

BEFORE THE RAILWAY CLAIMS TRIBUNAL

(BENGALURU BENCH AT BENGALURU)

CLAIM APPLICATION No.OA (II U)/SBC/0017/2021

DATED THIS THE TUESDAY THE 14th DAY OF MAY, 2024

CORAM:

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

BETWEEN

Chandrakanth R. Dasar, :: Applicant
S/o. Ramlu
Age:32 Years, Occ: Painting Work,
2-608/5A, Sedam Road,
Near Mailarlinga Temple,
Jagat, GULBARGA-585 105.

AND

Union of India through
The General Manager,
Central Railways,
MUMBAI CST. :: Respondent

Date of Registration: 22.03.2021

Arguments Heard and Reserved on: 01.05.2024

VALUE OF CLAIM Rs.10,00,000/=

Ld, Counsel appeared:

Mr. Ravi R. Saraf, Counsel for Applicant.

Mr. H.K. Amarnatha, Counsel for Respondent.

J U D G M E N T

RAVI NANDKEOLYAR,
Member (Technical).

1. Basic Details relating to accident as contained in the Application:-
 - a. Name of the Injured applicant : Shri Chandrakanth R. Dasar,
S/o. Ramlu
 - b. Date of Incident : 04.12.2018
 - c. Age & Occupation : 32 Years, Painter

- d. Train involved and transit details: Train No.11013 – Kurla-Coimbatore – Kurla Express. While travelling from Gulbarga to Shahabad fell down at Shahabad Railway Station.
 - e. Untoward incident narrated: The case of the Injured applicant is that he is the resident of Near Mailarlinga Temple of Gulbarga District and Painter by profession. On the fateful day i.e., 04.12.2018 at 8.00 in the morning, he went to Gulbarga Railway Station, purchased a second class Railway Journey ticket for his journey between Gulbarga and Shahabad and boarded the general compartment of Train No.11013 – Kurla-Coimbatore Kurla Express. When the said train was rolling into the platform of Shahabad Railway Station, due to thrust of passenger, the injured applicant stumbled, fell down and the wheels of the train ran over his both legs and crushed below knee. Railway Police have arranged for 108 ambulance and shifted the injured to Government Hospital at Kalaburagi, where he had undergone bilateral amputation of both legs below knee for crush injuries. Applicant contended that the incident had occurred while the injured was travelling with an aid of second class Railway journey ticket and he handed over the bloodstained ticket to the railway police due to the injuries sustained in a Railway Untoward Incident.
 - f. Jurisdiction: Originating station being Kalaburagi, Central Railway is the proper and necessary Respondent and has territorial jurisdiction.
2. Salient features of reply:
- a. Averments in reply:

General denial of all recitals in the application and putting the applicants to strict proof of the averments contained in the application.
 - b. Crux of DRM Report: Thus from the above inquiry based on the investigation papers of RPF/WD and GRP/WD, the facts came to the light that on 04.12.2018 injured person was found lying at platform No.2 at Shahabad Wadi Station. No ticket or pass was found in the possession of injured person. When train came at Shahabad Railway Station he was trying to get down from the running train and slipped his hand and he lost his balance and fell into the space between train and platform. Due to this reasons his both legs separated from the body as per statement of injured person. The injured person has been

negligent towards his own safety. The injured person himself responsible for the said incident. The Railway Administration always announces to the passengers by the proclamation that standing/sitting on a moving train/footboard is deadly and dangerous. Hence, it is not evidence that he has injured due to any untoward incident.

3. Issue-wise Reasoning for the judgment:

Based on the pleadings of the parties, following issues were framed on 29.06.2021:-

1. Whether the injured applicant was a bonafide passenger?
2. Whether the injuries sustained by the injured applicant was due to an untoward incident as is defined under the provisions of Section 123© of Railways Act, 1989? Whether the applicants are dependents of the deceased?
3. Whether the injured applicant is entitled for any relief and interest as prayed for in the application?

4. Evidence

a. Applicant's Evidence: The injured applicant, Shri Chandrakanth R. Dasar S/o. Ramlu (AW-1/1) filed his affidavit dated 21.10.2021 and deposed before this Tribunal on the even date. Documents have been marked as Exhibits A-1 to A-11.

In order to substantiate his case, the injured applicant has produced certified copies of police, hospital and identification documents viz., (1) Certified copy of memo issued by Station Manager, Shahabad to GRP and RPF, Shahabad (2) C.Mis., No.020 OF 2018 (3) Intimation form Kamareddy Ortho/Thromo card hospital (4) Report of RHC-23 to Kamareddy Hospital, Kalaburagi dated 04.12.2018 (5) Two blank tickets (6) Wound Certificate (7) Discharge Card issued by Kamareddy Hospital (8) Statement of injured applicant and wife of the injured applicant to the police (9) Aadhaar Card and first page of savings bank account of injured applicant issued by Allahabad Bank.

b. Respondent's Evidence:

Respondent Railways did not examine any oral witness. However, they have produced Statutory DRM's Investigation Report, which is marked as Exhibit R-1 by consent.

c. Court Witness

On issuance of summons, Shri Veerabhadra. S.H S/o. Shivappa, Police Sub-Inspector, Raichur has appeared and examined as CW-1. Exhibits C-1 was marked through him. CW-1 was cross-examined. CW-1 evidence was closed.

