

BEFORE THE RAILWAY CLAIMS TRIBUNAL

(BENGALURU BENCH AT BENGALURU)

CLAIM APPLICATION No.OA (II U)/SBC/0043/2020

DATED THIS MONDAY THE 4TH DAY OF MARCH, 2024

CORAM:

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

BETWEEN

Shri T. Kotesw S/o. Thippeswami
Aged about 25 Years,
R/o. Hirehalli Village,
Taluku Hobli, Challakere Taluk,
Chitradurga District. :: Applicant

AND

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

Ld, Counsel appeared:

Mr. M. Ramesh : Counsel for Applicant (Out of country)
Mr. Ananda Murthy. B : Counsel for Respondent.

Claim for Rs.8,00,000/-

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 (TECHNICAL).

Preamble: The Injured Applicant viz., T. Kotesw S/o. Thippeswami has filed the present Claim Application through his Counsel, Shri M. Ramesh. Subsequently, it is learnt from the Applicant that the Counsel on record was out of country in United States for a quite long time and has not turned up. Thereafter, the Applicant has neither engaged any other Counsel nor no

objection 'vakalathanamma' from the former Counsel has been filed as he is out of country. The Injured Applicant himself represented the case and led his evidence and was concluded on 04.08.2023. Keeping in view this being a welfare piece of legislature, this Tribunal has heard arguments from Respondent's Counsel and perused the materials such as OA, Oral and Documentary evidence led by both the parties and proceed with the case on merit.

1. This Injured applicant has presented this OA seeking grant of compensation of Rs.8 lakhs from the respondent for the injuries sustained by him in an alleged untoward incident, during the course of train journey on 01.08.2019.

2. Facts as stated in OA are that on 01.08.2019, the injured applicant along with his friend viz., Manju, went to Taluku Railway Station, purchased a combined second class journey ticket bearing No.89151289 dated 01.08.2019 for him and also for his friend to travel from Taluku Railway Station to Tumkur Railway Station by Train No.57452 -Guntakal-Chikkajajur Passenger Train and boarded the said train. When the said train was in operation between Taluku and Challakere Railway Stations, due to heavy rush and thrust of passengers, the Injured applicant, accidentally fell down from the moving train, sustained grievous head injury and amputation of left hand finger. Immediately, he was taken to Government Hospital, Taluku by 108 ambulance, where he was extended first-aid and shifted to Government Hospital, Chitradurga and Davanagere. On the advise of Doctors at Government Hospital, Davanagere, the injured was shifted to S.S. Institute of Medical Sciences and Research Center for higher treatment.

3. Applicant's Evidence: The Injured Applicant, Shri T. Kotesw S/o. Thippeswami (AW-1/1) filed his affidavit dated 20.12.2022 and deposed before this Tribunal on the even date. Exhibits A-1 to A-19 were marked through him. Similarly, Affidavit of Shri A. Manju @ Manjunath S/o. Malleshappa and examined as AW-2. Exhibit A-20 was marked through him. AW-2 was re-examined by Applicant's Counsel; while Affidavit of Shri Thippeswamy S/o. Nagappa (AW-3) filed. Exhibit A-21 was marked through him. AW-3 was re-examined by Applicant's Counsel. Evidence from Applicant's side was treated as closed on 04.08.2023.

4. In order to substantiate his case, the Applicants have filed Certified copies of Police and Medical documents viz., (1) C.Mis., dated 01.08.2019 (2) Acknowledgement of C.Mis., (3) MLC Intimation from District Hospital, Chitradurga (4) Copy of Report of Railway Head Constable-95 (5) MLC Intimation from S.S. Medical University and Research, District Hospital, Chitradurga dated 11.08.2019, Chigateri District Hospital dated 01.08.2019 (6) Statement of Shri Manju, Co-passenger and Father of the Injured Applicant (7) Letter from Police to Causality Officer, SS Hospital, Davangere dated 11.09.2019 and 20.09.2019 (8) Two Journey tickets (9) Medical Records viz., Discharge Summary issued by S.S. Institute of Medical Sciences and Research Center on 13.09.2019 and CT/MRI issued SS Institute of Medical Sciences and Research Center and Identification Documents viz., Aadhaar Card (2) Voter's Identity Card marked as Exhibit A-11 to A-18 respectively along with the affidavit.

