

Claims Of Railway Accident and How Do Filing Compensation by the Way Of Constitutional Law

R. SATHYABAMA

Ph.D. Scholar, Saveetha School of Law,

Saveetha Institute of Medical and Technical Sciences (SIMATS)

Chennai- 600077.

Dr. PRABHA S. NAIR

Associate Professor

Saveetha School of Law

Saveetha Institute of Medical and Technical Sciences (SIMATS)

Chennai- 600077.

ABSTRACT

Railway accidents, which result in extreme injuries consisting of demise or maiming of innocent and ignorant human beings have come to be a count number of grave subject. Due to an alarming development of street transport alien New technology have been adopted in almost each field of Railway running like stepped forward welding technology, long welded rail tracks, pre-harassed concrete sleepers,. OFC cable conversation community, Route Railway Interlocking, Three section Electric Locomotives, Computer controlled Diesel Locomotives, Passenger reservation reserving gadget via Internet and even Mobile phones, Attractive Voice Responsive System, Freight Operations Information System,(FOIS). Railways fluctuate in phrases of who owns -them, how they're organized, and how they are regulated by using authorities. As to ownership, within the United States and Canada freight services are supplied through the six main railways and the various local and nearby railways, all owned by way of private buyers. The functioning of Government has usually been influencing the social, rural and political net of a society, dictatorships have given upward thrust to a suppressed society without initiative, and democracies have given impetus to lose wondering, opposition, urge to defend human rights and consciousness of rights. The Governments have also, in turn, changed their style of functioning in step with the constitution of the society they ruled. The properly set up political institutions and faith in law gave upward thrust to rule of law in England and made Dicey ridicule the Administrative Adjudication, but the fear of accumulation and monopoly of powers and fear of security of the man or woman liberty gave upward thrust to Droit Administrative in France and created greater or much less independent Administrative Adjudication. The rule of law is the precept that governmental authority is legitimately exercised best in accordance with written, publicly disclosed legal guidelines adopted and enforced according with set up system. The precept is supposed to be a safeguard against arbitrary governance. Hallmarks of adherence to the rule of thumb of law generally include a clear separation of powers, legal truth, and the precept of legitimate expectation and equality of all before the regulation.

KEYWORDS: Railway Accident, Claims, Case Laws, Administrative.

INTRODUCTION

Indian Railways is the fourth largest State-owned national transportation service in the world. It is still one of the safest means of the transportation system in India. But still being one of the safest means of transportation Indian Railways is still prone to accidents. Majority of such accidents are caused by derailments of trains and low-level crossing. Both of them account for almost 90% of the railways related accidents (43.5% and 46.5% respectively). Regardless of how the accident or death occurred or whether it happened on the station, platform or train or any railway premises if it was not the passenger's fault then the passenger may be entitled to file a train accident claim. Hence, this article will deal with how to file for compensation for death caused while boarding or de-boarding trains.

LIABILITY OF RAILWAYS ADMINISTRATION UNDER THE RAILWAYS ACT

The liability of railways under accidents or death had been always a conflicting matter. The Supreme Court of India on May 9th, 2018 resolved through the case of Union of India vs Rina Devi. In this case, the Supreme Court held that death or injury in the course of boarding or de-boarding a train will be an "untoward incident".

An "untoward incident" falls under Section 124A of The Railways Act, 1989. So Section 124A of The Railways Act states that during the working of the railways an untoward incident occurs then the railway administration must pay

compensation to the victim or the dependant of the victim regardless of whether or not there was neglect, or any mistake on behalf of the railway's administration. Absence of ticket with such injured or deceased will not remove the liability of Railways to pay the claim. So any person who has been a victim of "untoward incident" is eligible to receive compensation from the Railway Administration.

PEOPLE ELIGIBLE FOR COMPENSATION

The following people are eligible for compensation under The Railways Act, 1989:

- People involved in any form of railway accident including the derailment of rail, low-level crossing (only the people boarding the said train), the collision of rail-car.
- Any person involved in any consequential railway accident which may cause injury or death of that person.
- Any person who has been exposed to hazardous chemicals or involvement of sabotage, terrorism, explosion or fire.