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

ISSUE No.1

5.1 The case of the Injured applicant is that he is the resident of Near Mailarlinga Temple of Gulbarga District and Painter by profession. On the fateful day i.e., 04.12.2018 at 8.00 in the morning, he went to Gulbarga Railway Station, purchased a second class Railway Journey ticket for his travel between Gulbarga and Shahabad and boarded the general compartment of Train No.11013 – Kurla-Coimbatore Kurla Express. When the said train was rolling into the platform of Shahabad Railway Station, due to thrust of passenger, the injured applicant stumbled, fell down and the wheels of the train ran over his both legs and crushed below knee. The Railway Police have arranged for 108 ambulance and shifted the injured to Government Hospital at Kalaburagi, where he had undergone bilateral amputation of both legs below knee for crush injuries. Applicant contended that the incident had occurred while the injured was travelling with an aid of second class journey ticket and the handed over the bloodstained ticket to the railway police due to the injuries sustained in a Railway Untoward Incident.

To prove the bonafide, injured applicant has filed Exhibit A-5 certified copies of two blank tickets. Shri Chandrakanth R.Dasar S/o. Ramlu, the injured applicant filed his evidence-in-chief by way of affidavit dated 21.10.2021, wherein at Para-1, he has stated that the railway police have enquired with him in regard to the incident and he has explained to them about the incident and handed over the bloodstained railway journey ticket, which was in his possession to the police. The injured applicant stepped into witness box on 21.10.2021 and deposed he was at Gulbarga station at 8.00 in the morning and purchased the ticket at 8.00 in the morning to travel from Gulbarga to Shahabad. He has also deposed that he purchased the ticket at 8.00 in the morning at Gulbarga Railway Station. Further, he deposed that he had handed over the original ticket to the police in the

hospital. From the above, it is very clear his evidence could not be shaken up by any means. At this juncture, it is relevant to cite here that on issuance of summons, Shri Veerabhadra. S.H S/o. Shivappa, Police Sub-Inspector, Raichur has appeared and examined as CW-1. CW-1 was cross-examined at length. During cross-examination, CW-1 has deposed that on the very same day of the incident, injured statement was taken at hospital. In the Station Diary, Shri Sharana Gowda, Head Constable had made necessary entry with regard to recovery of journey ticket from the injured person in the hospital and the said ticket was not readable and illegible. As it was blood stained.

5.2 Ld., Counsel for the Applicant submitted that the Applicant has filed the certified copies two blank ticket and back on the strength of which the deceased was travelling and filed affidavit in support of the same. The burden then shifts on to the Respondent to establish that the injured applicant was not a bonafide passenger, but no such evidence is forthcoming on behalf of the Respondent.

5.3 Ld. Counsel for the Applicant has submitted that Applicant through Affidavit of Shri Chandrakanth R. Dasar, Injured applicant dated 21.10.2021 has discharged burden cast on him in this regard. With the examination of AW-1 and CW-1 coupled with copies of tickets produced by the applicant and other evidence available on record the initial onus lying on the applicant to show that the injured was a passenger stands discharged. There is no contra evidence from the respondent's side to show that the deceased was not a bonafide passenger. In these circumstances, it is held that the injured was a bonafide passenger from Kalaburagi to Shahabad on the alleged date of incident i.e., 04.12.2018. Hence, Issue No.1 is decided accordingly in favour of the Injured Applicant.

ISSUE No.2

6. So far as the factum of untoward incident is concerned, applicant has produced police documents and medical records. The injured applicant has submitted his proof affidavit dated 21.10.2021 in lieu of examination. Exhibit A-2 is the C.Mis., No.20/2018 registered after the incident on the same day at 11.00 am in the morning Railway Police/Wadi(J). Exhibit A-3 is the police intimation submitted by Medical Officer, Kamareaddy,, Ortho and Trauma care hospital, Kalaburagi to Sub-Inspector of Police, Railway

Police Station, Wadi. It states that one Shri Chandrakant S/o. Ramlu, Aged 28 Years, R/o. Mailarling Temple, Gulbarga has got admitted on 04.12.2018 at 12.00 PM. Exhibit A-8 is the Statement of the injured applicant given to the police wherein he has narrated the incident stating that when the train was entering into platform of Shahabad Railway Station for halt, he came near the doorways of the compartment to alight from the train, but due to heavy rush and thrust of passengers, he stumbled and fell down from moving train and came under its wheels resulting in both his legs getting cut. The Wound Certificate issued by Kamareddy, Ortho & trauma care hospital, Gulbarga dated 17.01.2020, which is marked as Exhibit A-6 reveals that he was admitted on 04.12.2018 and got discharged on 08.01.2019. Injuries noted therein are: 'Below knee amputation. Cause of injuries drawn are that the patient fell from train.

