

BEFORE THE RAILWAY CLAIMS TRIBUNAL

(BENGALURU BENCH AT BENGALURU)

CLAIM APPLICATION No.OA (II U)/SBC/0063/2022

DATED THIS THE MONDAY THE 1ST DAY OF APRIL, 2024

CORAM:

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

BETWEEN

Sri Lokappa S/o. Chatrappa, :: Applicant
Aged about 28 Years,
Residing at No.3/371, C.R. Road, A.G. Colony.
Kyadigera,
Devadurga Taluk
Raichur-584 129.

AND

The Union of India owning :: Respondent
Represented by its General Manager,
South Central Railway,
Rail Nilayam,
SECUNDERABAD.

Ld, Counsel appeared:

Mr. G. Sharanabasappa, Counsel for Applicant.

Mr. B. Satish, Counsel for Respondent.

Date of Registration: 27.12.2022

Arguments Heard and Reserved on: 11.03.2024

Claim for Rs.8,00,000/- with interest at rate of 12% p.a.,

J U D G M E N T

RAVI NANDKEOLYAR,
MEMBER (TECHNICAL).

1. This original application is filed under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 124-A of Railways Act, 1989 seeking

compensation of Rs.8,00,000/- along with interest at the rate of 12% p.a., from the respondent railways for the injuries sustained by the applicant in an untoward incident that occurred on 08.05.2021.

2. The facts of the case of the Injured applicant are that he is the resident of Raichur and working as daily wager in Gopydada Enterprises and staying with his family at Pune. The Injured applicant with a view to see his parents at his native place Raichur, booked an e.Ticket bearing PNR No.863-7825394 for his journey from Pune to Raichur by Train 02163 – Madras Festival Special with confirmed ticket for seat No.43 in Coach D2. During the course of journey, when the train arrived Platform No.1 of Krishna Railway Station, the injured applicant deboarded from the train to drink water and thereafter while he was reboarding the train, the train started moving and due to jerk of the train, he accidentally fell down from moving train and both the legs were caught in between the wheels on the Railway track and suffered auto-amputation of Right leg below knee besides three toes cut of left leg and also fracture of left tibia and fibula. He stated that he was treated at RIMS, Raichur and Suraksha Hospital. The applicant further pleaded that on account of amputation of right leg and partial, loss of three toes and other injuries, which he suffered total and permanent disability. He also pleaded that he was a bonafide passenger, travelling with a valid reserved e.Ticket bearing PNR No.863-7825394 for his journey from Pune to Raichur by Train 02163 – Madras Festival Special with confirmed ticket for seat No.43 in Coach D2.

3. Respondent railway filed written statement disputing the claim and averred that the application is not maintainable either in law or on facts and same is liable to be dismissed. The respondent submitted that there is no cause of action for the applicants as claim does not fall within the ambit of Section 123©(2) and Section 124-A of Railways Act, 1989. There is no eye witness to the incident. The respondent emphatically denied that the deceased was a bona fide passenger and the deceased was not in possession of a valid journey ticket bearing PNR No.863-7825394 for his journey from Pune to Raichur by Train 02163 – Madras Festival Special with confirmed ticket. Therefore, they are not liable to pay compensation.

4. On the strength of the pleadings of both parties, following issues were framed on 20.04.2023:-

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?
3. Whether the injured applicant is entitled for any relief and interest as prayed for in the application?

5. In support of his claim, the applicant, Lokappa S/o. Chatrappa examined himself as AW-1 and Exhibits A-1 to A-9 are marked. Respondent did not adduce any oral evidence. However, they have produced Statutory DRM's Investigation Report, which is taken on record and marked Exh R-1 by consent. Arguments of both learned counsels for applicant and respondent are heard. On consideration of all the materials available on record and contentions of the learned counsels of both parties, the findings on the issues are recorded as below:-

ISSUE No.1

6. According to the applicant with a view to see his parents at his native place Raichur, he booked a e.Ticket bearing PNR No.863-7825394 for his journey from Pune to Raichur by Train 02163 – Madras Festival Special with confirmed ticket for seat No.43 in Coach D2. During the course of journey, when the train arrived Platform No.1 of Krishna Railway Station, he deboarded from the train to drink water and thereafter while reboarding the train, the train started moving and due to jerk of the train, he accidentally fell down from moving train and both the legs were caught in between the wheels on the Railway track and suffered auto-amputation of Right leg below knee besides three toes cut of left leg and also fracture of left tibia and fibula. At the outset, it may be noticed that the Injured applicant has placed on record photostat copy of e.Ticket, wherein against the passenger information, complete details of the ticket were mentioned in the said documents. Other documents pertaining to police investigation confirms that at the time of incident, the injured applicants was travelling with a valid journey ticket. The testimony of AW-1, the injured applicant coupled with the above documents would establish that the applicant was a bonafide passenger travelling with a valid e.Ticket at the time of the incident. The Respondent have not adduced any oral or documentary evidence to disprove the same.

In the circumstances, it is held that the applicant was a **bonafide passenger** in the train on the relevant day. The issue is answered accordingly in favour of the applicant.