PEOPLE NOT ELIGIBLE FOR COMPENSATION

According to Section 124A of The Railways Act, certain people are not entitled to compensation and they are as follows:

- If a person deliberately tries to kill himself or any attempt of suicide.
- Any injury inflicted on oneself.
- Injury caused by the person's own unlawful act
- An act committed by the person who was intoxicated or an insane person.

PROCESS OF CLAIMING SUCH COMPENSATION

Section 125 of the Railways Act, 1989, allows a victim or dependant of a deceased person to make an application for compensation along with the prescribed fee. The following people can file an application to The Railway Tribunal for compensation under Section 125 of the Railways Act, 1989:

- A person who has experienced any injury or suffered any form of loss.
- Any agent who has been duly authorized by such person in his behalf
- A person who is minor, in such case the guardian of such minor can file an application,
- A dependant of a person who has died due to an accident caused by the railways or who has sustained grievous injury due to the accident.

However, there are certain restrictions related to the filing of an application for compensation at the Railways tribunal as per section 17 of the Act:

- There is a definite "limitation period" for reporting of the incidents. In cases where the goods have been lost, damaged or destroyed or there is non-delivery of an animal then in that case the limitation period is three years.
- The incidents which are under the Section 124A of The Railways Act, the "limitation period" for such cases is one year.

Here, the term limitation period means "a legally specified period beyond which an action may be defeated or a right does not continue." In the claim tribunal claims can be dealt with in person, the claimant does not need to hire any lawyer and the Railways Claim Tribunal acts on the principle of natural justice than the principal of law.

BURDEN OF PROOF

The initial burden of proof lies on the claimant but it can be discharged by the filing of an affidavit of the relevant facts of the incident. Once the affidavit has been filed the burden of proof shifts on the Railway Administration and it is up to the discretion of the tribunal to decide from the facts or the attending circumstances.

QUANTUM OF COMPENSATION AND INTERIM RELIEF

The railway administration has increased the amount of compensation. The Indian Government has amended such enhancement in The railways Act, 1989. The compensation has been made twice for people who suffered severe physical injury or in case of death.

Under the Railway Accident and Untoward Incidents (Compensation) Amendment Rules, 2016 the initial amount for compensation which was Rs. 4 lakh has been increased to an amount of Rs. 8 Lakh in cases regarding the death of a passenger or the passenger faced any loss of limb. The compensation shall be granted by the Railways Claim Tribunal to the dependants of the victim who has died or suffered serious injuries.

The official notification states that, if a person becomes blind or loses his eyesight for one eye or becomes deaf, then that person shall be granted Rs 8 lakh in compensation. A person is also granted the same amount of Rs 8 lakh if that person suffer severe facial disfigurement, according to the official notification released by the railway administration. For injuries, the amount varies from Rs.32,000/- to Rs.8,00,000/- depending on the nature of the injury sustained.

EX GRATIA RELIEF

Ex-gratia relief is granted by the railway board or welfare department just after an accident, and the amount of moral relief is Rs.15,000/- to the next of kin of the dead, Rs.5,000/- if there is a case of grievous hurt and Rs.500/- in the case of injuries which are simple in nature. The Ex-gratia relief is proposed to meet the instant cost and is not considered at the time of final judgement of claims related to the compensation. In case of severe or special circumstances, the quantum can be enriched. The amount of Ex-Gratia relief for accidents at the level crossing is Rs. 6000 in case of death and Rs 2500 in case of grievous injury.

STEPS TAKEN FOR SPEEDY SETTLEMENT AS PER MINISTER OF STATE FOR RAILWAYS

Minister of State for Railways Shri Rajen Gohain (also a member of the Parliament, Lok Sabha) gave a written statement in Rajya Sabha on 22nd December 2017 inducing various steps that the Ministry of Railways proposes to take regarding the speedy settlement of causes related to compensation in The Railways Claim Tribunal. Some of the steps are:

