

BEFORE THE RAILWAY CLAIMS TRIBUNAL

(BENGALURU BENCH AT BENGALURU)

CLAIM APPLICATION No.OA (II U)/SBC/0001/2023

DATED THIS THURSDAY THE 19TH DAY OF SEPTEMBER 2024

CORAM:

1. Mrs. IVY CHARLES D'CRUZ,
Hon'ble Member Judicial.
2. Mr. RAVI NANDKEOLYAR,
Hon'ble Member (Technical).

BETWEEN

1. Smt. Pratima Prakash Bhatkalkar @ Shanbhag :: Applicant
Aged 51 Years (Wife of the Deceased)
2. Smt. Shantabai Pundalika Bhatkalkar,
Aged 81 Years, (Mother of the deceased).
3. Sri Ramnath @ Anoop Prakash Bhatkalkar @ Shanbhag,
Aged 31 Years, (Elder Son of the deceased).
4. Sri Akash Prakash Bhatkalkar @ Shanbhag,
Aged 21 Years, (Younger Son of the deceased).

All are residing at Book Sellers Building,
House No.1335, Raj Marg, Siddapur,
Siddapur Post Tq & Dist, Siddapur PIN-581 355.
Uttarakannada, Karnataka.

AND

The Union of India owning :: Respondent
Represented by its General Manager,
South Western Railway,
HUBLI.

Ld, Counsel appeared:

Shri G.T. Satish, Counsel for Applicant.
Shri Megharaj. G.M, Counsel for Respondent.

Claim for Rs.8,00,000/- with Interest @ 12% from the date of incident

Application under Section 16 of Railway Claims Tribunal Act, 1987 read
with Section 123(c) (2) and 124-A of Railways Act, 1989.

J U D G M E N T

RAVI NANDKEOLYAR,
MEMBER (JUDICIAL)

The Claim Application has been filed under Section 16 of the Railway Claims Tribunal Act in respect of Claims for compensation arising out of an alleged Unusual Incident from a train.

1. Basic details relating to the incident as contained in the claim application:

a. Name, age and occupation of the deceased:

Shri Prakash Pundalika Bhatkalkar @ Shanbhag, Aged 56 Years,
Sales Distributor.

b. Date of Incident: 28.01.2022

c. Train involved & transit details: Train No.20651 – KSR Bengaluru-Talaguppa Express Train. While travelling from KSR Bengaluru to Shivamogga, when the said train reached Bhadravathi Railway Station, the deceased while disembarking the train, accidentally fell down from the moving train and died on the spot.

d. Untoward incident narrated:

It is stated in the Claim Application that the deceased was a resident of Siddapur of Uttarakannada and was a sales distributor by profession. On 28.01.2022, the deceased as a bonafide passenger with a valid second class Railway journey ticket bearing No.AOA-52247305 boarded Train No.20651 – KSR Bengaluru-Talaguppa Express Train and started his journey at KSR Bengaluru. When the said train reached Bhadravathi Railway Station, the deceased disembarked the train for some or other reason, due to heavy rush, he had accidentally fallen down from the said train and died on the spot instantaneously. It is further stated that the deceased was in possession of a valid Second Class Railway Ticket, bearing No. AOA-52247305. The said Ticket has been filed along with the Original Application.

e. Jurisdiction: The place of incident is within the jurisdiction of this Tribunal.

2. Salient features of Reply:

a. Written Statement: General denial of all the averments in the Claim Application.

3. Crux of DRM's Report: (1) As per the inquest Mahazar, one Railway Journey ticket No.52247305 issued at Bangalore City Railway Station travel by one adult from Bengaluru City to Shivamogga Town Railway Station was found with worn clothes thereby victim was a bonafide passenger. (2) As per inquest Mahazar vide point No.17, GRP mentioned that, the victim died while made efforts to board the moving Train at

Bhadravathi Railway Station whereas his destination was Shivamogga Town Railway Station. (3) Several caution boards like boarding and deboarding from running train is dangerous is provided throughout the railway stations. (4) The Doctor, who conducted Post-Mortem, opined that, the death was due to shock and hemorrhage as a result of head injuries sustained. (5) On duty GRP Staff informed to Station Master of Bhadravathi Station that, victim fell down from Train No.20651 Bangalore City-Shivamogga Town express while boarding the moving train at Bhadravathi station yard and died. (6) As per statement of Shri Ramachandra, RPF Head Constable, Bhadravathi, who stated that the victim made efforts to board the moving Train negligently and got run over.

(7) The Railway got a time tested method for safe carriage of its passengers, hence falling down of passenger is a very rare possibility. (8) There is no deficiency of services on the part of the Railway. The Railway Administration is no way responsible for the death of victim on his self-inflicted act of suicide and the claim may be repudiated.

