BEFORE THE RAILWAY CLAIMS TRIBUNAL

(BENGALURU BENCH AT BENGALURU**)**

CLAIM APPLICATION No.OA (II U)/SBC/0014/2022

DATED THIS THE 19h DAY OF DECEMBER, 2023

CORAM:

1. Mrs. IVY CHARLES D'CRUZ,
   Hon'ble Member (Judicial).

2. Mr. RAVI NANDKEOLYAR,
   Hon'ble Member (Technical).

BETWEEN

E. Venu S/o. E. Ramanna,
Aged about 34 Years,
R/at No.4-502, Vidyaranyanagar,
Papampet, Ananthapur,
Andhrapradesh-515 004. :: Applicant

Versus

The Union of India owning
South Western Railway,
HUBLI. :: Respondent

Application under S.16 of Railway Claims Tribunal Act, 1987 read with Section 123(c) (2) and 124-A & 125 of Railways Act, 1989.

Claim for Rs.2,00,000/-

Present: Mr. E. Venu (Injured Applicant), Party in person**.**
Mr. Satish. B, for Respondent.

JUDGMENT

Mrs. IVY CHARLES D'CRUZ,
Member (Judicial).

1. Mr. Venu. E, Unemployed in the present OA, seeks compensation amounting to Rs.2 lakhs from the date of filing of present OA (12.02.2020) with costs.

2. Facts in short which are necessary to notice for appreciating above aspects are that on 28.04.20218, applicant was to go back to his home at Ananthapur holding ticket UTS-94119240 boarded Train No.12975 – Ex-MYS-JP Express to travel from KSR Bengaluru to Ananthapur and while

attempting to board the said train at PF No.5, slipped and fell and sustained injuries. Immediately, SIPF/SBC Personnel summoned 108 Ambulance and he was shifted to Victoria Hospital, Bangalore for treatment. As per MLC of said hospital, he was provided treatment for Grade-III Compound Fracture both bones Right leg. Along with OA, applicant filed various documents viz. Certified copy of message issued by Station Manager/Commercial, Bengaluru dated 28.04.2018 to SHO, GRP, Bangalore (2) C.Mis., dated 28.04.2018 (3) Statement to the police dated 15.09.2019 (4) MLC Intimation (5) Discharge Summary (6) Prescription issued by Ananthapura Orthopedic Center dated 30.11.2018 (7) Another MLC No.284243 (8) Another Discharge Summary issued by S.V. Hospital dated 01.05.2018 and other identification documents. He also filed his affidavit dated 12.02.2020 and deposed on 26.05.2023.

3. In the above circumstances, the injured applicant contended that the he has sustained injuries in a Railway Untoward Incident and entitled for compensation of Rs.2,00,000- as prescribed in the Railway Accident and Untoward Incident (Compensation) Rules, 1990 as amended vide GSR No.1655(E) dt.22.12.2016 which came into force w.e.f. 01.01.2017, be awarded. It was, however, contended that because of above incident and accident, his life has been affected.

4. By filing reply, respondent denied the averments made in OA and emphasized that he suffered such injuries when he tried to detrain from moving train. He should have been aware about risks involved in detraining from moving train, which amounts to self-inflicted injury. He did not wait until the train got stopped and therefore, railway is absolved of its liability under Section 124-A of Railways Act 1989.

5. By filing DRM report which contained various documents, aforesaid aspects were reiterated emphasizing that the injured applicant in his statement to SI/RPF stated that while the train No.12975 was arriving on platform No.5 of Bangalore station and rolling in slowly, he tried to board the train. This proves that he has attempted to board a train while it was moving and as a result suffered the injury. This is an act of negligence and carelessness on his part. By his act, he has endangered his personal safety for which Railway administration cannot be held responsible. The rash and negligent act of trying to board train in such a fashion is negligence. In the

above background, it was emphasized that applicant is not entitled to compensation, as prayed for.

6. Based on pleadings raised by the parties, issues were framed vide order dated 28.06.2022, which read as follows:

1. Whether the injured applicant was a bona fide passenger?
2. Whether the injury sustained by the applicant was in an untoward incident as defined under Railways Act?
3. Whether the applicant is entitled for any compensation? Relief and costs?

