

BEFORE THE RAILWAY CLAIMS TRIBUNAL
(BENGALURU BENCH AT BENGALURU)
CLAIM APPLICATION No.OA (II U)/SBC/0027/2022

DATED THIS THE 26TH DAY OF SEPTEMBER, 2023

CORAM:

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

BETWEEN

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| 1) Smt. Ashwathamma. G.N
W/o. late Manjunatha. B.M,
Aged about 33 Years, Housewife. | :: Applicants |
| 2) Master B.M. Chandan,
S/o. late Manjunatha. B.M,
Aged about 6 Years, Student. | |
| 3) Kumari. Yogitha Yadav,
D/o. late Manjunatha. B.M,
Aged about 4 Years, Student. | |
| 4) Smt. Rathnamma W/o. B.V. Mallaiah,
Aged about 52 Years, Housewife. | |
| 5) Shri B.V. Mallaiah S/o. late Veeranna,
Aged about 63 Years, Retd., Govt. Servant. | |

All are R/o. Hanumanthapura Extension,
Near Govt., First Grade College,
1st Ward, Koratagere Town,
Tumkur District, Karnataka State-572 129.

AND

The Union of India owning South Western Railway rep. by its General Manager, <u>HUBLI.</u>	:: Respondent
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Application under S.16 of Railway Claims Tribunal Act, 1987 read with
Section 123(C) (2) and 124-A of Railways Act, 1989.

<u>Date of Filing & Registration</u>	: 14.06.2022
<u>Arguments heard on</u>	: 21.09.2023

Ld., Counsel appeared:

Mr. K.G. Shantharaja,	:: For Applicants
Mr. Prakash Rao. K	:: For Respondent

J U D G M E N T

Mr. RAVI NANDKEOLYAR,
Member (Technical).

1. This application is filed under Section 16 of RCT Act, 1987 read with Section 124-A of Indian Railways Act, 1989 seeking compensation of Rs. 8,00,000/- along with interest at the rate of 12% per annum from respondent railway for the death of Manjunatha. B.M S/o. Shri Mallaiah. B.V, who died in an alleged untoward incident that occurred on 03/04.03.2022. 1st Applicant is wife, 2nd Applicant is minor son, 3rd Applicant is minor daughter; whereas 4th and 5th Applicants are Mother and Father of the deceased respectively.

2. According to the applicants, the deceased who is resident of Koratagere Town of Tumkur District went to Bangalore in search of job, since he could not get any job, he had decided to go to Mangalore in search of job. Accordingly, he went to Yeshwantpur Railway Station, purchased a valid journey ticket for his travel between Yeshwantpur to Mangalore Railway Station. During the course of journey, due to heavy rush, he was forced to stand near the doorways of the compartment and that enroute between Hassan-Shanthigrama Railway Stations at RKM No.160/900-161/000, the deceased had an accidental fall from the train resulting in his death on the spot.

3. The respondent railway filed written statement disputing the claim and denying their liability to pay compensation and further contending that the death of the deceased occurred due to his own criminal act and he was not a bonafide passenger. Therefore, the respondent railway is not liable to pay compensation.

4. On the strength of the pleadings the following issues are settled.

1. Whether the deceased was a bonafide passenger?
2. Whether there was any untoward incident as is defined under the provisions of Section 123© read with Section 124(a) 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?

5. In support of the claim the applicant was examined Smt. Ashwathamma W/o. Manjunatha. B.M, Wife of the deceased as AW-1. Exh. A-1 to A-20 are marked on behalf of applicants.

6. Respondent examined Shri Mohan Kumar. C.D S/o. late Devaiah, Keyman, Hassan Railway Station as RW-1 document as Exh.R-2 is marked through him. Respondent Railway have conducted a detailed enquiry and filed Statutory DRM's Investigation Report, which is taken on record as Exh R-1 by consent.

7. Arguments of Mr. K.G. Shantharaja, Learned Counsel for the Applicants and Mr. Prakash Rao. K, Learned Counsel for the respondent are heard. Perused the records.