5. The Injured Applicant Shri T. Kotesw S/o. Thippeswami (AW-1) filed his affidavit dated 20.12.2022 (Exh. AW 1/1) and in his deposition averred that -

“My name is T. Kotesw. I am a resident of No.130, Hirehalli village Taluk and Hobli, Challakere Taluk, Chitradurga Dist. I am not aware of the contents of my affidavit filed before this Court. I do not remember the date of incident. On the date of incident I was travelling by a train from Taluku to Birur. On the date of incident I have reached Taluku at about 11.10 A.M. I do not know by which train I was travelling on that date. On the date of incident we total 14 numbers of persons were travelling from Taluku to Birur. On the date of incident the train arrived at 11.20 A.M. I cannot say by which train I travelled. By birth I am an handicapped but I used to travel in train. In order to go to toilet when I came close to doorways I slipped and fell down from the train. I cannot remember at what time the incident took place. After the incident I was unconscious I do not remember who has taken me to hospital. In order to prove my train travel I have produced the train ticket. It is true that said ticket was issued on 01.08.2019 at 11.16 A.M. I do not remember for how many days I was in the hospital. I have not given any statement to the police but my younger brother has given his statement to the police. Now, I cannot do any work. One Mr.Manjunath had witnessed the incident and he is the eye witness to the incident. I will try to produce Mr.Manjunath before this Court. There was heavy crowd in the train. Now, I say that there was no one near the door but other people were standing behind due to jerk I fell. No other person other than me had fallen down during that incident. When I was returning from wash room due to push and pull of the passenger I fell down from the train.

It is incorrect to say that I have filed a false application and I was not travelling on the day of incident. It is incorrect to say that ticket produced by me are not my ticket.

Both the Counsel agreed that the injuries in this case will be decided based on the medical documents submitted by “SS Institute of Medical

Sciences and Research Centre” discharge dated : 13.09.2019 at the time of argument.

(emphasis supplied)

6. Applicant prays that through his affidavit and also the Affidavits of co-passengers has discharged the burden cast on him in this regard. However, Respondent could not produce any substantial evidence contrary to this and have failed to prove that the injured was a ticketless traveller at the time of the incidence.

7. By filing reply, the respondent denied all the averments made in the OA and averred that the claim does not fall within the ambit of Section 123© or Section 124-A of the Railway Act, 1989. Respondent also averred that it is not an untoward incident, the alleged injury is due to his own criminal act, but not connected with any train accident. The ticket number mentioned in Column No.7 of the OA clearly reveals that the ticket was issued at 11.16 hrs., on 01.08.2019 and whereas the only day running passenger train towards Chikkajajur/Tumkur from Taluku Railway Station is Train No.57452 Guntakal-Chikkajajur Passenger. As per the schedule the arrival and departure of the said train is 11.00 hrs., and 11.01 hrs., respectively and also as per the statement of Train Manager (working Guard) of Train No.57452 – Guntakal-Chikkajajur passenger train arrived at 11.10 and left at 11.11 hours after schedule stoppage, which clearly indicates that the journey ticket attached in this case purchased after the incident. This application is misconceived, false, frivolous and vexatious. Thus, it is not a case of falling down from a running train, but it was an act of applicant's carelessness and negligence for which the Railway is not liable to pay any compensation. Respondent denied that applicant (injured) was a bonafide passenger in the train in question.

8. Respondent's Evidence: Respondent did not adduce any oral evidence, but filed Statutory Divisional Railway Manager's Investigation Report, which is marked as Exhibit R-1.

9. **Issue-wise Reasoning for the judgment:**

From the pleading of both parties, the following issues are settled:-

1. Whether the applicant was a bonafide passenger as alleged?
2. Whether the injuries sustained by the applicant on 29.08.2015 was due to any untoward incident as defined under Section 123© of the Railways Act, 1989 as alleged?

3. Whether the applicant is entitled for the compensation as claimed and other relief if any.?

10. We have given our earnest consideration to the respective submissions made by the Ld., Counsel and gone through the documents made available on record. Having done so, we shall now proceed to consider the claim application on merit specifically within the ambit of the issues framed in this case.

11. Based on pleadings, the basic issues which needs to be considered and adjudicate are - Whether the applicant was a bonafide passenger as alleged? And Whether the injuries sustained by the applicant on 29.08.2015 was due to any untoward incident as defined under Section 123© of the Railways Act, 1989 as alleged?

