

BEFORE THE RALWAY CLAIMS TRIBUNAL
(BENGALURU BENCH AT BENGALURU)
CLAIM APPLICATION No.OA (II U)/SBC/0019/2022

DATED THIS THE 12Th DAY OF OCTOBER, 2023

CORAM:

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

BETWEEN

1. K.A. Hameed S/o.Aboo, :: Applicants
Aged about 65 Years.
2. M. Rabiya W/o. K.A. Hameed
Aged about 51 Years.

Both are R/at Arji Village,
Kallubane Post,
Virajpet Taluk,
Kodagu District.

AND

Union of India through
The General Manager,
South Western Railway,
HUBLI. :: Respondent

Value of Claim Rs.24,64,000/-

Date of Filing and Registration : 13.05.2022

Heard and Reserved on : 03.10.2023

Ld., Counsel Present:

For the Applicants : Smt. B.S.Roopa @ Smt. Indra S.Bharathi
For the Respondent : Shri Prakash Rao. K

J U D G M E N T

RAVI NANDLEOLYAR,
Member (Technical).

Basic details relating to accident as contained in the application:-

a) **Date of accident:** 02.02.2022.

- b) **Name of the deceased:** Shri Mohammed Rafi. K.H
S/o. K.A. Hameed.
- c) **Relationship of the claimants with the deceased:** Father and Mother of the deceased. Deceased was aged about 28 Years and 'Unmarried'
- d) **Train involved and transit details:** Train No.12614 –Tippu Express.
- e) **Untoward incident narrated:** It is alleged in the claim application of the applicants that Shri Mohammed Rafi (hereinafter called and referred to as 'deceased' for brevity) while travelling as a bonafide passenger holding a valid second class journey ticket bearing No.UMG-69756523, from KSR Bengaluru to Mysuru Junction by Train No.12614 – Tippu Express. During the course of journey, on 02.02.2022 at about 16.47 hrs., when the said train arrived Mandya Railway Station, the deceased had alighted from the train to purchase water bottle and thereafter while re-boarding, he slipped, lost the balance and accidentally fell down from the moving train, sustained fatal injuries and died at Columbia Asia Hospital, Mysuru.

2. Shri Thagadaiah. K.T, Station Manager, Mandya, immediately, hired an autorickshaw and shifted the injured person to Government Hospital, Mandya. The said Station Manager, Mandya, issued Memo dated 02.02.2022 at 17.00 hrs., stating that Train No.2614 –Tippu Express arrived Mandya on Road No.2 at 16.47 hrs., and left at 16.48 hrs. Immediately, the train had a halt due to ICC pulled in Coach No.06617 and 1443171. Later noticed that one male person aged about 25 to 30 years found run over, fallen down near PF No.2 FoB and found in an injured condition to his right leg; he was shifted to Government Hospital, Mandya. Thereafter, he was shifted to Columbia Asia Hospital, Mysuru. The on duty Doctor, Columbia Asia Hospital issued a Medico Legal Case Intimation to Sub-Inspector of Police, GRP, Mysuru. However, he did not respond to the treatment and declared dead on 02.02.2022 at 22.45 hrs., Based on which, FIR No.0008 OF 2022 was registered by Shri Sharanabasavaraj Biradar, Police Sub-Inspector, Mysuru Railway PS was registered under Section 174 of Cr.PC (**Exh A-1**), Inspect Report (**Exh A-4**) was commended at 23.45 hrs., on 02.02.2022 and concluded at 1.45 AM on 03.02.2022, which in specific noticed at more than one place about the details of above rail ticket, and various injuries suffered by the deceased. Post-mortem

Examination (**Exh A-6**) was also held on 03.02.2022 and cause of death was opined as “Multiple injuries sustained”. Copy of the ticket was produced along with OA as **Exh A-5**.

3. Applicant No.1, Shri K.A. Hameed, Father of the deceased filed his affidavit dated 27.01.2023 and prayed that sixteen documents annexed to the OA be exhibited as A-1 to A-16. He was examined and cross-examined on 26.05.2023. Family Living Members Certificate issued by Deputy Tahsildar, Virajpet, Aadhaar Cards of both the applicants and death certificate of the deceased were marked as (Exh A-9 to A-11 and A-23) respectively. He also prayed that the averments made in the affidavit be read as his deposition.

4. In the reply filed, respondent has denied the averments made in the OA. It was stated that the incident in question did not fall within the ambit of Section 124-A of Railways Act, 1989. The deceased tried to board moving train at Mandya Railway Station with water bottle, without caring to frequent announcements made at the Railway Station. It was further disputed that the deceased while trying to board the train in running condition met with an accident. By filing DRM's Report, it was concluded that –

“From the above enquiries, it has come to light that the injured person by name Mohammed Rafi, Aged 25 years is a bonafide passenger having a general ticket No.UMG-69756523 Ex-SBC-MYA dated 02.02.2022. As per the statement of Sri Prathap, Friend of the deceased, the injured tried to board the moving train, lost balance, fell down and got injured. Though the said train had a scheduled halt for one minute at Mandya Railway Station. Thus, the injured person attempted to board the moving train with water bottle without caring frequent announcement made by Railway Administration, thereby he had taken dangerous steps by boarding the moving train and hence the incident was taken place purely due to the carelessness of the victim.

(emphasis supplied)

In the above backdrop, it was contended by Respondent of South Western Railway that applicants are not eligible for compensation, as prayed for.

