

# KADALUNDY - BRIEF

## **Introduction**

The recent train tragedy at the Kadalundi River in Kerala is still fresh in the minds of many people. On June 22, 2001 the Mangalore-Chennai Mail was travelling over the Kadalundi Bridge near Kozhikode, Kerala when eight of the train's cars suddenly derailed. Four of the cars plunged from the bridge into the Kadalundi River below. Heavy rain greatly hindered the subsequent rescue operation. The death toll eventually reached Fifty-two, while over 100 people were injured in the crash.

But the tragedy of Kadalundi is not limited to the death and destruction that resulted from the crash. The families of the dead mourn the loss of their loved ones, of course; but, for many, the grief of death is compounded by an oppressive sense of anxiety. For, the families of the dead and severely injured are now unsure of how they can sustain themselves without the level of income and support they once had.

This is because the Railway limits the compensation to family members of the deceased to Rs. 4 lakhs. The family of every victim receives the same amount of compensation, regardless of the age, level of education, income, or life expectancy of the victim. (Railways Act, Act. No. 24 of 1989, § 124 -13). In its compensation scheme, the Railway does not distinguish between store clerks and surgeons, between 18-year olds and 80-year-olds. Thus many families may find themselves totally unable to support themselves. What is most unfortunate is that this type of situation is not limited to the accident at Kadalundi; it is prevalent whenever passengers are injured or killed in rail accidents in India.

The current compensation scheme used by the Railway is completely arbitrary. It clearly needs to be revised to provide a proper amount of compensation to the injured and the families of the dead. A good place to start constructing a more fair compensation scheme for victims of rail accidents is the Motor Vehicle Act of 1988. Unlike the Railways Act's compensation scheme, its scheme differentiates between different types of passengers, rather than treating them all as unvarying and interchangeable.

## **Theory of Law**

Article 14 of the Indian Constitution provides for equality before law. The article proclaims, "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." But, as esteemed as the principle of equal rights before the law is, it is an idea that can be easily misunderstood. Equal rights before the law does not mean equal treatment of all people in all conditions. That is, one must be careful not to confuse the differentiation of one individual or group from another with discrimination against one individual or group.

Although the distinction between "differentiation" and "discrimination" was not made explicit in Article 14, subsequent case law plainly demonstrates that the Article does indeed imply such a distinction. Several Supreme Court cases from the 1950s attest to this fact.

(See Chiranjit Lal v. Union of India, AIR 1941 SC 41; State of Bombay v. F.N. Balsara, AIR 1951 SC 318; Kathi Raning v. State of Saurashtra, AIR 1952 SC 123; Ramakrishna Dalmia v. Tandalakar, AIR 1958 SC 538.) These cases declare that the principle of equality defined in Article 14 “does not mean that every law must have universal application for all persons who are not, by nature, attainment, or circumstances, in the same position.” (Balsara.) They recognize that the “varying needs of different classes of persons often require separate treatment.” (Id.)

Thus, according to the established interpretation of Article 14, the current Railway Compensation provision cannot be justified on the grounds of “equality.” In fact, it is everything but fair to treat different groups of people as if they were all the same. Reasonable classification of varying groups is necessary to maintain the fair treatment of individuals under Article 14.

And, according to the existing understanding of Article 14, the classification of victims of Railway accidents according factors such as age, life expectancy, education and income level is indeed “reasonable.” A compensation scheme based on classification clearly passes the two-part test that the case law has established to determine if classification of individuals is of the permissible type. (Kathi Raning.)

?The first part of the test requires that the classification used be based on “an intelligible differentia which distinguishes persons/ things grouped together from others left out of the group.” (Id.) Factors such as age, life expectancy, education and income level are plainly solid, easily identifiable factors that meet the requirement of “intelligible differentia.” The second part of the test requires that the differentia have a rational relation to the object sought to be achieved by the Act. Again, a Railway compensation scheme that differentiated victims on the basis of the above-mentioned factors would meet this part of the test. The object of the accident compensation scheme in a Railway Act is to adequately provide for the victims of accidents and their families. Factors such as age and income are rational indicators of what type of sum might be adequate to support the family of a person killed in a train accident.

Thus, according to principles of equality contained in Article 14, the Railways Act’s compensation scheme is truly in need of revision. It would be disingenuous at the very least, and perhaps even unconstitutional to treat the various victims of a train accident, like the one that occurred at Kadalundi, as if they were totally homogeneous.

