

**BEFORE THE RAILWAY CLAIMS TRIBUNAL,
RANCHI BENCH.**

CORAM :

Gyan Prakash Tewari - Member Judicial
Dhruv Singh - Member Technical.

Case No. OA(IIU)/RNC/15/2020
Old No. O.A.No.239/18
Check List No.2903200008
Date of incident : 18.6.2017
Date of filing : 18.6.2018
Date of judgement:20.12.2023

1. Dula Soren, wife of deceased Samu Kisku
aged about 35 years.
2. Parameshwar Kisku, minor son of deceased Somu Kisku
aged about 17 years.
3. Ganga Kisku, minor son of deceased Samu Kisku
aged about 14 years.
4. Puja Kisku, minor daughter of deceased Samu Kisku
aged about 16 years.
5. Lil muni Kisku, minor daughter of deceased Samu Kisku
aged about 10 years.

Applicant nos.2 to 5 became major now.

All are Residing at Door No.95, Sarkanda Village, Godda Post, Nagr Godda
Thana, Godda Dist. Jharkhand State, Pin : 814133.

----- Applicants

Versus

1. Union of India represented by
The General Manager,
South Central Railway,
Secunderabad.
2. Bammy Soren, mother of deceased Samu Kisku
aged about 60 years.

----- Respondents

Claim for Rs.8,00,000/- (with interest)

Ld. Counsel for Applicants - Shri Vijay Shankar Jha.
Ld. Counsel for Respondent - Shri Sudhir Kumar Srivastava.

J U D G E M E N T

01. Initially this original claim application was filed at RCT/Secunderabad Bench by wife, children and mother of deceased arising out of an Untoward Incident for the alleged death of Samu Kisku under Section 16 of the Railway Claims Tribunal's Act, 1987. Later on, In terms of communication dated: 10.02.2020 by the Principal Bench, this case was transferred to RCT/Ranchi Bench as per order sheet dated:02.3.2020. Further, name of Bammy Soren (mother of deceased) was deleted from the array of the party and through amendment kept as respondent No.2 as per order sheet dated :02.01.2020.

02. Brief facts of the case:

It has been pleaded in the OA that the deceased namely Samu Kisku for the purpose of eking livelihood with a view to go to Nellore after purchasing a journey ticket bearing No.41660022 for Rs.400/- from Tinpahar to Nellore boarded a train carrying passenger on 16.6.2017. During the course of his journey he accidentally fell down from the train at Nellore station and sustained severe multiple injuries on 18.6.2017. He was shifted to Govt.Hospital, Nellore for treatment and succumbed due to fatal injuries on the same day. The journey

ticket was seized by the GRP/Nellore. Being dependent applicants have filed this claim.

03. Respondent's reply: The Respondent have filed Written Statement along with DRM's report and denied the purchase of the ticket, travel by the train and untoward incident at Nellore railway station and its liability and the applicants are put to strict proof of the same. The Respondent submits the following against the claim of the applicant:-

a) Final Report is not filed.

(b) The applicants have filed death certificate of the deceased dated:30.6.2017 issued by Registrar (Birth and Death) ACSR Govt. General Hospital, Nellore and they are put to strict proof of the death of the deceased.

(c) The incident was informed by Dr. Rama Devi, Causality Medical, Nellore. There was no eye witness to the incident of fall from the train.

(d) No ACP arose, no intimation from Keyman, Station Master or Railway Authorities was received about the incident.

(e) There was no information that the deceased was first informed by Dr.Rama Devi, CMO, Govt.General Hospital, Nellore who gave complaint on 19.6.2017 at 07.10 hrs to GRP/Guntakal, P.S.Nellore.

(f) The Panchanama was conducted by GRP on 21.6.2017 after two days of registering the FIR. It is revealed from Col.1(b) that blood relatives of deceased

were not present at the time of conducting the Panchanama. After PME body would be handed over to their blood relatives, if blood relatives were not there to Nellore Municipality with proper acknowledgement. Therefore, it is clear that the body was not identified by the relatives of the deceased.

g) As per the Hospital documents collected by Sri T.Prabhakar Rao, RPHC-508/GRP, it was shown that the deceased was having two tickets i.e. (i) Platform Ticket of Nellore dated:18.6.2017 and (ii) Journey ticket from Tinpahar Jn. to Nellore dated:16.6.2017 which were collected from Hospital authorities whereas at the time of inquest, GRP did not mention about the availability of Platform Ticket of Nellore Station dated: 18.6.2017 which gives suspicion.

