

RAILWAY CLAIMS TRIBUNAL
RANCHI BENCH, RANCHI

CORAM:

GYAN PRAKASH TEWARI - Member Judicial.

DHRUV SINGH - Member Technical.

Claim Application No. : OA(IIU)/RNC/64/2019

Check List No. : 2907190013

Date of Incident : 05.3.2019

Date of filing : 13.06.2019

Date of decision : 11.03.2024

- 1) Manorama Devi, aged about 35 years, wife of deceased Ketku Yadav
- 2) Pushpa Kumari, aged about 18 years, daughter of deceased Ketku Yadav
- 3) Usha Kumari, aged about 14 years, daughter of deceased Ketku Yadav
- 4) Dipak Kumar, aged about 13 years, son of deceased Ketku Yadav

Applicant Nos.3 and 4 being minor are represented through their natural guardian Applicant No.1.

R/o. Vill – Simrakita, Post- Baijukura, PS-Mohanapur alias Mohanpur, District – Deoghar, Pin-814 143 (Jharkhand)

...Applicants.

Versus

Union of India represented by
The General Manager,
Eastern Railway,
Kolkata.

...Respondent.

Claim for Rs.8,00,000/- (With interest 9%)

Ld. Counsel for Applicants - Ms. Gauri Guha

Ld. Counsel for Respondent - Shri Sudhir Kumar Srivastava.

J U D G E M E N T

01. This claim application is filed by the Applicants under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 123 (c) (2) and Section 124-A of the Railways Act, 1989 seeking compensation of Rs.8,00,000/- (Rupees Eight Lakhs only) along with 9% per annum interest from the Respondent Railway for the death of Ketku Yadav (hereinafter referred to as

“the deceased”) in an alleged untoward incident that occurred on 05.3.2019. Applicants are the wife, two daughters and son of the deceased. The name of the applicant No.5 Tikhiya Devi, mother of the deceased has been deleted from the array of the party as per Tribunal’s order dated:18.12.2023 due to her demise. In support the applicants have filed the death certificate of Tikhiya Devi.

02. Brief facts of the case:-

As per claim application, the deceased Ketku Yadav with a view to come his home at Giridih via Howrah, he started his journey along with his elder brother Dindayal and nephew Nagaswar and Bijoy from Yashwantpur-Howrah Express with a reserve ticket PNR No.445-582233 dated:03.03.2019. After reaching Howrah they purchased a journey ticket No.27193550 dated:05.3.2019 and boarded in a local train. Thereafter they again boarded Kolkata Jammutawi Express Train No.13151 to return home to join the religious ceremony of funeral of their aunt. According to applicants due to hurry and push of passengers the deceased accidentally fell down from the running train near Sitarampur railway station and succumbed to his injuries instantly. Rest others de-boarded at next railway station and identified the deceased. GRPS Officer seized his journey ticket from his shirt’s pocket but one kid’s bag, mobile, driving license was lost in the incident. After register UD Case, inquest was conducted and the body of the deceased was sent to Asansol SD Hospital Morgue for post-mortem. Thereafter the body was handed over to the family members of the deceased for his last rites. The Applicants (wife, daughters and son of the deceased), being dependents, OA(IIU)/RNC/64/2019

have filed this claim application for compensation from the Respondent Railway.

03. Respondent's reply:-

Respondent railway have filed the Written Statement and denied their liability. Respondent further submitted that there is no evidence that the victim has alighted at Howrah railway station. No ticket was placed on record. PNR number mentioned in the claim application is incorrect. It is not possible for the victim to travel as a bonafide passenger by purchasing ticket No.27193350 dated:05.3.2019 ex-Howrah to Jasidih by Kolkata-Jammutawi Express Train No.13151 which departs from Kolkata(Chitpur) railway station and not from Howrah railway station. It clearly indicates that the ticket has been planted. Apart from there is no evidence that there had been any co-passenger travelling with the deceased as the ticket was for only one adult. There is no eye witness to the incident. Nobody knows how and under what circumstances the incident took place. Hence, the applicants are not entitled to get any compensation from the respondent railway. It has been prayed that the claim must be dismissed.