1. Directions are issued to all authorities of zonal railways that as soon as there is an occurrence of an accident all information regarding the injured or killed people in the accident must be provided and all the claimants shall be provided with accident claim forms.
2. The railway administration must assist the tribunals for quick and easy settlement of disputes.
3. Written statement is essential to be filed by the railway administration in such circumstances under 15 days of notice from RCT.
4. After the amount of a claim has been approved by the RCT, railways have to make that cheques are issued and transferred under a period of 15 days.
5. Initial fiscal incidents regarding the accident compensation claims case shall be allocated amongst victims.
6. The Chief Claims Officer of the RCT has the power to compensate claims up to Rs. 8 lakh.
7. The claimant can file the application of claim at the tribunals bench having its jurisdiction over the territory of India
8. If there is a high pendency of cases then in that condition there must be an establishment of Holding Circuit Benches.
9. Whenever there is presence of any vacancy in the Railways Claim Tribunal then in that case railway administration must fill up those vacancies as soon as possible.
10. There can be a maximum of three trials regarding the cases of compensation in the RCT.
11. Railway Claims Tribunal must give their judgement under 21 days of final hearing of the case that was filed before it.
12. One copy of the order of Railway Claims Tribunal for accident compensation claims shall be supplied for free to the claimant under 3 days of the granting of final judgement.
13. Relevant Rules & Procedures in connection with compensation claims in respect of "Accident" have been incorporated in the Indian Railways" website. It also contains the format of different application forms which are needed for filing compensation claims.

These steps were released in the press afterwards with the Ministry of Railways insisting on complying with these steps for speedy settlement of trials pending under the Railways Claim Tribunal.

RIGHTS THAT ARE GIVEN TO CLAIMANTS

RIGHT TO LEGAL REPRESENTATION

The claimant has the right to take the help of a lawyer of his/her choice and such lawyer can represent the victim or the claimant in the tribunals.

FREE LEGAL-AID

The railway along with the state provides free legal aid to all the claimants and the victims who cannot afford to hire a legal representative of their own. The railway administration issues tickets to victims. The railway administration issues travel passes from the address of the victim/claimants to the place of hearing when the claimant is summoned by the Railway Tribunal regarding the matters falling under Sections 124 and 124-A of the Railways Act, 1989.

Particulars required for filing of claim for compensation

1. The claimant must provide their name and also the name of their father.
2. The claimant must provide their place of residence.
3. The claimant must fill their age.
4. The claimant must provide their profession.
5. If there is any employer of the deceased then in that case the name and the address of such employer.
6. The claimant must provide the details of the accident along with the location and the date of the accident.
7. The claimant must provide the ticket or pass number.
8. Nature of injuries sustained along with a medical certificate.
9. Name and address of the Medical Officer/Practitioner who attended on the injured/dead and period and date of treatment.
10. The claimant must mention if he/she faced any disability due to the accident.
11. If there is any loss of luggage then the claimant needs to provide the details of such luggage.
12. If the claimant has lodged any report regarding the accident to any other authority then the claimant must attach the report as well.
13. Name and permanent address of the applicant/claimant.
14. If there is any local alternative address of the applicant then it must be stated as well.
15. If a dependant is filing the application then the dependant must state the relationship he/she had with the deceased or injured.
16. The claimant must state the amount of compensation that he has claimed.
17. Any other information or documentary evidence that may be necessary or helpful in the clearance of the claim.

Documents required for the facilitation of the settlement of claim by the Tribunal

1. If the person had died then post mortem report of his death.
2. If there is death or injury then a copy of the FIR.
3. If a person suffered some injuries then there is a requirement of a medical report by a certified doctor and the medical report must contain details of such injuries.
4. If the passenger has died then in that case the tribunal requires the death certificate of such passenger and the death certificate must be issued by the District Administration.
5. If there is death of the passenger then there is a need for heirship title.
6. The registered proof of the victim/claimant. The registered proof must show that the victim/claimant was a passenger of the train and in case if there is no availability of such documentary proof then the claimant must provide ticket number and class of travel (to the extent that the claimant is aware).

CONCLUSION

So to conclude, the Railway Administration through the means of The Railway Act and The Railways Claim Tribunal aims to compensate victims or the dependants of the deceased. It is very important for a person to be aware of how the railway compensation tribunal functions as it may enable them to fight for their right to claim compensation from Railways due to any untoward incident.

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