In view of the above submissions, it is not a case of accidental fall from the train and hence, the application is not maintainable in law before this Hon'ble Tribunal under Section 123 (c) (2) read with Section 124-A of the Railways Act, 1989. The respondents have prayed for dismissal of the claim application.

04. Issue: From the pleadings of the parties, the following issues were framed on 12.8.2021:-

1. Whether this case comes under the jurisdiction of Ranchi Bench?
2. Whether Samu Kisku was a bonafide passenger?
3. Whether any Train accident as defined under Section 123 (c) (2) of the Railway Act, 1989 happened on any Passenger Train on 18.6.2017 ?
4. Whether the applicant or other dependents of the deceased are entitled to get compensation?
5. Relief.

05. In support of their claim, Applicant No.1, wife of the deceased has filed her affidavit (Ext.A1) as examination in chief as AW1 and proved documents, which are marked/exhibits as under. She was also cross-examined by the Respondent.

- | | |
|---|----------|
| (1) Attested copy of FIR | - Ext.A1 |
| (2) Attested copy of intimation of Accidents and injuries to Police | - Ext.A2 |
| (3) Attested copy of Inquest Report with English translation | - Ext.A3 |
| (4) Attested copy of Post-mortem Report | - Ext.A4 |
| (5) Attested copy of Death Certificate | - Ext.A5 |
| (6) Attested copy of Legal Heir Certificate | - Ext.A6 |
| (7) Photo copy of Bank particulars compared with original | - Ext.A7 |
| (7) Photo copy of Aadhar Card of Dula Soren | - Ext.A8 |
| (8) Photo copy of Ration Card | |

06. Respondent have not examined any witness, but submitted Statutory Enquiry Report (DRM Report) which is marked Ext.R1.

07. Heard both sides' counsels and perused the case file. On consideration of materials available on record and the contentions of the learned Counsels appearing for both the parties, issues wise findings are recorded as follows:

F I N D I N G S

08. Issue No.1 : Territorial Jurisdiction

Though the incident occurred at Nellore railway station which is located in Andhra Pradesh but the applicants are residents of Door No.95, Sarkanda Village, Godda Post + Nagra Godda Thana, Godda Dist. Jharkhand State, Pin : 814133 which falls within the territorial jurisdiction of this Bench. As such, this Tribunal has the territorial jurisdiction to try, entertain and determine the present OA. There is no objection from respondent regarding territorial jurisdiction at

Ranchi to try this claim. Accordingly, issue No.1 is answered in favour of the applicants.

09. Issue No.2 : Bonafide Status of Passenger/deceased.

This is a death case in which a daily wage coolie died and his dead body was found at Nellore railway station (Andhra Pradesh).

According to claimants the deceased Samu Kisku a native of Jharkhand was eking livelihood by doing coolie work in another state. Before his death, with a view to go Nellore (Andhra Pradesh) he started his journey on 16.6.2017 from Tinpahar Jn., and purchased a journey ticket bearing No.41660022 for Rs.400/- from Tinpahar Jn. to Nellore. During journey hours train reached Nellore on 18.6.2017 where he accidentally fell down from the train and got severe multiple fatal injuries. With the help of the railway employees and 108 Ambulance he was shifted to Government Hospital, Nellore for treatment but due to fatal injuries in the incident he died on 18.6.2017 in the hospital on the same day. Further, it is stated that the doctor of the Government Hospital informed GRP Nellore and the police reached the hospital and verified the identity of the deceased. The inquest and P.M.E. was conducted and deceased was buried. It is argued by the applicants that the death of the deceased occurred during train journey at the place of incident Nellore railway station, Andhra Pradesh and at the time of incident the deceased was holding a valid train journey ticket. Hence, he was a bonafide passenger at the time of the incident. Respondent railway refuted the bonafide status of the deceased stating that railway have no information about

any such incident and denied the bonafide status as well as any untoward incident.

