berth no. 55. Respondent has argued that the said ticket of the deceased was not recovered from the body of the deceased during the Spot or Inquest Panchnama. However, the applicants have filed railway journey ticket on record. AW-1 has filed her affidavit wherein she has stated that the deceased was travelling in the alleged train after purchasing a valid reservation E-ticket. The affidavit and deposition of AW-1 prove beyond doubt that the deceased was possessing the valid railway journey ticket and was a bonafide passenger of the alleged train. Respondent has not produced any documentary or other evidence to prove that the ticket filed by applicants was forged or bogus and deceased was not a bona fide passenger. Nothing contrary has been shown in this regard on behalf of the respondent railway. Respondents have not raised any objection to the veracity of ticket. Keeping in view the circumstances explained above, it is concluded that the deceased was a bonafide passenger of the alleged train. Hence, this issue no. 2 regarding the bonafide of the deceased is decided in favour of applicants.

9) It is the case of applicants that the deceased had accidentally fell down from the running train no. 02190 Durgam Cheruvu Express during the course of his journey whereas as per the DRM report the alleged train no. 02190 did not have schedule halt at Kalyan railway station and the train was moving when the deceased tried to deliberately deboard from the alleged train at platform

no.6 during which he fell down from the train and, as such, he invited injuries upon himself and incident would not be covered under the meaning of the definition of untoward incident. The Respondent counsel at the time of arguments vehemently argued that Respondent is not liable to pay any compensation.

10) In the document Memo (Exh.A-6) issued by Station Manager/Kalyan on 13.10.2021 to GRP it is mentioned that as per the information received from Guard of train no. 02190, one unknown person aged about 21 years had fallen down from the train and sustained injuries to his right leg, left hand and to his head. So far as the contention of Respondent Railway is that the deceased was de-boarding from the alleged train no. 02190 at Kalyan Rly. Stn. where the train did not have a schedule halt and died in the said incident because of the self-inflicted due to his own criminal act and the alleged incident falls under the provision of sub sections (a), (b) and (c) of Section 124-A of the Railways Act, 1989, the burden of proving this fact was on respondent railway but the Railway did not produce any evidence to prove that the deceased was trying to de-board the alleged train. Moreover, the memo of Station Manager also does not mention that the fall of the deceased was while alighting from the alleged train. For the negligence of deceased is concerned the apex court is CIVIL APPEAL NO. 4945 OF 2018 UNION OF INDIA VS. RINA DEVI in para No. 16.6 held:-

“Accordingly we hold that death or injury in the course of boarding or deboarding a train will be an ‘untoward incident’ entitling a victim to the compensation and will not fall under the proviso to Section 124-A merely on the plea of negligence of the victim as a contributing factor.”

It has also been mentioned by the Hon'ble Supreme Court in para 16.1 of the case of Rina Devi referred to above that:-

“....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.”

In this case also, the incident that happened at Kalyan railway station falls in the category of untoward incident as per the judgement passed by the Hon'ble Supreme Court. Having heard from the respondent side and after going through the documents on record and in the light of the above judgement of UNION OF INDIA VS. RINA DEVI, one thing is clear that Respondent has admitted travel of the deceased in the alleged train. The respondent has not adduced any evidence or has not proved anything contrary regarding the happening of untoward incident. There is no evidence available on record to prove that the deceased had died due to some other reason and he did not fall from the train. The alleged incident does not fall in the exception given in Section 124A of the Railways Act 1989. From the above facts, it is clear that the incident that happened with the deceased falls in category of untoward incident under Section 123 (c)(2) of the Railways Act and he died in an untoward incident. It is judicious and fair to give benefit of circumstantial evidence which might have caused accidental fall of deceased from running train and which would fall within the meaning of untoward incident and consider this incident as accidental fallen down from the train. Further, the body of the deceased was found between platform and train and possibility of falling of the deceased from the train under given circumstances cannot be ruled out. Therefore this issue no.3 is answered accordingly.

11) In view of the above it is held that deceased 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. 2 and 3 are decided in favour of the applicants.

ISSUE No. 4

12) In view of my findings on issue No. 1, 2 and 3, I hold that the deceased was a bonafide passenger for his journey on the date of the incident and he had died in an untoward incident for which the applicants are entitled to get the statutory compensation for a sum of Rs. 8,00,000/- (Rs. Eight Lakhs only).

ORDER

13) In the result, the O.A. is allowed on contest and merits against the respondent. The Respondent Railway shall pay to the applicant no. 2 and 3, a sum of Rs. 8,00,000/- (Rs. Eight Lakhs only) as compensation along with interest @ 9% per annum on their compensation amount from date of accident till date of payment, except, the interest for a period from 05.01.2024 to 18.03.2024 shall not be granted to the applicants as per the restoration order dated 18.03.2024 passed in RES/NGP/001/2024.

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. The compensation amount is distributed as follows:

Name of Applicants	Compensation Amount	Disbursement of Compensation Amount	
		Cash	Annuity/ Fixed Deposit
Abhilasha wd/o Aman Patil	NIL	NIL	NIL
Shri Prakash Bapurao Patil	Rs. 4,00,000/-	Rs. 40,000/- + proportionate interest	Rs. 3,60,000/-
Anusaya w/o Prakash Patil	Rs. 4,00,000/-	Rs. 40,000/- + proportionate interest	Rs. 3,60,000/-

14) So far as disbursal of the amount of award is concerned, it is noticed that in Geeta Devi v/s 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

15) 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:-

16) The respondent railway shall deposit the awarded amount, along with 9% 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.

17) 10% of the distributed share of compensation to each Applicant no. 2 and 3 together with accrued interest on their proportionate share of award, shall be released forthwith by ECS/NEFT to them. For Applicant No. 2 and 3, the remaining amount of Rs.3,60,000/- (Rupees Three Lakhs Sixty Thousand only), shall be split into 72 monthly fixed deposits of Rs. 5,000/- (Rupees Five Thousand only) each and invested for a period of 1 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 accounts of the applicant no. 2 and 3 near the place of their residence.

18) The dependents 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 personally.

19) 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.

20) 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.

21) 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)
Pronounced in open Court.
Nagpur.
Date: 28.01.2025.
/SW/

(Rajeev Jain)
Member (Judicial)