ISSUE No.2

7. According to the applicant, on that day while he was re-boarding the train No.02163 – Madras Festival Special at 8.30 am, he accidentally fell down from the moving train and he was caught under the wheels of the moving train and suffered auto-amputation of Right leg below knee besides three toes cut of left leg and also fracture of left tibia and fibula. Exhibit A-2 is the memo issued by Deputy Station Superintendent, Krishna issued all concerned message shortly after the incident stating that on 08.05.2021 at 6.20 hrs., one unknown person informed that a person found lying in an injured condition. On receipt of the information, since, pointsman was not present, he attended the injured and arranged for 108 ambulance and shifted the injured to RIMS Hospital. Exhibit A-3 – Extract of General Diary of Railway Police, Mahboobnagar dated 08.05.2021 stated that the injured person supposed to get down at Raichur Railway station, but tried to alight at Krishna Railway Station, fell down and suffered injured. Exhibit A-6 is the Discharge Summary issued by the Suraksha Hospital showing that the applicant was admitted on 08.05.2021 and discharged on 09.06.2020 (the year is erroneously mentioned as 2020 instead of 2021) for treatment of (1) Amputation of Right leg below knee (2) Fracture of left Tibia and Fibula; and (3) Left Foot degloving Injury” amputation below knee was done on 08.05.2021. Exhibit A-7 is the Disability Certificate noting the injuries i.e., (1) Below knee amputation of right lower limb (2) Fracture of left Tibia and Fibula and (3) Degloving Injuring to left foot. Exhibit A-4 is the Digital Photograph of the applicant showing that Right leg was amputated below the knee and toes cut. In fact, at the time of recording his evidence, it was also noted in the deposition on 21.09.2023 that (1) Amputation of right leg 7 inches below the knee point and (2) Three toes of left leg cut.

8. Per contra, Respondent Railways did not adduce any oral evidence. However, they have produced Statutory DRM’s Investigation Report and concluded that there is no eye witness to the incident. In hospital, the RPF and GRP have video recorded the statement of the injured in which he has

stated that while he was trying to get down at Krishna Railway Station, fell down and suffered injuries.

9. From the above evidence, it is clear that the applicant suffered injury due to accidental fall from the running train which amounts to an untoward incident within the ambit of Section 123 © read with Section 124-A of Railways Act, 1989. Certified copies of Reserved-cum Journey tickets were produced along with OAs. Certified copies of Reserved-cum-journey tickets is not denied in any manner or even suggested remotely about its not being issued and the same was placed in deceased's pocket; particularly when incident happened in the evening time in an area, which has no connection to injured. Furthermore, there is no Rule or law which suggests to the effect that in all Railway accident should have witness, which is a pre-requisite condition for grant of compensation. Hence, all these aspects of Respondent has no justification; Even if it is accepted and presumed that there was no witness, factum of deceased fall and various injuries suffered, as highlighted in the hospital documents as well as DRM's report, cannot nullify the suggestion made belatedly while filing DRM's Report.

10. 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 debording 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. The ratio laid down in the above judgments is squarely applicable in the present case and thus in the given circumstances, we have no hesitation to hold that it amounts to an untoward incident within the meaning of Section 123(C)(2) of the Railways Act, 1989.

11. Once it is shown that the Injured applicant was a bonafide passenger travelling with a reserved ticket and he became victim on account of accidental fall from the running train, even if it is assumed that he was boarded or deborded the running train, the respondent cannot escape from the liability for payment of compensation pleading that the fall was due to negligence on part of the deceased. In view of the above decision of the Apex Court, the negligence even if there is any does not amount to an offence and therefore the respondent cannot seek exoneration from the liability for

payment of compensation. Hence, Issue No.2 is answered in affirmative in favour of the injured applicant.

ISSUE No.3

12. In view of the findings of the above in Issue No.1 and 2, the respondent is liable to pay the compensation. The injuries suffered by the applicant falls within the purview of Item No.22 of Part-III of the Schedule appended to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, which states that for amputation below knee with stump exceeding 5', the compensation amount payable is Rs.3,20,000/-. The injured applicant also suffered fracture of left tibia and fibula, which falls under Item No.33 of Part-III of the Schedule for which he is entitled to receive Rs. 80,000/-. Thus, the total compensation which applicant would be entitled to comes Rs.4,00,000/- (Rupees Four Lakhs Only) plus pro rata interest for the injuries sustained in an untoward incident.

ORDER

1. The claim application is '**ALLOWED**' to the extent of payment of Rs.4,00,000/- (Rupees Four Lakhs Only) with interest @ 6% p.a., from 27.12.2022 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 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:-

4. So far as disbursal of the amount of award is concerned, we have heard the learned counsel for the parties.

5. Therefore, 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:-

6. Additional Registrar, Bengaluru Bench, Bengaluru upon deposit of total compensation amount of Rs.4,00,000/- plus pro rate 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
Lokappa S/o. Chtrappa	Canara Bank, Raichur Station Road Branch	110088335803	CNRB0003062

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

8. 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.

9. 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 Monday, the 1st Day of April, 2024.

(RAVI NANDKEOLYAR)
MEMBER (TECHNICAL)

(IVY CHARLES D’CRUZ)
MEMBER (JUDICIAL)

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