12. The case of the applicant is that on 01.08.2019, the injured applicant along with his friend viz., Manju, went to Taluku Railway Station, purchased a combined second class journey ticket bearing No.89151289 dated 01.08.2019 for him and also for his friend to travel by Train No.57452 Passenger Train from Taluku Railway Station to Tumkur Railway Station and boarded the said train. When the said train was in operation between Taluku and Challakere Railway Station, Due to heavy rush and thrust of passenger, the Injured applicant, accidentally fell down from the moving train, sustained grievous head injury and amputation of left hand finger. Immediately, he was taken to Government Hospital, Taluku by 108 ambulance, where he was extended first-aid and thereafter shifted to Government Hospital, Chitradurga and Davanagere. On the advise of Doctors at Government Hospital, Davanagere, he was shifted to S.S. Institute of Medical Sciences and Research Center for higher treatment. During cross-examination, AW-1 the Injured Applicant has reiterated the same. During the course of proceedings, Applicant filed certified copies of Journey ticket bearing No.89151289 to travel from Taluku to Tumakuru for 02 adults issued on 01.08.2019 at 11.16 hrs.,

13. Per contract, Respondent Railways contended that the General Tickets bearing Nos., 89151287, 89151288 and 89151289 Ex-Taluku to Tumkur dated 01.08.2019 were issued at 11.16 hrs. However, as per the records, the impugned train arrived at Taluku Railway Station at 11.10 hrs., and left at

11.11 hrs., after scheduled halt for one minute, which clearly shows that the journey tickets, which were produced by the applicant were come into existence only after the alleged incident for unlawful gain. During the course of investigation, the Post Commandant, RPF, Davanagere has recorded the statement of on duty Station Superintendent, in the said statement, the Station Superintendent has categorically stated that the timing shown in the wall clock was wrong. Furthermore, Respondent Railways have neither produced Train Signal Register, Rough Journal maintained by the Station Master and Train Manager (Guard of the Train) respectively nor did not lead any contra evidence to prove that the tickets were came into existence only after the incident. At this juncture, it is pertinent to cite here that when the train had already arrived and left from the station, then as to why the officials who was manning the ticket counter has issued two tickets for the impugned train, when the train has already left from the Railway Station, raises serious doubt. ,In view of the above, the contention of the Respondent that the ticket, which was produced by the applicant is a planted one for purpose of this case does not hold any water. Furthermore, the affidavits and deposition of Injured Applicant, AW-2 and AW-3 and other documents substantiate that the Injured was a bonafide passenger on the day i.e., 01.08.2019. Under these circumstances, it is held that the injured applicant was a bonafide passenger on board of Train No.57452 – Guntakal-Chickkajajur Passenger Train from Taluku to Tumakuru on 01.08.2019.

14. So far as the Untoward Incident is concerned, in this case, the oral and documentary evidence led by Injured applicant clearly establishes that injured applicant while travelling from Taluku to Tumakuru by Train No. No.57452 – Guntakal-Chickkajajur Passenger Train with a valid journey ticket, when the said was in operation between Taluku and Challakere Railway Station, due to heavy rush and thrust of passenger, the Injured applicant, accidentally fell down from the moving train, sustained grievous head injury and amputation of left hand finger. Immediately, he was taken to Government Hospital, Taluku by 108 ambulance, where he was extended first-aid and thereafter shifted to Government Hospital, Chitradurga and Davanagere. On the advise of Doctors at Government Hospital, Davanagere, he was shifted to S.S. Institute of Medical Sciences and Research Center for higher treatment.

15. We have carefully perused materials placed on record, during the course of enquiry, the Asst. Sub-Inspector, RPF, Davanagere has recorded the statement of Shri Laxminarayna, On duty Guard of Train No. 57452 – Guntakal-Chikkajajur Passenger Train. In the said statement, he has stated that on 01.08.2019, while he was working as Guard of Train No.57452, Ex-Guntakal to Chikkajajur Passenger Train, when the said train while passing at RKM No.78/000-77/800 between Taluku and Chalakere, suddenly, the Alarm Chain was pulled and the train had a stop. He also stated that some passenger were running towards Taluku side. We have also perused the Police and Medical Reports, wherein, it is stated that, the applicant, while travelling in a train and fell down and got injured. We have also perused the statements of father recorded on dated 02.08.2019, 28.08.2019 and 12.09.2019 and friends (co-passengers) dated 02.08.2019 of the injured to Police, wherein they have stated that:

“On 01.08.2019 in the morning, the injured along with other were travelling by train from Taluku to Tumkur by Train . During the course of journey, the injured applicant went to toilet to attend natures’ call . Thereafter, the co-passengers heard from co-passengers that someone fell down from the train and they stopped the train by pulling the ACP. One of the co-passenger got down from the train and took the injured Kotesk to Taluku Government Hospital in a motorbike. ”.

16. Further, Respondent did not lead any evidence to prove that the act of the Applicant T. Kotesk, leading to his injuries was as a result of any of the followings, covered under the exceptional clauses under Section 124-A of Railways Act, 1989.

- 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.

17. It is a settled proposition that provisions of Section 124-A are based on the principle of strict liability or no fault liability and it is mandated that the Railway Administration is bound to pay the compensation regardless of any wrongful act, negligence or default on part of the Railway Administration. The Railways can escape the liability to pay the compensation only when the victim’s death or injuries are due to the reasons under the exception clauses (a) to (e) of Section 124-A of the Railways Act 1989.

