

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

CASE No.: OA (Ilu)/NGP/30/2022

Date of filing - 12.04.2022.
Date of Judgement - 29.05.2024.

APPLICANTS:

1. Smt. Mayawati wd/o Suresh Kasbe
Aged- 42 years, Occu. – Household.
 2. Tejas s/o Suresh Kasbe
Aged- 19 years, Occu.- Education.
 3. Smt. Chandrabhagabai wd/o Khirappa Kasbe
Age- 70 years, Occu.- Household.
 4. Abhijit s/o Suresh Kasbe
Age- 17 years, Occu- Education
(Minor represented under guardianship of mother
Smt. Mayawati wd/o Suresh Kasbe i.e. applicant
no.1)
 5. Anurag s/o Suresh Kasbe
Age- 14 years, Occu.- Education
(Minor represented under guardianship of mother
Smt. Mayawati wd/o Suresh Kasbe i.e. applicant
no.1)
- All R/o Sidharth Nagar, Gokunda, Tq.-Kinwat, Dist.-
Nanded-431804.

V/s

RESPONDENT:

Union of India,
South Central Railway,
through its General Manager,
Secunderabad.

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

Appearances:

For the Applicants : Sh. N.R.Mankar, Ld. Advocate

For the Respondent : Sh. S. Mendiretta, Ld. Advocate

J U D G E M E N T

1) The applicants have filed this claim application under Section 16 of the Railway Claim Tribunal Act, 1987 read with Section 124 and 125 of the Railways Act, 1989 seeking compensation on account of death of Shri Suresh Khirappa Kasbe (herein after referred as deceased) during the alleged train journey dated 23.11.2021.

2) It is the case of the applicants that on 23.11.2021 the deceased purchased a valid railway journey ticket bearing number APB 51672568 from Kinwat to Sahastrakund, in the presence of his nephew, and it is alleged that the deceased boarded in Train No. 57552, Adilabad-Purna Passenger however during travelling in the said train due to sudden jerk to the said running train, he fallen down from the said running train and came under the wheels of the train at Km pole no. 112/7-8 between Kinwat to Bodhadi Rly. Stn. as a result thereof he was seriously injured and died on the spot.

3) Respondent railway appeared and filed its written statement and denied its liability. Respondent denied that the deceased was a bonafide passenger of the said train and further submitted that applicant needs to be put into strict proof regarding the travel. It is averred that no untoward incident of accidental fall down of any passenger was occurred by the alleged train which falls within the meaning of the provision of Section 123 (c) read with Section 124-A of the Railways Act has taken place and as such, the claim application is not maintainable and further that the deceased was not a bona fide passenger of train at the time of incident as no journey ticket

was found during the Panchnama. While denying all the averments of the applicants as made in the claim application either being false or for want of knowledge, it is averred that the applicants are not entitled to any compensation u/s 124 (A) read with Section 123 (c) of Railways Act. With these averments, a prayer is made to dismiss the claim application with costs.

In view of aforesaid pleadings and documents produced on record, this Tribunal framed the following issue on 18.10.2022, for just and proper adjudication of Claim Application on merit within ambit of law :-

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

4) In order to establish the claim, the applicant no.1, Smt. Mayawati Suresh Kasbe (widow of the deceased) was stepped into the witness box as AW-1 and Shri Nikhil Ramesh Kasbe was examined as AW-2. The relied upon documents were exhibited as Exh.A-1 to A-26, on behalf of applicants. The respondent railway placed on record the Statutory Investigation Report along with a number of documents as prepared during the course of such enquiry and opted not to adduce any evidence.

4.1 Applicant no.1, Mayawati Suresh Kasbe in her affidavit dated 01.04.2024 (Exh.AW-1) and deposed that on 23.11.2021 the deceased alongwith Shri Nikhil s/o Ramesh Kasbe came at Kinwat station and Nikhil

obtained one railway ticket bearing no. APB-51672568 for Rs. 40/- from Kinwat to Sahastrakund from ATVM and handed over this ticket to the deceased who kept it in his pocket. The deceased was travelling in Train no. 57552 Adilabad-Purna Passenger and while travelling he stood near the train and when the train was running in between Km no. 112/7-8 he accidentally fell down from the running train due to sudden jerk and came under the wheels of the train and died. She further deposed that the deceased was travelling as a bonafide passenger, on the strength of a valid railway ticket. Recovery of the said ticket has been mentioned in Spot Panchnama as well as Inquest Panchnama. During cross examination the AW-1 denied all the adverse allegation suggested by the Ld. Counsel for the respondent.