8. On considering the material available on record and the contentions of the learned counsel for both the parties the findings on the issues are recorded as follows:

9. We have heard both sides at length, perused the pleadings and other material placed on record. Issues No.1 and 2 being inter-linked are being taken up for consideration together for brevity. At the outset, it may be observed that genuineness of statement of wife, mother and father of the deceased to the police (**Exh A-6 to A-8**) as well as Family Living Members Certificate (**Exhibits A-10**) have not been disputed. Similarly, validity of rail ticket No.AOA-59798945 Ex-Yeswanthpur Junction to Mangalore Junction (**Exh. A-5**), based on which the deceased travelled from Yeswanthpur to Mangalore, which too has been reflected in various paras of Inquest and also other police documents has not been contested and disputed by the respondent. It may also be noticed that the Police Final Report, which is annexed to Statutory DRM's Investigation Report (Folio No.25) No.51/2022 dated 25.05.2022 submitted by the Police concluded that ".....it is affirmed that while the deceased travelling from Yeswanthpur to Mangalore Central, accidentally fell down from train, sustained severe injuries to his head and died on the spot. Thus, it is clear that it was an accidental falling from a running train. Thus, first two issues have not been contested by the respondent at all. Similarly we note that genuineness of FIR, Inquest Report, Post-mortem certificate, statement of wife, mother and father to police and Police Final Report have not been questioned by the respondent. Furthermore, it is not in dispute that Keyman who noticed the dead body

first of the deceased and informed this incident to Station Master/SIGA, who in turn conveyed the same to ASI, GRP/HAS, and became the basis of FIR have not been questioned in any manner. Inquest was drawn, in the presence of witness, which too noticed the details of journey ticket. Thus, it is clear that the deceased was a bona fide passenger, had fallen from running train which fall within the ambit of untoward incident, within the meaning of Section 123(c)(2) of the Railways Act, 1989. Mere plea raised that there was no eye witness to support that the deceased person travelled by train and fell down from the running train, and therefore the railway department is not at fault and hence not responsible for the incident is totally unjust, imaginary and based on hypothesis. It is not in dispute that the deceased's destination was Mangalore Central which was about 358 km from the originating station. Furthermore, the body of the deceased was found on the next day morning between Hassan and Shanthigramma Railway Stations at RKM No.161/000-160/900, which is 150 kms., which is basically half way of the ultimate destination of the deceased as per ticket recovered from his body. Merely because there was no eye witness to suggest that he travelled and had fallen down from the running train, after covering the sufficient long distance after he bought the said ticket have to be taken more than a reasonable journey to presume him as a bonafide passenger. To draw any other inference in the given circumstances would be totally unjust and uncalled for and therefore to draw an adverse inference would be doing injustice totally unsupportive of any evidence. We may observe at this stage that no oral evidence was adduced by the respondent to support the above theory.

10. Thus, only plea raised therein is that the cause of accident was due to **careless travelling of the victim on the doorways/footboard**. We may observe that apart from raising this plea no material has been placed on record to support this aspect. No oral evidence was adduced by the Railway. Therefore we are of the view that no material has been placed on record to support the plea raised in the DRM report. Law on this subject is well settled, as held by Hon'ble Supreme Court in **Union of India vs. Prabhakaran Vijaya Kumar and Others** {(2008) 4 MLJ 323 (SC)} wherein it has been stated 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 the Hon'ble Supreme Court has 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. As far as the plea regarding “self-inflicted injury” is concerned it has to be examined in the light of observations made by the Hon’ble High Court of Andhra Pradesh in II(2005) ACC 324 (**Union of India v. S.Yadagiri @ Yadaiah & another**), wherein the said term has been explained vide para 10, which reads as under:

“The expression ‘self-inflicted injury’ is not described or defined under the Act. However, it is not difficult to understand its scope. The infliction of the injury should be by the person himself upon his body and out of his own volition. It pre-supposes the state of mind wherein the person accused of it had conceived an idea of inflicting an injury to himself. This in turn presupposes the person being in a state of mind to take an independent decision. When these aspects are established in relation to a person while travelling in a train, the Railways cannot be held responsible to pay the compensation.”

(emphasis supplied)

Thus, there is no merit in the defence raised by the respondent. Therefore, issue No 1 and Issue No.2 are decided in affirmative and we hold that deceased suffered in untoward incident.