18. Since travel and fall from the train of the injured (Applicant) was established and the Applicant has filed the Certified copies of Journey Tickets, on the strength of which the injured and his friends were travelling and also filed their affidavits in this regard to discharge the burden casted upon him. We conclude that the Applicant was a bonafide passenger of the train in question, at the time of the incident.

Issue No. 1 and Issue No.2 are decided accordingly in favour of the Applicant.

ISSUE No.3

19. The Applicant has filed the medical documents of District Hospital, Chitradurga, MLC Intimation issued by S.S. Medical University and Research, and Discharge Summary from S.S. Institute of Medical Sciences & Research Centre, where he was diagnosed with following injuries, while travelling in a train:

“L/E Head, Neck, Face Multiple lacerated wound near Parietal, Frontal and Temporal Region of left side. Sutured lacerated wound over left frontozygomatic region, 5CM. Periorbital swelling over right eye, abrasions over right submental region, sutured lacerated wound over left lumbar Region, “Spine – No External injuries, Upper limb – Multiple abrasions over Right Shoulder joint, sutured lacerated wound over left hand palmar surface – 8 cm. Lower limbs – Abrasion over left 5th Toe Nil.

20. Considering medical terminology in the discharge card and S.S. Institute of Medical Sciences & Research Centre classifying the injuries as per the Schedule of Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, as amended, the said injuries do not fall under Part II or III of the Schedule to Rule 3 of the aforesaid Rules as appended to in Railway Accidents and Untoward Incidents(Compensation) Rules, 1990 which deals with the above injuries and therefore it becomes unscheduled injury, which under Rule-3(3) prescribes a maximum compensation amounting Rs.1,60,000/-. The injuries as mentioned above sustained by the Applicant are non-schedule injuries. Looking in to victim's hospitalization, nature of injuries, pain and suffering, the victim had

undergone, we are inclined to grant a maximum compensation of Rs.1,60,000/- (Rupees One Lakh Sixty Thousand Only).

21. The applicant is, therefore, entitled for compensation of Rs.1,60,000/- (Rupees One Lakh Sixty Thousand only) with interest @ 6% p.a from 21.12.2020 i.e., from the date of registration of the claim application, In the given circumstance, we are of the view that a compensation of Rs.1,60,000/- would meet the ends of justice for scheduled injury.

ORDER

1. The claim application is '**ALLOWED**' to the extent of payment of Rs.1,60,000/- (Rupees One Lakh Sixty Thousand Only) with interest @ 6% p.a from 21.12.2020 i.e., from the date of registration of the claim application, 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 disbursement 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 the bank account of the claimant given by him. Rest of the amount, together with accrued interest, if any, shall be invested in a Fixed Term Deposit for a period of five years in his name in a nationalized bank, near to the place of his residence with monthly payment of accrued interest to him. Bank authorities are at liberty to release the Fixed Terms Deposit of the respective claimant after its maturity without making any reference to this Tribunal.

4. From the perusal of records, it is seen that the Injured Applicant has produced his savings bank account particulars. As per the rules in vogue, it is a pre-requisite condition that at the time of institution of the Claim Application, the applicant is required to produce the Bank Accounts Details along with its original for verification. However, in the instant case, the Injured applicant has failed to do so. Hence, applicant is hereby directed to produce Bank Account details along with its original before Additional Registrar, RCT, Bengaluru Bench within 30 days from the date of this Order. The amount of compensation awarded in his favour will be kept in abeyance till furnishing the copy of the first page of his Bank Account Pass Books containing the account detail.

5. Thereafter, Additional Registrar, Railway Claims Tribunal, Bengaluru Bench, Bengaluru will verify the details of the bank accounts of 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 Deposits without permission of the Tribunal.

6. 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.

7. If the Claimants 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. The Claimants are directed to produce the Passbook with the necessary endorsement as well as Aadhaar Cards and Pan Cards before the Additional Registry, RCT, Bengaluru Bench, Bengaluru. He shall take the following documents on record from the Claimants before releasing the awarded amount:

- (i) Details of the Bank Accounts of the Claimants near the place of their residence with necessary endorsement.
- (ii) Aadhaar Cards, PAN Cards or any other appropriate ID cards; and
- (iii) Two sets of photographs and specimen signature of the Claimant.

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

10. 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.

11. 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 4TH March, 2024.

(RAVI NANDKEOLYAR)
MEMBER (TECHNICAL)

(IVY CHARLES D’CRUZ)
MEMBER (JUDICIAL)