4.2 AW-2, Shri Nikhil Ramesh Kasbe in his affidavit dated 01.04.2024 (Exh.AW-2) deposed that on 23.11.2021 he obtained one railway ticket for the deceased from Kinwat to Sahastrakund and handed over it to the deceased. He also deposed that the deceased boarded in the alleged train in his presence for travelling upto Sahastrakund. Thereafter, AW-2 left Kinwat Rly. Stn. On the same evening he received information that the deceased had accidentally fell down from the running train due to sudden jerk to the train. During cross examination the AW-2 denied all the adverse allegation suggested by the Ld. Counsel for the respondent.

5) We have heard the Ld. Counsels appearing for the Applicant and Respondent. Now, 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 produced 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 proceedings before this Tribunal.

ISSUE No. 1**1. Whether Applicants are the dependents of the deceased within the meaning of Section 123 (b) of the Railways Act?**

6) The applicant No. 1 is widow of the deceased, applicant no. 2 is the son of the deceased, applicant No. 3 is the widowed mother of the deceased and applicant no. 4 and 5 are the minor sons of the deceased. Applicants have filed on record the copy of the death certificate of the deceased (Exh. A-9), death certificate of the father of the deceased (Exh.A-10), Aadhar cards of the applicant no. 1 to 5 (Exh. A-14 to A-16 and Exh. A-22 to A-23 respectively) and also the Ration card of the applicants no. 1 to 5 (Exh.A-26). On perusal, the said documents prove the relationship of the applicant's with the deceased. During the proceedings no other person staked claim as dependents 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 no.1 is answered accordingly.

ISSUE No. 2 & 3

Both these issues being inter-connected are being taken up together for the sake of brevity and better appreciation.

7) The applicants have adduced the deposition of AW-1 & AW-2 wherein they have categorically stated that the deceased was travelling from Kinwat to Sahastrakund by Adilabad-Purna Passenger train no. 57552 with a valid journey ticket which he had purchased at Kinwat Rly. Stn. The applicants have filed certified copy of one railway ticket no. APB-51672568 from Kinwat to Sahastrakund as Exh.A-1 on record. The said ticket was recovered from the body of the deceased and same fact is corroborated in the documents

Spot Panchnama (Exh.A-4), Seizure panchnama (Exh.A-5) and Inquest Panchnama (Exh.A-6). Respondent cross examined witness at length but respondent has failed extract anything in their favour during cross examination. The respondents in their written statement have denied that the deceased was a bonafide passenger of any train. However, the Respondent verified the ticket and found it genuine. The respondent has not seriously contested the issue of difference in Train No., as alleged in their written statement. In view of the deposition of AW-1 & AW-2, the applicants discharged the burden cast on them in regard to possession of valid ticket at the time of incident by filing of an affidavit and their deposition. Therefore, considering the situation of this case, it is concluded that the deceased was a bonafide passenger at the time of incident.

8) So far as the factum of untoward incident is concerned, the statement of AW-2, Nikhil Ramesh Kasbe was recorded by GRP authority on 04.12.2021 (Exh.R-4) wherein he has stated that, on 23.11.2021 when AW-2 left his house at around 15.30 hrs., he met with his paternal uncle (the deceased) and asked his uncle where he was going so, the deceased told him that he was going to Islapur by train departing at 16.30 hrs. Therefore, AW-2 had dropped the deceased to Kinwat station on his motorbike. Later, AW-2 had purchased one railway ticket for the deceased from Kinwat to Islapur and boarded the deceased in the train. Later, on the same day at around 17.00 hrs. he received one phone call from his home and he came to know that his uncle had died fallen down from Adilabad-Purna Passenger train near Kothari (Chikhali) village and died. Then he visited the spot of incident where his relatives were already present. By looking at the dead body of the person he identified the deceased person as his uncle.

8.1 The inquest proceedings in this matter was conducted by APSI/Kinwat Police Station. During the inquest proceedings police documents were

prepared by the investigating officer such as Crime Details Form (Exh.A-4) and Inquest Panchnama (Exh.A-6) wherein the Police authority have opined that the deceased had died by falling down from some running train and sustaining severe head injury.