04. From the pleadings, following issues were framed on 05.3.2020:-

1. *Whether the deceased was a bonafide passenger as alleged?*
2. *Whether the deceased had died due to alleged Untoward Incident?*
3. *Whether the applicant or other dependents of the deceased are entitled to get compensation?*
4. *Relief.*

05. In support of their claim, Applicant No.1, wife of the deceased, filed her affidavit for examination in chief as AW-1 and was cross-examined by the

Respondent. Sri Nageshwar Yadav appeared as AW-2 and filed his affidavit for examination in chief as Ext.A10. He was also cross-examined by the Respondent and discharged. The following documents have been marked exhibited as under:-

- | | | |
|---|---|----------|
| 1. Certified copy of Rail Memo | - | Ext.A.1. |
| 2. Certified copy of FIR | - | Ext.A.2. |
| 3. Certified copy of Investigation Report | - | Ext.A.3. |
| 4. Certified copy of Seizure List | - | Ext.A.4. |
| 5. Certified copy of Railway Journey ticket | - | Ext.A.5. |
| 6. Certified copy of dead body challan | - | Ext.A.6. |
| 7. Certified copy of PM Report | - | Ext.A.7. |
| 8. Certified copy of Final Report | - | Ext.A.8. |
| 9. Photo copy of Aadhar Card of Manorama Devi | - | Ext.A.9. |

06. Respondents have not produced any oral evidence but submitted Statutory Enquiry Report (DRM's Report) which is marked as Ext.R.1.

07. Heard both sides counsel and perused the case file. On consideration of material available on record and the contentions of the learned Counsels appearing for both the parties, issue wise findings are recorded as follows:-

08. **Territorial Jurisdiction:**

From perusal of case file, it is observed that though the incident took place near Sitarampur railway station (West Bengal) the applicants are residents of Vill – Simrakita, Post- Baijukura, PS-Mohanapur alias Mohanpur, District – Deoghar, Pin-814 143 (Jharkhand) which falls within the territorial jurisdiction of this Tribunal. Moreover, respondents have not raised any

objection, regarding territorial jurisdiction of this claim. As such, this Tribunal has the territorial jurisdiction to try, entertain and determine this present OA.

FINDINGS

09. Issue No.1 : Bonafide Status

As per claimants, the deceased started his journey from Yashwantpur to Howrah with a reservation ticket vide PNR No.445-582233 dated: 03.3.2019 along with his elder brother Dindayal and nephew Nageswar and Bijoy. In support of their contention they have filed said reservation journey ticket vide PNR No.445-5822339 dated:03.3.2019 (Ext.A9). It is observed that there is some typographical error regarding missing No.9 (last digit) in the PNR No. shown in the claim application. For his onward journey from Howrah to Jasidih the deceased had purchased a 2nd class journey ticket No.27193550 dated: 05.3.2019 which was seized by the GRPS/Asansol from his shirt's pocket. A certified copy of the journey ticket is on record (Ext.A5). Form : A Details inspection of Spot and Person at Column No. 4 annexed with DRM's report (Ext.R1) shows the description of the said ticket recovered from the body of the deceased. Recovery of the journey ticket from Howrah to Jasidih is mentioned in the Seizure List (Ext.A4). Investigation Report under Section 174 Cr.P.C. also shows the recovery of the journey ticket from Howrah to Jasidih (Ext.A3). These all proves that the deceased was travelling holding a valid journey ticket at the time of incident. The respondents have nothing to contradict regarding proof of journey ticket. Hence, we have no hesitation to hold that the deceased was a bonafide passenger at the time of the incident. Accordingly, issue No.1 is decided in favour of the applicants.

10. **Issue No.2 : Untoward Incident**

To conclude untoward incident, according to applicants death of the deceased occurred due to accidental fall from a running train during journey hour, so that death of the deceased is fully covered under the purview of an Untoward Incident as defined under Section 123 (c) (2) and Section 124-A of the Railways Act, 1989. Per contra respondent has refuted stating that the death of the deceased may be due to negligence or his own criminal act or self-inflicted injury which is not covered under the definition of untoward incident.

To substantiate the Untoward Incident, it has been concluded that at the time of the incident, the deceased was a bonafide passenger. So far as untoward incident is concerned; it is observed that body of deceased is found within railway premises.

It is further observed that SM's memo (Ext.A1) was issued on the same day at 16.27 hrs on 05.3.2019 by Sri Jitendra Kumar, Dy.SM/Sitarampur railway station to the GRP and RPF stating that some platform passengers informed that one unknown male person, aged about 35 years, fell down from Train No.13151 UP Express UP G/C Line at KM No.220/35 Platform No.01 near RPF Post, seems to be dead. On the basis of station memo (Ext.A1) GRP/Asansol registered a UD Case No.11/19 which is Ext.A2. Inquest was prepared which is Ext.A3 and a seizure memo is Ext.A4 wherein it is further observed that a journey ticket from Howrah to Jasidih was found from the possession of the deceased. On 05.03.2019 body was sent for post-mortem

which is Ext.A7. From perusal of inquest and post-mortem report it is observed that both legs of the deceased were found stumped from body (hip joint). It is pertinent to mention that body of the deceased was found on 05.3.2019 within the railway premises. On the same day Inquest (Ext.A3) was prepared at 17.05 hrs near Sitarampur station and the post-mortem was conducted by the doctor on 06.3.2019 which is Ext.A7. It is observed that station memo, inquest, seizure of journey ticket and post-mortem was conducted simultaneously as per rule. A UD Case No.11/19 was investigated and concluded that the deceased Ketku Yadav died due to fell down from Train No.13151 UP near RPF post of Sitarampur railway station. Nothing was found false or contradictory against contents of claim petition.