### **Current Disparity between Laws**

Although the Railways Act does not distinguish between different classes of people, other codified laws do. Most significantly, The Motor Vehicles Act of 1988 provides a structured formula for calculating the amount of compensation to be provided to the victims of motor vehicle accidents. (Motor Vehicles Act, 1988 § 163-A, Second Schedule). The Act states that the owner or insurer of a motor vehicle is liable to pay the victim, in the case of permanent disablement, or victim’s family, in the case of death, as indicated by a schedule.

The amount of compensation is calculated taking into account the victim's age and income level. Thus, the family of a 30-year-old victim earning an annual income of Rs. 40,000 is compensated in the amount of Rs. 640,000, while the family of a 55 year-old victim earning an annual income of Rs. 12,000 is compensated in the amount of Rs. 96,000.

Unlike the Railways Act, the Motor Vehicles Act provides a compensation scheme that follows both the principles of natural justice and the established interpretation Article 14. It distinguishes between people of different income levels and ages, realizing that it is in fact unfair to treat these different groups of people as if they were one and the same.

There is no justifiable reason for the current disparity between the compensation provisions of the Motor Vehicle Act and the Railways Act. Although some argue that the Railways Act should not be changed to be more like the Motor Vehicle Act because the two are "two different statutes which are made for two different situations," this contention is entirely merit-less. (AIR 2000 KNT 344.) In fact, both statutes were created to regulate means of travel and to protect travelers.

It is thus arbitrary and capricious to deny the family of a person killed in a train accident the level of compensation they would have received had the person died in a car accident instead. Just as it is reasonable to differentiate between different groups of Rail passengers using factors such as income, age, and life expectancy, it is unreasonable to differentiate between Rail passengers and auto passengers. The former situation passes the two-part test set out by the case law interpreting Article 14, as mentioned above. (See Kathi Raning.) The latter situation, however, does not.

A distinction between the victims of train accidents and those of auto accidents when awarding compensation clearly does not even meet the first part of the test. There is no "intelligible differentia" that distinguishes victims of rail accidents from victims of auto accidents. \*\*\* Both groups of people have been killed or injured while traveling and the families of both groups need a fair amount of support. While there certainly is a difference between individual travelers, whether they are traveling by rail or automobile, there is undoubtedly no parallel difference between all rail travelers and all auto travelers. There simply is no reasonable distinction between rail passengers as a group and auto travelers.

Under the current capricious distinction between victims of rail accidents and auto accidents, the family of a young train accident victim who had a life-time of earning potential ahead of him, will be given a meager sum with which to support itself under the current Railways Act. But, if by some twist of fate, this same young man was killed in an auto accident, his family would likely receive a much more just amount of compensation.

## **Conclusion**

Just as the established interpretation of Article 14 justifies the classification of travelers into groups according to factors such as age, income level, education, and life expectancy, it also obliges us to treat Rail travelers, as a group, in the same way we treat automobile travelers. More recent case law demonstrates that the established interpretation of Article

14 still persists in modern times. (See State of Karnataka v. B.Suvarna Malini, AIR 2001 SC 606; K.Thimmappa v. Chairman of Central Board of Directors, SBI, AIR 2001 SC 467; Process Technicians and Analysts' Union v. Union of India, AIR 1997 SC 1288 E.)

There is absolutely no reason why the current compensation provision of the Railways Act should remain as it is. It must be amended immediately to allow for a compensation scheme that provides for victims and their families according to a rationally calculated plan, not according to the current arrangement, which is entirely arbitrary. The Motor Vehicles Act is a good place to look to begin drafting a new compensation scheme. At the very least, the Railways Act's compensation scheme should take into account age and income, as the Motor Vehicle Act does.

Everyday, thousands upon thousands of people across the country travel on the Railway. Should these people have to continue to travel in state of ceaseless apprehension, wondering how their families will survive if they are killed or injured in an accident? A more calculated compensation scheme would provide for victims and their families in a much more fair manner than that which is currently in place. In addition, if the Railway is compelled to take more pains and spend more funds in compensating victims and their families, perhaps it will also be compelled to take more measures to *prevent* accidents in the first place. And surely, if the tragedy of Kadalundi teaches us anything, it is that if we can avoid Railway accidents in at the outset, we should make every effort to do so.

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