10. To conclude the bonafide status of the deceased, it is observed that according to the claimants the deceased Samu Kisku was travelling by train on 16.6.2017 from Tinpahar Jn. to Nellore after purchasing the train journey ticket bearing No.41660022 of Rs.400/-. Photocopy of the journey ticket is available with DRM's report. Further, inquest was conducted in the morning at 10.00 hrs to 12.00 hrs on 21.6.2017 in A.C.S.R Government Medical College, Nellore in which it is specifically mentioned in Column No. 7 of the inquest that a journey ticket No.41660022 dated:16.6.2017 from Tinpahar to Nellore at 19.48 hrs of Rs.400/- recovered from the possession of the deceased along with one Aadhar Card and Micro Max mobile phone which proves the bonafide status of the deceased.

It is further important to say that during DRM's enquiry respondent have not denied the genuineness of the journey ticket and admitted the availability of the journey ticket with the deceased. Hence, bonafide status of the deceased is proved. Accordingly, Issue No.2 is decided in favour of the applicants.

11. Issue No.3:- Untoward Incident.

According to applicants, the deceased was travelling holding a valid ticket from Tinpahar to Nellore. During inquest journey ticket was found from the possession of the deceased and moreover the body was found within the premises of railway station, Nellore at platform No.3. Injuries found over the body

of deceased proves the accidental death. Hence, it is established that the deceased died due to accidental fall from train and the case is covered under the purview of Untoward Incident of Railways Act.

The respondent countered the averments of applicants, stating that the respondent railway have neither informed nor any eye witness of the incident is available to prove the case of the applicants. Moreover, the deceased did not die due to train accident. Hence, his death cannot be treated as an Untoward Incident.

12. To substantiate the Untoward Incident it is important to say that, although no railway officials were involved in this case but the evidence available with the case file proves the accidental death of deceased as an untoward incident.

(a) It is admitted that GRP/Nellore was informed by Dr.Rama Devi, Casualty Medical Hospital, Nellore regarding accidental death of the deceased Samu Kisku on 19.6.2017 and after getting such information GRP/Nellore Guntakul Division registered a UD Case No.78/2017 under Section 174 Cr.PC on same day. Ext.A1 is certified copy of FIR and Ext. A2 is the police intimation report sent by Dr.Rama Devi of Casualty Medical Hospital, Nellore. FIR and death intimation report (A-1, A-2) proves that the deceased Samu Kisku was brought to hospital by 108 ambulance who was accidentally injured while getting into a train at about 05.55 pm on 18.6.2017 main railway station Nellore and expired on the same day at

06.30 pm. Nothing is available from respondent railway to contradict anything in this regard.

- (b) Further GRP has conducted the inquest at ACSR Govt. Medical College, Nellore in the presence of vendor at Nellore railway station, due to long distance and non-availability of the family members of the deceased. The articles found during inquest are mentioned in Column No.7 of the Inquest Report (Ext. A-3). A journey ticket No.41660022 dated:16.6.2017 from Tinpahar Jn. purchased at 19.48 hrs. of Rs.400/- was recovered from the deceased along with one Aadhar Card and one Micromax Mobile phone. It proves that the deceased was travelling on a valid ticket from Tinpahar to Nellore railway station.
- (c) It is further observed that the inquest (Ext.A3) and post-mortem report (Ext.A4) available with case file, describes the injuries received by the deceased, viz (i) head fractured (ii) both his legs fractured at knees (iii) deep bleeding injury at the back side of the head (iv) slash injuries on right side shoulder and (v) small injuries on face. During post-mortem report doctor has opined that the deceased had died due to shock and hemorrhage caused by head injuries. Nothing is available to contradict the presence of the body of the deceased at Nellore railway station as well as injuries sustained by him. Moreover, it is important to say that the injuries sustained by the deceased proves accidental fall from train.