Further observed that the DRM's enquiry (Ext.R1) available with case file, proves that body of the deceased was found on 05.03.2019 near Sitarampur railway station within the railway premises along with journey ticket from Howrah to Jasidih although there is no eye witness to prove accidental fall of the deceased from a running train carrying passenger. However, because of case is based on circumstantial evidence and evidence available with case file proves the accidental death of the deceased from a running train. Hence, non-availability of eye witness has no significance in this case.

To prove untoward incident there are voluminous evidence available with case file regarding accidental death of the deceased from Train No.13151 near Sitarampur railway station and nothing was found contrary against accidental fall of the deceased during train journey hour. So that, death of the

deceased is covered under the definition of untoward incident as defined under Section 123 (c)(2) and Section 124-A of the Railways Act, 1989.

To contradict claim application, respondent railways has argued stating that the death of the deceased is either due to his own negligence or it is a self-inflicted injury but respondent has not examined any witness to prove either negligence or self-inflicted injury caused by the deceased himself. If the said argument is taken into consideration then proviso of Section 124-A of the Railways Act is applicable, but provisos regarding death due to own negligence or self-inflicted injury are **an exception not a presumption**. If respondent railway wants a finding from Court regarding death of the deceased is due to his own negligence or self-inflicted injuries, it must be proved by cogent and reliable evidence. Moreover, Hon'ble Supreme Court in the case of Union of India-vs-Rina Devi (2018) established that there is a difference between an Untoward Incident and an act of criminal negligence where negligence will not disentitle grant of compensation. It is further established that under Section 124-A of Railways Act question of negligence has no relevance because of railway accident claim law is made for the welfare of the victims which is based on the principle of strict liability or no fault liability. Further, from perusal of the injuries found over the body of the deceased, it cannot be said that the deceased had committed suicide or died due to self-inflicted injury or due to own negligence. Therefore, argument advanced by the respondent railway regarding negligence, suicide or self-inflicted injury committed by the deceased himself has no substance. Thus, it

is held that the death of the deceased is covered as an Untoward Incident under the purview of Section 123 (c)(2) and Section 124-A of the Railways Act. Therefore, Issue No.2 is decided in favour of the applicants.

11. Issue Nos. 3 and 4:- Dependency of applicants and relief

So far as the dependency is concerned applicant no. 1 is the wife, applicant nos.2 and 3 are the minor daughters and applicant No.4 is the minor son of the deceased. In their support applicants have filed copy of Aadhar Cards, Family Membership Certificate, 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 applicants and their relationship with the deceased. 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 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% per annum.

12. In view of the above, it is hereby

ordered

that the claim application is allowed. Applicants are entitled to compensation amounting to Rs.8,00,000/- (Rupees Eight Lakhs only)

along with simple interest @ 9% per annum from the date of incident on 05.3.2019 till the date of judgement.

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 the Hon'ble Delhi High Court on behalf of respondent.

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.	Manorama Devi	Wife	35	Rs.4,00,000	Rs.40,000	Rs.3,60,000
2.	Pushpa Kumari	Daughter	18	Rs.1,34,000	Rs.13,400	Rs.1,20,600
3.	Usha Kumari (DOB:01.01.2009)	Minor daughter	14	Rs.1,33,000	-	Rs.1,33,000
4.	Dipak Kumar (DOB:01.01.2010)	Minor son	13	Rs.1,33,000	-	Rs.1,33,000

Note: * Share of Usha Kumari and Dipak Kumar will be kept in fixed deposit till they attains majority.

13. The share of Usha Kumari and Dipak Kumar (minor daughter and son of the deceased) shall be deposited in term deposit scheme in any nationalized Bank opened under the guardianship of their mother (Manorama

Devi), nearest to the permanent place of their residence, for a period of attaining their majority.

14. The respondent Railway Administration is hereby directed to deposit the amount awarded with the Additional Registrar of this Tribunal within a period of 30 days from the date of communication of the judgement failing which the applicant shall be entitled to receive interest @ 10% per annum from the date of award till the actual date of depositing the amount.

15. 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.

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

17. **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 Claimants i.e. the savings bank account of the Claimants 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 Claimants 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 Claimants. 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 Claimants so that no debit card be issued in respect of the account of the Claimants 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 Claimants 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 Claimants are sufficient compliance of clause (g) above.

(i) The concerned Bank of the claimants be directed to permit the claimant to withdraw money from his savings bank account by means of a withdrawal form only.

18. 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
11.03.24.

(GYAN PRAKASH TEWARI)
Member (Judicial)
RCT/Ranchi
11.03.24.