4. Framing of Issues: Based on the submission of both the parties following issues were framed on 20.03.2023:-

- 1) Whether the deceased was a bona fide passenger?
- 2) Whether there was any untoward incident as is defined under the provisions of section 123(c) read with Section 124(A) of the Railways Act, 1989?
- 3) Whether the applicants are dependents of the deceased?
- 4) Whether the applicants are entitled for any relief and interest as prayed for in the application?

5. Evidence:

5.1 Applicant's Evidence: Applicant No.1, Smt. Pratima Prakash Bhatkalkar @ Shanbhag, Wife of the Deceased filed her Affidavit dated 15.11.2023 and deposed before this Tribunal as AW-1 on the even date (15.11.2023).

To substantiate their claim, the AW-1 along with her affidavit has filed photostat copies of the Genealogical Tree attested by Deputy Tahsildhar, Kondli Hobli, Siddapura Taluka (Exh A-12), Aadhaar Cards of all the Applicants (Exh A-13 to A-16) and Bank Details. In addition to this, the applicants along with their claim application have filed certified copies of police documents viz., FIR, Memo issued by Station Supdt., Bhadravathi to

Sub-Inspector of Police, Government Railway Police, Shivamogga Town & Sub-Inspector of Police, Railway Protection Force, Shivamogga Town dated 28.01.2022, Inquest Panchnama, Post-mortem Report, Statements of Wife, two sons and deceased son's friend to the police dated 29.01.2022, Police Final Report, Railway Journey Ticket bearing No. AOA-52247305 issued to travel from KSR Bengaluru to Shivamogga Town for an adult dated 28.01.2022 etc., marked Exh A-1 to A-10.

a) Respondent's Evidence: Evidence-in-chief by way of affidavit of Shri G. Eswara Rao S/o. Gangoji Rao, Assistant Sub-Inspector, RPF, Bangalore City filed and examined as RW-1. Exh R-2 was marked through him. RW-1 was cross-examined by Applicant's Counsel. Similarly, Evidence-in-chief by way of affidavit of Shri Ramachandra S/o. Kalanayaka, Head Constable, RPF, Bhadravathi filed and examined as RW-2. Exh R-3 was marked through him. RW-2 was cross-examined by Respondent's Counsel at length. Respondent reports no further evidence. Evidence from both parties were closed on 26.07.2024.

6. Issue-wise discussion and reasoning for the Judgment:

Arguments of Shri G.T. Satish, Ld., Counsel for the Applicants and Shri Megharaj. G.M, Ld., Counsel for the Respondent are heard. Perused the records. We have gone through the case and have carefully examined the documents and evidence led by the parties and our findings on the issues are as under:

ISSUE No.1

6.1 Applicant No.1, Smt. Pratima Prakash Bhatkalkar @ Shanbhag, Wife of the Deceased filed her Affidavit dated 15.11.2023 and deposed before this Tribunal as AW-1 on the even date (15.11.2023). The applicant, AW-1 admittedly has no personal knowledge of the incident, since she was not accompanying the deceased. However, AW-1 evidence has testified to the fact that the deceased was travelling with a valid second class Railway journey ticket Exh A-4. The genuineness of the journey ticket bearing No. AOA-52247305 issued to travel from KSR Bengaluru to Shivamogga Town for an adult dated 28.01.2022, which was recovered at the time of Inquest Mahazar by the Investigation Authority is not disputed by the respondent. In the Statutory DRM's Investigation Report,

the genuineness of the journey ticket not been disputed. As such, Issue No.1 remain uncontested. In these circumstances, said issue No.1 is decided in affirmative, in favour of the applicants.

ISSUE No.2

7. As far as Issue No.2, the factum of Untoward Incident is concerned, on perusal of records, it is seen that in the instant case, law was set into motion, based on the Memo issued by Station Supdt., Bhadravathi to Sub-Inspector of Police, Government Railway Police, Shivamogga Town & Sub-Inspector of Police, Railway Protection Force, Shivamogga Town dated 28.01.2022, wherein it is clearly elicited that a male person aged about 50 years has fallen down from Train No.20651 Express at RKM No.44/600 at Bhadravathi Railway Station.

7.1 On examination of Statutory DRM's Investigation Report, not much is required to be observed and discussed. Cumulative reading of above material facts on the documents prepared by respondent, would reveal that in fact it is not a case of contest under any circumstances. Except to raise defence plea that the deceased had fallen down from running train while de-boarding the running train. Plea of self-inflicted injury on part of the deceased while boarding/de-boarding a train is not accepted in view of legal position well settled by Hon'ble Supreme Court in Rina Devi vs. Union of India, (Supra). The relevant Para from the judgement is reproduced below:

"We are unable to uphold the above view as the concept of 'self-inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. We may in this connection refer to judgment of this Court in United India Insurance Co. Ltd. versus Sunil Kumar laying down that plea of negligence of the victim cannot be allowed in claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor."