- (d) In FIR (Ext.A1) it is specifically mentioned that the body of the deceased was found at Platform No.3 on injured condition at Nellore railway station and after calling 108 ambulance the deceased Samu Kisku was sent to Government Hospital, Nellore wherein inquest was conducted by G.R.P. It is proved that the body of the deceased was found at platform No.3 of the Nellore railway station in injured condition.
- (e) It is further concluded that during statutory inquiry, RPF has found that GRP/Nellore attended the deceased at Govt.Hospital, Nellore. Inquest and P.M.E. was conducted at Medical College, Nellore. GRP/Nellore concluded that the deceased had travelled from Tinpahar to Nellore by some unknown train and admitted that the body of the deceased was found at platform no. 3 of Nellore railway station. The body of the deceased was found in injured condition at Nellore railway station and he was admitted through 108 ambulance at District Hospital, Nellore and emergency medical officer informed GRP/Nellore regarding his admission and death of the deceased. Further, GRP has registered a case No.78/2017 under Section 174 of Cr.PC. Inquest as well as post-mortem was conducted as per rule. Journey ticket as well as platform ticket both were available with the body of the deceased at the place of the incident which is approximately 1500 kms. away from native place of the deceased. Injuries sustained by the deceased appear to be due to accidental fall from the train. The above documents are available and proved with the case

file. Nothing is contradicted at all from the respondent railway. So that, it is held that the deceased had died due to accidental fall from the train holding a valid train journey ticket which is covered under the definition of Section 123 (c) (2) of the Railways Act as untoward incident.

(f) So far as the respondent railway is concerned, it has been argued that none is the eye witness to the incident and railway was not informed.

13. If said argument is taken into consideration it is pertinent to say that this case is based on circumstantial evidence in which the presence of eye witness is not necessary. As far as the incident not being informed to the railway is concerned, evidence available with case file proves that the body of deceased was found at railway platform no. 3 of Nellore Railway Station, holding a valid ticket. The injured was admitted by calling 108 ambulance at Nellore Hospital and emergency doctor of Government hospital informed the GRP/Nellore issuing train accidental death memo and GRP has registered a case No.78/2017 dated: 19.6.2017 under Section 174 of Cr.PC at Nellore. Moreover, death certificate of the deceased Ext.A5 is attached with the case file. Therefore, information not being given to Nellore railway station is not fatal to this case and said argument has no substance.

14. Hon'ble Supreme Court in the case of Union of India-vs-Rina Devi (2018) has established the principles stating that the railway accidental claims cases are based on the principles of strict liability and law is made for the welfare of

the victims. Moreover, it is immaterial who was at fault if the case is not covered under the proviso of Section 124-A of the Railways Act applicants are liable to get compensation. Hence, it is held that the deceased was a bonafide passenger at the time of the incident and his death occurred due to accidental fall from the train which is covered under the definition of Section 123 (c) (2) of the Railway Act as Untoward Incident. Accordingly, Issue No.3 is decided in favour of the applicants and against the respondent.

15. Issue Nos. 4 and 5:- Dependency of applicants and relief

So far as the dependency is concerned, the Applicant no. 1 is the wife, applicant nos. 2 and 3 are the sons, applicant nos.4 and 5 are the daughters. In their support, applicants have filed copy of Aadhar Cards, Family Membership Certificate, Death Certificate of deceased and residential proof along with bank account passbook. There is no dispute about the inter se relationship of the applicants and their relationship with the deceased. Even, at the time of arguments, Counsel for the respondent has not disputed the dependency of the applicants and relationship with the deceased. So that it is held that applicants no.1 to 5 being dependents of the deceased are entitled to compensation.

16. Thus, we hold that the applicants are the dependents of the deceased under Section 123 (b) (i) of the Railways Act, 1989 and accordingly, they are entitled to get compensation approved by Ministry of Railways. Railway Board's notification dated: 22nd December 2016 under GSR 1165 has amended the amount of compensation payable in respect of death in a railway untoward

incident to Rs.8,00,000/- (Rupees Eight Lakhs only) in favour of the applicants along with simple interest @ 9% from the date of incident. Both the issues are decided in favour of the applicants.

17. In view of the above, the applicants are entitled to get compensation amounting to Rs.8,00,000/-(Rupees Eight Lakhs only) along with simple interest @ 9% from the date of incident i.e.18.6.2017 till date of this Judgement without costs.