7. We have heard both sides at length, perused documents and other material placed on record and also given our thoughtful consideration to entire aspects of the case. At the outset, it may be noticed that the injured applicant has candidly admitted that the injuries suffered, as noticed in accident register, as well as discharge summary, are scheduled injuries under aforementioned rules of 1990, as amended in 2016. Further, journey ticket dated 28.04.2018 has also not been questioned by respondent. Rather the genuineness of same has been admitted. Thus, there is no contest to issue No.1 and accordingly we hold that applicant was a bonafide passenger. It is also not in dispute that as per statement of Shri P. Shekar, Head Constable, RPF who was deputed to platform duty of Mysore side end. In his statement, he has stated that during his duty hours at about 12.45 hrs., one passenger tried to board the running train and fell down between train and platform and his right leg was got struck. The same has been highlighted in the DRM's Report. Thus there is no challenge made to the effect that applicant boarding the train. Thus, it is not in dispute that applicant had travelled and slipped when he was trying to board the moving train.

8. In the judgment in the case of Union of India Versus Rina Devi, Civil Appeal No. 4945/2018 (Special Leave Petition (Civil) No.10223 @D.No.6059 of 2018), Hon'ble Supreme Court of India has settled the issue of death and injury in the course of boarding and deboarding a train and untoward incident under Section 123(c) read with Section 124-A of Railways Act, 1989. The relevant para of the judgement is reproduced below:-

> *8. "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 34 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.

9. Bare perusal of above deposition would also reveal that Initially, he was inpatient at Victoria Hospital for three days and right leg shin was fractured and got operated and a steel rod was inserted thereon. Thereafter, he was under treatment at S.V. Hospital, Ananthapur for nearly one week as inpatient and thereafter he was taking treatment at Ananthapur Orthopedic, wherein surgery was performed in the said hospital. Thus, we are of opinion that applicant sustained injuries on 28.04.2018 when he was trying to board the moving train at KSR Bengaluru Railway Station, accidentally fell down and sustained injuries, which amounted to untoward incident as defined under Section 123 (c)(2) of the Railways Act 1989. Only dispute remains as to quantum of compensation, he is entitled to. He was treated conservatively at various hospital for the injuries sustained to his Right leg.

10. In the given circumstance, even if it is presumed and assumed that there had been some negligence on his part while trying to board the moving train, that will not make any difference as the injuries suffered by him are not self-inflicted injuries and there has been no oral deposition made by producing any witness by respondent.

11. We have given our thoughtful consideration to the above aspects and note that in deposition made by applicant, he specifically stated that he sustained injuries to Right Leg. On examining from the above angle and the deposition made by applicant, it is quite clear that injuries suffered in the right leg falls under Sl.No.33 of Part-III to Schedule of Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 i.e., Fracture of Major Bone Femur Tibia of one limb, for which compensation prescribed is Rs. 80,000/-

. In the given circumstance, we are of the view that a compensation of Rs.80,000/- would meet the ends of justice for scheduled injury.

O R D E R

1. The claim application is **'ALLOWED'** to the extent of payment of Rs.80,000/- (Rupees Eighty Thousand Only) plus interest @ 7% per annum from the date of registration 12.02.2020 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 @ 7% 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. Note relevant.

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 compensation amount awarded, 10% of the same shall be released forthwith by ECS/NEFT transfer to his savings bank account by Additional Registrar, Bengaluru Bench, Bengaluru upon deposit of amount by the Respondent upon issuance of appropriate orders to this effect. And, 90% of the awarded amount together with accrued interest, if any, shall be invested in a Fixed Term Deposit for a period of three years is to be invested in his name in a nationalized bank, near to the place of his of residence. Bank authorities are at liberty to release the Fixed Terms Deposit of the injured claimant after its maturity without making any reference to this Tribunal.

4. Thereafter, Additional Registrar, Railway Claims Tribunal, Bengaluru Bench, Bengaluru will verify the details of the bank account of the injured applicant before making payment. Further to that the bank should also be directed not to allow any loan, advance, withdrawal or pre-mature discharge on the Fixed Terms Deposit s without permission of the Tribunal.

1. The Fixed Deposit shall be governed by directions of G.S.R. 347(E) dated 03.06.2020 issued by Ministry of Railway. This should be strictly implemented by the parties concerned. For better appreciation of the Scheme, GSR may be referred.

2. If the Claims are entitled to exemption on deduction of TDS, he shall submit Form 15-G or 15-H (as the case may be) to the Presenting Officer of Respondent Railways so that no TDS is deducted.

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

6. 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.

7. With these observation, the application is **'ALLOWED'** and disposed off accordingly. File be consigned to Record Room after compliance.

(IVY CHARLES D'CRUZ)
(MEMBER (JUDICIAL)

(RAVI NANDKEOLYAR)
(MEMBER (TECHNICAL)

Judgment pronounced on 19th December, 2023.

(IVY CHARLES D'CRUZ)
(MEMBER (JUDICIAL)

(RAVI NANDKEOLYAR)
(MEMBER (TECHNICAL)

L. SURESH, PS Gr-II, RCT/BNC