7.2 Ld., Counsel for Respondent did not lead any contra evidence to prove that the act of the deceased (Shri Prakash Pundalika Bhatkalkar @ Shanbhag), leading to dead, was as a result of any of the followings, covered under exceptional clause in section 124 A of Railways Act:

- 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 medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Thus, Respondent failed to establish that they are protected under the exempted provision of Section 124 A of the Railway Act and not liable to pay compensation in the instant incidence.

7.3 On the basis of facts, circumstances of this case, preponderance of evidence on record and above discussion, we have come to the conclusion that the deceased (Shri Prakash Pundalika Bhatkalkar @ Shanbhag), on 28.01.2022, while de-boarding the train as a bonafide Railway passenger from KSR Bengaluru to Shivamogga Town, had accidentally fallen down from the running train and died on the spot. Accordingly, the incident is covered under "untoward incident" as defined under Section 123(c)(2) read with Section 124-A of the Railway Act, 1989. Issue No.2 is decided in favour of the applicants.

ISSUE No.3

8. The applicants in their claim application have stated that Applicant No.1, Smt. Pratima Prakash Bhatkalkar @ Shanbhag, Wife of the Deceased, Applicant No.2, Smt. Shantabai Pundalika Bhatkalkar, Mother of the deceased. Applicant No.3, Sri Ramnath @ Anoop Prakash Bhatkalkar @ Shanbhag and Applicant No.4, Sri Akash Prakash Bhatkalkar @ Shanbhag, are Sons of the deceased are legal heirs/dependents of the deceased. In order to prove their legal heirs/dependency with the deceased, applicants have produced Photostat copies of the Genealogical Tree attested by Deputy Tahsildhar, Kondli Hobli, Siddapura Taluka (Esh A-12), Aadhaar Cards of all the Applicants (Exh A-13 to A-16). The record of investigation also establishes that the applicants are legal heirs/dependents of the deceased. In absence of any contest from Ld. Counsel for the Respondent on this issue and there being no evidence to the contrary, the aforesaid four Applicants, Wife, Mother and Two Sons of the deceased are the dependents of the deceased, as per Section 123(b)(i) of the Railways Act, 1989. Issue No.3 is decided accordingly in favour of the applicants.

ISSUE No.4

9. As per GSR 1165(E) issued by the Ministry of Railways on 22.12.2016, the amount of compensation payable in cases of death due to untoward incidents is Rs.8 Lakh.

9.1 Hence, the present Claim Application is allowed, the Respondent are directed to pay a sum of Rs.8,00,000/- plus pro rate interest to the applicants as compensation for the death of the deceased in an untoward incident. Applicants are entitled for interest at the rate of 6% from the date of registration of present OA i.e., 05.01.2023 till the date of award. The Respondent shall deposit the amount as per award with Additional Registrar/RCT, Bangalore within 30 days from the date of receipt of this order. In case of default in payment within the stipulated period, the Respondent shall be liable to pay simple interest @ 6% per annum for subsequent delay.

O R D E R

1. The claim application is 'ALLOWED' to the extent of payment of Rs.8,00,000/- (Rupees Eight Lakh) plus pro rata interest @ 6% per annum from the date of registration of the present OA i.e., 05.01.2023 till the date of award to the aforesaid dependents of the deceased as compensation. The Respondent shall deposit the amount as per award with Additional Registrar/RCT, Bangalore within 30 days from the date of receipt of this order. In case of default in payment within the stipulated period, the Respondent shall be liable to pay simple interest @ 6% per annum for subsequent delay.

2. In order to protect claimants from exploitation, GSR No.347 dated 3rd June 2020, has been issued by this Ministry of Railways which has come into effect on 1st day of January, 2020 incorporating it in the Railway Accidents & Untoward Incident (Compensation) Rules, 1990.

“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 sub-serve justice.