O R D E R

For the determination of the amount of award, we have heard the learned counsel for the parties and perused the decision passed in **Geeta Devi Vs Union of India** by Hon'ble the Delhi High Court.

Relying upon the judgement rendered by the Delhi High Court in the case of **Geeta Devi Vs Union of India** and in pursuance of **Rule 5**, the amount of award along with the interest in the present case shall be disbursed in the following manner:

<i>Sl. No.</i>	<i>Name of the Applicant(s)</i>	<i>Relationship with deceased</i>	<i>Age in years</i>	<i>Amount Awarded (Rs.)</i>	<i>Transfer of 10% of respective share to the account of party/ parties (Rs.)</i>	<i>Amount to be kept in Fixed Deposit for a period of three years (Rs.)</i>
<i>(a)</i>	<i>(b)</i>	<i>(c)</i>	<i>(d)</i>	<i>(e)</i>	<i>(f)</i>	<i>(g)</i>
1.	Dula Soren	Wife	27	Rs.4,00,000	Rs.40,000	Rs.3,60,000
2.	Parameshwar Kisku (DOB:01.01.2013)	Minor son (became major now)	17	Rs.1,00,000	Rs.10,000	Rs.90,000
3.	Ganga Kisku (DOB:2006)	Minor son (became major now)	14	Rs.1,00,000	Rs.10,000	Rs.90,000
4.	Puja Kisku (DOB:2002)	Minor Daughter (became major now)	16	Rs.1,00,000	Rs.10,000	Rs.90,000
5.	Lil muni Kisku (DOB:23.7.2011)	Minor Daughter (became major now)	10	Rs.1,00,000	Rs.10,000	Rs.90,000

18. The respondent Railway Administration is hereby directed to deposit the amount awarded with the Suitor account of this Tribunal within a period of 30 days from the date of communication of the award failing which the applicant shall be entitled to get interest @ 10% per annum from the date of award till the actual date of receiving the amount.

19. The applicants are hereby directed to submit the details of their Aadhar linked Bank accounts of a Nationalized Bank mentioned in the schedule Appendix-I of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, situated near their place of permanent residence to the Additional Registrar of this Tribunal.

20. If the claimant is 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 Railways (as applicable under sub-section (2) of Section 19 of the Railway Claims Tribunal Act, 1987) so that no TDS is deducted.

21. Terms and conditions:

- (a) The Bank shall not permit any joint name(s) to be added in the savings bank account or fixed deposit accounts of the Claimant i.e. the savings bank account of the Claimant shall be an individual savings bank account and not a joint account.
- (b) The original fixed deposit 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 Claimant(s).

- (c) The monthly interest be credited by Electronic Clearing system (ECS) in the savings bank account of the Claimant near the place of their permanent residence.
- (d) The maturity amounts of the FDR(s) be credited by Electronic Clearing System (ECS) in the savings bank account of the Claimant(s) near the place of their permanent residence.
- (e) No loan, advance, withdrawal or pre-mature discharge be allowed on the fixed deposits without permission of the RCT.
- (f) The concerned bank shall not issue any cheque book and/or debit card to the Claimant. 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 freeze the account of the Claimant so that no debit card be issued in respect of the account of the Claimant from any other branch of the bank.
- (g) The bank shall make an endorsement on the passbook of the Claimants to the effect that no cheque book and/or debit card have been issued and shall not be issued without the permission of the RCT and Claimant shall

produce the passbook with the necessary endorsement before the RCT on the next date fixed for compliance.

- (h) It is clarified that the endorsement made by the bank along duly signed and stamped by the bank official on the passbook of the Claimant is sufficient compliance of clause (g) above.
- (i) The concerned Bank of the claimant be directed to permit the claimant to withdraw money from his savings bank account by means of a withdrawal form only.

22. Copy of this order be supplied to both the parties free of costs, and the file, after its due completion, be consigned to the Record Room.

(DHRUV SINGH)
Member (Technical)
RCT/Ranchi
20.12.2023.

(Gyan Prakash Tewari)
Member (Judicial)
RCT/Ranchi
20.12.2023.