6.1 Per contra, Respondent Railways have strongly opposed the evidence led by the applicants. It would be expedient to note that the concluding para of the DRM's Investigation Report submitted by Investigating Officer, under Rule-7(2) of the Railway Passenger (Manner of Investigation of Untoward Incidents) Rules, 2003 as amended in 2007 on 28.04.2021, wherein the respondent Railways have come to the following conclusion -

"Thus from the above inquiry based on the investigation papers of RPF/WD and GRP/WD, the facts came to the light that on 04.12.2018 injured person was found lying at platform No.2 at Shahabad Wadi Station. No ticket or pass was found in the possession of injured person. When train came at Shahabad Railway Station he was trying to get down from the running train and slipped his hand and he lost his balance and fell into the space between train and platform. Due to this reasons his both legs separated from the body as per statement of injured person. The injured person has been negligent towards his own safety. The injured person himself responsible for the said incident. The Railway Administration always announces to the passengers by the proclamation that standing/sitting on a moving train/footboard is deadly and dangerous. Hence, it is not evidence that he has injured due to any untoward incident."

6.2 Even if it is presumed for sake of arguments that injured applicant had been negligent and careless while deboarding, the same would not make any material difference. Law on this aspect is well settled by Hon'ble Supreme Court in Union of India Vs Prabhakaran Vijayakumar and Others {(2008) 4 MLJ 323 (SC)} wherein it has been held that liability of the Railways is strict and it is irrelevant who was at fault. Similarly, in Jameela & others v. Union of India, AIR 2010 SC 3705}, Hon'ble Supreme Court had laid down that even if it were to be assumed that a passenger fell down from the train due to his own negligence, it will not have any effect on the compensation payable under

Section 124 (A) of Railways, Act 1989. Ratio of said judgments is squarely applicable in the present case.

6.3 Further, Hon'ble Supreme Court of India in the judgment of Civil Appeal No.4945 of 2018 in case of Union of India Versus Rina Devi case has decided that the death or injury **in the course of boarding or disembarking a train will be an "Untoward Incident" entitling a victim to the compensation** and will not fall under the proviso to Section 124-A merely on the plea of negligence of the victim as a contributory negligence.

In view of above, Issue No.2 is decided in affirmative, in favour of Injured applicant.

ISSUE No.3

7. Once Issue No.1 and 2 are decided in the affirmative, applicant would be entitled to compensation as prescribed under the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. Testimony of the injured applicant coupled with medical evidence, clearly indicates that the injuries sustained by the applicant are amputation of both legs below knee.

7.1 A thoughtful consideration to the above aspect convinces us that any relief allowed to the applicant (injured applicant) in this case shall be of great help in alleviation of the distress undergone by him as a result of the injuries sustained in the untoward incident.

7.2 We hold that he is entitled to the statutory compensation prescribed under Part-II(3) of Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 which prescribes Rs. 8,00,000/- (Rupees Eight lakhs only) with interest for double amputation. Thus, Issue No. 3 is answered in favour of the injured applicant.

O R D E R

1. The claim application is '**ALLOWED**' to the extent of payment of Rs.8,00,000/- (Rupees Eight Lakhs Only) with interest @ 6% p.a., from the

date of registration i.e., 22.03.2021, till the date of award to the injured applicant 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 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.*

3. In pursuance of Rule 5 quoted above, in the present case, the amount of award along with interest shall be disbursed, relying upon the judgment rendered by the Delhi High Court in the case of Geeta Devi (supra) and 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:-

4. Out of the total compensation awarded, 10% of the share of compensation amount along with its proportionate interest 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. However, taking the young age of injured applicant into consideration and he has a long life ahead, rest of the compensation awarded together with accrued interest, if any, shall be invested in a Fixed Term Deposit for a period of seven years in his name in a nationalized bank, near to the place of his residence with monthly payment of accrued interest to them.

5. Additional Registrar, Bengaluru Bench, Bengaluru upon deposit of total compensation amount of Rs.8,00,000/- plus pro rata interest, by the Respondent, 10% of the same shall be released forthwith by ECS/NEFT transfer to the bank account of the claimant given by him, which is indicated hereinbelow:-

Name of the applicant (Mr.)	Name and Branch	Account No.	IFSC
Chandrakanth R. Dasar	Allahabad Bank, Gulbarga (2885)	50489797357	ALLA0212885

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

7. 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.

8. 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 Tuesday, the 14th Day of May, 2024.

(RAVI NANDKEOLYAR)
MEMBER (TECHNICAL)

(IVY CHARLES D’CRUZ)
MEMBER (JUDICIAL)

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