5.2. Not Applicable to the present case in hand.

5.3. *Nothing in this Rule shall limit the power of the Tribunal to make modifications of the mode of disbursal 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.”*

5.4.1 *Examination of the Claimant(s) before passing of the award –*

(i) *RCT shall; before or at the time of passing of the award, examine the claimant(s) to ascertain their financial condition/needs, mode of disbursement of and amount to be kept in fixed deposit.*

(ii) *Before disbursement of the award amount, the RCT shall direct the claimant(s) to open an individual savings bank account in a nationalized bank near the place of their permanent residence and the concerned bank be directed to not issue any cheque book(s) and/or debit card(s) to the claimant(s) and if the same have already been issued, the bank be directed to cancel the same and make an endorsement on the passbook of the claimant(s) to the effect that no cheque book and/or debit card shall be issued to the claimant(s) without the permission of the RCT. The concerned Bank of the claimant(s) be directed to permit the claimant(s) to withdraw money from his savings bank account by means of a **withdrawal form only**. The claimant(s) be directed to produce the copy of the order passed by the RCT before the concerned bank whereupon the bank be directed to make an endorsement on the passbook. The claimant(s) be directed to produce the passbook with the necessary endorsement as well as Aadhaar Card and PAN Card before the RCT on the next date fixed for compliance.*

(iii) *RCT shall take the following documents on record from the claimant(s):-*

- (a) Details of the Bank Accounts of the Claimant(s) near the place of their residence with necessary endorsement.*
- (b) Aadhaar Card, PAN Card or any other appropriate ID card; and*
- (c) Two sets of photographs and specimen signatures of the Claimant(s).*

5.4.4 *RCT shall impose the following conditions with respect to the fixed deposits –*

- (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(s), i.e., the savings bank account(s) of the Claimant(s) shall be an individual savings bank account(s) and not a joint account(s).*
- (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 created by Electronic Clearing System (ECS) in the savings bank account of the Claimant(s) near the place of their 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 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(s). 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(s) so that no debit card be issued in respect of the account of the Claimant(s) from any other Branch of the Bank.*
- (g) *The Bank shall make an endorsement on the passbook of the Claimant(s) 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(s) shall produce the passbook with the necessary endorsement before the RCT on the next date of fixed for compliance.*
- (h) *It is clarified that the endorsement made by the bank along with the duly signed and stamped by the bank official on the passbook(s) of the Claimant(s) is sufficient compliance of clause(g) above.*
- (i) *The concerned Bank of the Claimant(s) be directed to permit the claimant to withdraw money from his savings bank account by means of a withdrawal form only.*

In pursuance of Rule 5 quoted above, in the present case, the amount of award along with interest shall be disbursed in the following manner:-

3. Out of the total share of compensation awarded, Applicant No.1, Smt. Pratima Prakash Bhatkalkar @ Shanbhag, Wife of the Deceased, shall be entitled to receive a share of Rs.4,00,000/- (Rupees Four Lakhs Only) along with pro rata interest. Applicant No.2, Smt. Shantabai Pundalika Bhatkalkar, Mother of the deceased, shall be entitled to receive a share of Rs.1,00,000/- (Rupees One Lakh Only) along with pro rata interest; whereas Applicant No.3, Sri Ramnath @ Anoop Prakash Bhatkalkar @ Shanbhag and Applicant No.4, Sri Akash Prakash Bhatkalkar @ Shanbhag, Sons of the deceased, shall be entitled to receive a share of Rs.1,50,000/- each (Rupees One Lakh Fifty Thousand Only) each along with pro rata interest to be released forthwith by ECS/NEFT transfer to their savings bank account by Additional Registrar, Bengaluru Bench, Bengaluru upon deposit of amount by the Respondent upon issuance of appropriate orders to this effect.

4. Out of the total share of compensation awarded, 10% of the share of compensation amount along with its proportionate interest of all the Applicants i.e., Wife, Mother and Two Sons of the deceased, shall be released forthwith by ECS/NEFT transfer to their savings bank account by Additional Registrar, Bengaluru Bench, Bengaluru upon deposit of amount by the Respondent upon issuance of appropriate orders to this effect. It is also directed that, rest of the share together with accrued interest, if any, of all the Applicants shall be invested in a Fixed Term Deposit for a period of Three

years in a nationalized bank, near to the place of their place of residence with monthly payment of accrued interest to them.

5. Bank authorities are at liberty to release the Fixed Terms Deposit of the respective claimants after its maturity without making any reference to this Tribunal.

6. Additional Registrar, Bengaluru Bench, Bengaluru upon deposit of total compensation amount, the same shall be released forthwith by ECS/NEFT transfer to the bank account of the claimants.

7. In facts and circumstances of the case, there is however, no order as to costs.

8. Registry is directed to send a free certified copy of this Order to the parties in view of Rule 34(3) of the Railway Claims Tribunal (Procedure) Rules, 1989.

9. With these observation, the application is ‘ALLOWED’ and disposed off accordingly. File be consigned to Record Room after compliance.

(RAVI NANDKEOLYAR)
MEMBER (TECHNICAL)

(IVY CHARLES D’CRUZ)
MEMBER (JUDICIAL)

Judgment pronounced on Thursday, the 19th Day of September, 2024.

(RAVI NANDKEOLYAR)
MEMBER (TECHNICAL)

(IVY CHARLES D’CRUZ)
MEMBER (JUDICIAL)