8.2 It is denied by the counsel of the respondents that the deceased died in an untoward incident on the date of incident as alleged by the applicants as there is no eye witness as to how the deceased had fallen from the train and died at the incident spot. However, from the record it is seen that the body of the deceased was noticed on 23.11.2021 prior to 17.00 hrs. at Km no. 112/7-8 in between Kinwat to Bodhadi railway station which is enroute to alleged journey of the deceased and the same facts have also been stated by the AW-2, Nikhil Ramesh Kasbe (nephew of the deceased) in his statement that the deceased was travelling in the train on 23.11.2021 from Kinwat to Islapur. The deceased was not a resident of vicinity of the place of incident nor there any contrary evidence is brought on record by the respondents to this effect. The injuries sustained by the deceased including head injury could happen when the person has fallen down from the running train. In this case the Ld. Counsel for the respondent did not lead any evidence to prove that the act of the victim leading to his death was a result of any exceptional clauses (a) to (e) under Section 124-A of Railway Act, 1989. In above premises, it can be concluded that the deceased had fallen down from the alleged train during course of his journey.

8.3 In absence of any cogent evidence from Respondent and in the light of above discussion, we have no hesitation to conclude that the deceased had fallen down from train between Kinwat to Sahastrakund Railway Station, while travelling in Adilabad-Purna Passenger train.

9. Since travelling and fallen down of the deceased from a train has been established and Respondent could not prove that the victim was not a bonafide passenger at the time of incidence, whereas, the Applicants have discharged the burden cast on them as regard to possession of a valid ticket at the time of incident by way of filing of an Affidavit and deposition of Applicant No. 1 Mayawati Suresh Kasbe (AW-1), before this Court. Therefore, considering the situation in this case, it is concluded that the deceased was a bonafide passenger at the time of incident.

10. On the basis of facts and circumstances of this case and preponderance of evidence on record, We have come to the conclusion that the deceased Suresh s/o Khirappa Kasbe, on 23.11.2021, while travelling as a bonafide railway passenger from Kinwat to Sahastrakund railway station, had accidentally fallen down from a moving Train no. 57552, sustained serious injuries and died. Accordingly, the incident is covered under "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. 2 and 3 in the affirmative, in favour of the Applicants.

ISSUE No. 4

4. To What order/ relief?

11) In view of our findings on issue No. 1, 2 and 3, we 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

12) The Claim Application filed under section 16 of Railway claims Tribunal Act 1987, is hereby allowed.

13) The Respondent shall pay Rs.8,00,000/- (Rupees Eight Lakh only) to the Applicants as a compensation along with simple interest @ 6% per annum from 27.09.23, in view of order dated 27.09.2023 passed by this Hon'ble Tribunal, till the date of judgement.

14) The Respondent shall deposit entire amount of award in the office of Additional Registrar, RCT Mumbai within 60 days from the date of receipt of this order.

15) In case of default in payment within the stipulated period of 60 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.

16) 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

17) 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 amount of award shall be disbursed in the following manner:-

Name of Applicants	Compensation Amount	Disbursement of Compensation Amount	
		Cash	Annuity/ Fixed Deposit
Smt. Mayawati wd/o Suresh Kasbe	Rs. 4,00,000/-	Rs. 40,000/- + proportionate interest	Rs.3,60,000/-(Rupees Three Lakh Sixty Thousand only) in 36 Fixed Deposits of Rs.10,000/- each, with FD maturity of 1-36 months. Every month the matured FD with interest shall be credited in the Saving Bank account of Awardee.
Tejas s/o Suresh Kasbe	Rs. 1,00,000/-	Rs. 10,000/- + proportionate interest	Rs. 90,000/-(Rupees Ninety Thousand only) F.D. for three years.
Smt. Chandrabhagabai wd/o Khirappa Kasbe	Rs. 1,00,000/-	Rs. 10,000/- + proportionate interest	Rs.90,000/- (Rupees Ninety Thousand only) in 18 Fixed Deposits of Rs. 5,000/- each, with FD maturity of 1-18 months. Every month the matured FD with interest shall be credited in the Saving Bank account of Awardee.

Abhijit s/o Suresh Kasbe	Rs. 1,00,000/-	-	Rs. 1,00,000/- (Rupees One Lakh only) in a Fixed Deposit scheme for a period of three years. After maturity the principle amount alongwith accrued interest shall be credited in the Saving Bank Account of the Awardee
Anurag s/o Suresh Kasbe	Rs. 1,00,000/-	-	Rs. 1,00,000/- (Rupees One Lakh only) in a Fixed Deposit scheme for a period of three years. After maturity the principle amount alongwith accrued interest shall be credited in the Saving Bank Account of the Awardee

18) 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.

19) 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.

20) 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.

21) 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.

22) 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)

Alok Upasani
Member (Judicial)
Mumbai at NGP

Pronounced in open Court.

Nagpur.

Date: 29.05.2024.

/SW/