5. Along with Statutory DRM's Report, Respondent Railways enclosed Form – 1 – Report of Untoward Incident containing Brief particulars of Untoward Incident, copies of journey ticket, FIR, Police Inquest Report, Post-mortem Certificate, Police Final Report submitted by police. Bare

perusal of DRM's Report would reveal that deceased being a bonafide passenger, his travel by Train No.12614 –Tippu Express as well as his fall from the running train at Platform No.2 of Mandya Railway Station are not in dispute, rather such facts stand clearly admitted by Respondent. These facts, in our considered opinion, clinch the entire issue raised in the present OA.

6. Based on the pleadings of the parties, following issues were framed on 26.09.2022, to the following effect:-

- 1. Whether the deceased was a bonafide passenger?**
- 2. Whether there was any untoward incident as is defined under the provisions of Section 123©(2) of Railway 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?**

7. We have heard both sides at length, perused the pleadings and other material placed on record very carefully.

8. At the outset, we may note that applicant who has deposed as AW-1 on 26.05.2023 has specifically stated that the deceased was his son and came to Bangalore on official work and was returning back to Mysuru. The deceased was travelling along with two others by purchasing individual tickets. In the DRM's Report, the genuineness of the journey ticket has not been disputed. As such, Issue No.1 remains uncontested. In these circumstances, said Issue No.1 is decided in affirmative, in favour of the applicants. As far as Issue No.2 is concerned, the report of 'Untoward Incident' signed by Post Commander, RPF, Mandya, it is mentioned at Sl.No.5 that one person got injured as his right leg was run over while boarding the moving train No.12614 – Tippu Express. As stated supra, Station Manager, Mandya, issued Memo dated 02.02.2022 at 17.00 hrs., stating that Train No.12614 – Tippu Express arrived Mandya on Road No.2 at 16.47 hrs., and left at 16.48 hrs. Immediately, the train had a halt due to ICC Pulled in Coach No.06617 and 1443171. Later noticed that one male person aged about 25 to 30 years, fallen down near FoB of PF No.2 and was run over and sustained injuries to his right leg, he was shifted to Government Hospital, Mandya. Thereafter, he was shifted to Columbia Asia Hospital, Mysuru. The police and hospital documents were also detailed therein, which are akin to those which are suffered when someone falls from a running train.

9. Per contra, on critical analysis of the factual aspects as highlighted in the Statutory DRM's Investigation Report, it may be noticed that the genuineness of travel ticket as well as his fall, have not been disputed. However, Respondent contended that the deceased tried to board the running train, which amounts to self-inflicted injury and such act disentitled the applicants from claiming any compensation.

10. Even if it is presumed for sake of arguments that deceased had been negligent and careless while boarding, 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.

11. 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 deboarding 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 applicants.

ISSUE No.3

12. Applicant No.1, Shri K.A. Hameed S/o. Aboo (AW-1) in his affidavit dated 27.01.2023 (Exh AW-1/1) and in his deposition averred that the deceased was his son and he has submitted that Applicant No.2, Smt. M. Rabiya is the Mother of the deceased. In support of this, he has filed Family Living Members Certificate issued by Deputy Tahsildar, Virajpet, Aadhaar Cards of both the applicants and death certificate of the deceased

were marked as (Exh A-9 to A-11 and A-13) respectively. There being no contest from Counsel for Respondent on this issue and also no evidence to the contrary, it is held that the aforesaid Applicants, being the parents of the deceased, under Section 123(b) of the Railway Act, 1989, are the legal dependents of the deceased.

Issue No.3 is decided in favour of the Applicants.

ISSUE No.4

13. 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.

14. Hence, the present Claim Application is allowed, the Respondent are directed to pay a sum of Rs.8,00,000/- to the applicants as compensation for the death of the deceased in an untoward incident. Applicants are entitled for interest at the rate of 7% from the date of registration of present OA i.e., 13.05.2022 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 @ 7% per annum for subsequent delay.

ORDER

1. The claim application is '**ALLOWED**' to the extent of payment of Rs.8,00,000/- (Rupees Eight Lakh) plus interest @ 7% per annum from the date of filing and registration of the present OA i.e., 13.05.2022 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 subserve justice.*

5.2. *Not relevant and hence omitted.*

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, the Applicant No.1, Shri K.A. Hameed S/o. Aboo, Father of the deceased and Applicant No.2, Smt. M. Rabiya W/o.Shri K.A. Hameed, Mother of the deceased, shall receive a sum of Rs.4,00,000/- each (Rupees Four Lakhs only) each plus pro rata interest as the parents of the deceased.

4. 10% of the share of compensation amount of Applicant No.1, Shri K.A. Hameed S/o. Aboo, Father of the deceased and Applicant No.2, Smt. M. Rabiya W/o. Shri K.A. Hameed, Mother of the deceased, shall be released

forthwith by ECS/NEFT transfer to their savings bank accounts by Additional Registrar, Bengaluru Bench, Bengaluru upon deposit of amount by the Respondent upon issuance of appropriate orders to this effect. Rest of their share together with accrued interest, if any, shall be invested in a Fixed Term Deposit for a period of three years to be invested in their names in a nationalized bank, near to the place of their residence with monthly payment of accrued interest to them. 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

5. Additional Registrar, Railway Claims Tribunal, Bengaluru Bench, Bengaluru will verify the details of the bank accounts of all the awardees 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/she 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.

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 12th October, 2023.

(RAVI NANDKEOLYAR)
MEMBER (TECHNICAL)

(IVY CHARLES D’CRUZ)
MEMBER (JUDICIAL)