ISSUE No.3

11. As per OA, the applicants are wife, son (minor), daughter (minor), mother and father of the deceased (Manjunatha. B.M). In proof of their relationship and dependency with the deceased, the applicants have produced Exhibit A-10 – Deceased’s Family Living Members Certificate issued by Deputy Koratagere Taluk. Applicants have also produced (Exhibits A-11 to A-15 – copy of Aadhaar Cards of all the applicants. The record of investigation (Exhibit A-6 to A-8) by the police also shows that the applicants are dependents of the deceased. Under these circumstances, it is held that the applicants are dependents and legal heir of the deceased and they are entitled to receive compensation.

ISSUE No.4

12. 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.

13. 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 along with interest at

the rate of 7% from the date of registration of present OA i.e., 14.06.2022 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/Decreed’** to the extent of payment of Rs.8,00,000/- (Rupees Eight Lakh) plus interest @ 7% per annum from the date of filing of the present OA i.e., 14.06.2022 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. *If any of the Claimants is a minor or person of unsound mind, the Tribunal may give liberty to the guardian ad litem to use the interest accruals on the deposit that shall be made during the minority for maintenance.*

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 of Rs.8,00,000/- awarded, the Applicant No.1, Smt. Ashwathamma.G.N W/o. late Manjunatha. B.M, Wife of the deceased shall receive a share of compensation amount of Rs.3,00,000/- (Rupees Three Lakhs Only) plus pro rata interest, Applicant No.2, Master B.M. Chandan Yadav S/o. late Manjunatha. B.M, Minor Son of the deceased and Applicant No.3, Kumari Yogitha Yadav D/o. late Manjunatha. B.M, Minor Daughter of the deceased shall receive a share of Rs.2,00,000/- each (Rupees Two Lakhs Only) each, plus pro rata interest; whereas Applicant No.4, Smt. Rathnamma W/o. B.V. Mallaiah, Mother of the deceased and Applicant No.5, Shri B.V. Mallaiah S/o. late Veeranna, Father of the deceased shall receive a share of Rs.50,000/- each (Rupees Fifty Thousand Only) plus pro rata interest.

4. 10% of the share of compensation amount awarded in favour of Smt. Ashwathamma. G.N W/o. late Manjunatha. B.M, Wife of the deceased, Applicant No.4, Smt. Rathnamma W/o. B.V. Mallaiah, Mother of the deceased and Applicant No.5, Shri B.V. Mallaiah S/o. late Veeranna, Father of the deceased shall be released forthwith by ECS/NEFT transfer to their savings bank accounts. Rest of their share together with accrued interest, if any, shall be invested in a Fixed Term Deposit for a period of five years in favour of Applicant No.1 i.e., wife of the deceased and three years in favour of Applicant No.4 and 5 respectively i.e., parents of the deceased 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.

5. As far as the share of compensation amount of Rs.2,00,000/- each (Rupees Two Lakhs Only) plus pro rata interest payable to Applicant No.2, Master B.M. Chandan Yadav S/o. late Manjunatha. B.M, Minor Son of the deceased and Applicant No.3, Kumari Yogitha Yadav D/o. late Manjunatha. B.M, Minor Daughter of the deceased, the entire share of compensation amount along with its accrued interest shall be invested in a fixed term deposit in their names in a nationalized bank near to their place of residence till they attains '**majority**'. Thereafter, on their attainment of 'majority', the share of compensation amount awarded along with its accrued interest in their favour shall be released forthwith by ECS/NEFT transfer to their savings bank accounts. Further, Applicant No.1 is at liberty to withdraw the 'quarterly interest' accrued on the share of decreetal Fixed Term Deposit of Applicant No.2 and Applicant No.3 for their maintenance/educational purpose during their period of minor status.

6. Additional Registrar, Railway Claims Tribunal, Bengaluru Bench, Bengaluru will verify the details of the bank accounts of the awardees before making payment.

7. 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.

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

9. 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.

10. 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 26th September, 2023.

(RAVI NANDKEOLYAR)
MEMBER (TECHNICAL)

(IVY CHARLES D’CRUZ)
MEMBER (JUDICIAL)