

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR**

FIRST APPEAL NO. 117 OF 2022

1. Smt. Motilila wd/o Pruthviraj Gajbhiye
Aged 62 years, Occupation-Household

2. Nitin s/o Pruthviraj Gajbhiye
Aged 35 Years, Occupation-Service

3. Pawan s/o Pruthviraj Gajbhiye
Aged 31 Years, Occupation-Service

4. Sawan s/o Pruthviraj Gajbhiye
Aged 33 Years, Occupation-Service

All R/o Plot No. 93, Near Jiwan
Shikshan School, Parvati Nagar,
Nagpur-400 027.

Appellants

Vs.

Union of India
Through General Manager,
Central Railway, CST,
Mumbai-400 001.

...

... Respondent

Mr. Vilas Manohar Deshpande, Advocate for Appellants.

Ms. Neerja G. Chaubey, Advocate for Respondent.

CORAM : ABHAY AHUJA J.
RESERVED ON : 20th OCTOBER, 2022
PRONOUNCED ON : 2nd JANUARY, 2023

JUDGMENT :

1. This is an appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987 by the dependents of one Shri

Pruthviraj Gajbhiye, being aggrieved by the judgment and order dated 21st December, 2020 passed by the Railway Claims Tribunal, Nagpur rejecting their claim application No. OA(Ilu)/NGP/22/2019 for compensation on account of death of Shri Pruthviraj Gajbhiye in a purported untoward incident.

2. It is the case of the appellants that the appellant no. 2 i.e., the son of the deceased Shri Pruthviraj Gajbhiye, who was in private service, had on 28th February, 2018 informed his father that he was coming to Nagpur on 1st March, 2018 for Holi festival and told his father to come to receive him at Ajani Railway Station. This has been recorded in an affidavit dated 27th January, 2020 of Smt. Motilila widow of deceased Pruthviraj Gajbhiye, who states that the aforesaid fact was communicated to her by her deceased husband. It is stated in the said affidavit that the deceased went to Ajani Railway Station on 1st March, 2018 to receive their son Sawan and met with an accident caused by train no. 12723, Telangana Express and died on the spot. That when her son arrived at Ajani on 1st March, 2018, he had no knowledge of the accident of his father and because he

had not found his father on station, he came home. As deceased Prithviraj Gajbhiye had not returned home, the wife and the son tried to search for him, after which they came to know that an accident had taken place at Ajani Railway Station and an unidentified body was kept in the mortuary, which was identified by her son Pawan. It is only then she came to know that her husband had died in a railway accident. That thereafter, the body was sent for post-mortem and then handed over to them for cremation.

3. A platform ticket has been produced, which is of 1st March, 2018, 15.37 hours no. UFA 18302453, translation whereof is at page A-49 in the record and proceedings and it is stated to be a platform ticket recovered from an unknown dead person. It is on this basis, the appellants preferred a claim application for compensation under Section 124A of the Railways Act, 1989 (the "Railways Act").

4. The railway authority objected to the claim for compensation relying upon the affidavit of Loco Pilot of train no.

12723, Telangana Express, submitting that Shri Prithviraj Gajbhiye, who came from platform no.1 from Wardha side where there is a railway over bridge and suddenly came in front of the engine and slept on the track; and despite continuous blowing of the horn by the Loco Pilot the said person did not get up and since the speed of the train was almost 90 km/per hour, Loco Pilot did not get the time to apply brakes and he was run over by the said train. It is stated in the affidavit of Shri Y. K. Somesh, the Loco Pilot of the said train, that he informed of the same to the guard and Deputy Station Superintendent, Ajani through walkie talkie. He has stated in the affidavit dated 27th January, 2020 that there was no incident of accidental fall down of any passenger noticed or reported to him by any person. He also states that there was no alarm chain pulling, rush or jerk in his train. He states that the RPF, Ajani, Nagpur had recorded his statement on 20th March, 2019. On this basis it is submitted on behalf of the railway administration that the claim be rejected.

5. The Railway Claims Tribunal has after considering the rival claim on the basis (i) of the memo dated 1st March, 2018 issued

by Deputy Station Master, Central Railway, Nagpur at 17.00 hours to GRP incharge (page A45), which records that an unknown person had been run over by the train no. 12723 at 833.30 down line, Ajani, platform BB end, (ii) of the affidavit of Mr. Y. K. Somesh, RW-1, the Loco Pilot who is an eye witness of the incident, that Shri Prithviraj Gajbhiye had come in front of the engine and slept on the track and despite the continuous blowing of horn did not get up and move away from the track, thereby committing suicide and (iii) that the wife of the deceased was not an eye witness to the incident, rejected the claim of the appellants. Following paragraph of the impugned decision is usefully quoted as under:-

"I find a strong force in the argument of the counsel for respondent. Hence, in my considered view, the applicants have not been able to prove that the deceased had died in an untoward incident at Ajani Railway Station. The evidence of RW-1, Loco Pilot of Train No. 12723 Telangana Express, adduced by the respondents; who is the clear eye witness of the incident, has been able to prove that the deceased came in front of his train, in spite of being continuously warned by him. Sub Divisional Magistrate has also accepted the suicidal death of the deceased. It seems that the deceased was pre-determined for committing suicide at Ajani Railway Station hence he purchased the platform ticket and entered into the station premises and committed suicide. He was not performing any journey and cannot considered to be a

bonafide passenger. Therefore, it can be inferred that the death was not due to any untoward incident as contended by the applicants. The deceased seems to have committed suicide at Ajani Railway Station by coming in front of Train No. 12723. Such an act comes within the purview of proviso (a) of the Section 124A of Railways Act, 1989 and the Railways are not liable to pay any compensation.

(emphasis supplied)

6. On 13th September, 2022, this Court passed the following order:-

"1. On 24/08/2022, the following order was passed by this Court :-

"At the request of learned Counsel for the respondent, two weeks time is granted to find out whether Loco Station Diary is recovered."

2. Today, when the matter is called out, Ms. Neerja Chaubey, learned counsel for the Railways instructed by Mr. Jagdeo More, Chief Law Assistant, submits that the Loco Station Diary is not relevant to the case. When called upon Mr. More, he states that the same is misplaced.

3. Shri Deshpande, learned counsel for the appellants submits that it is not Loco Station Diary but the Loco log book that is an important part of the evidence. Not only that but also the Assistant driver log book is an important document which determines exactly what happened at the time when the accident took place. He draws the attention of this Court to Chapter VI of a document pertaining to Operation of Locomotives. It is submitted that it is mandatory for driver of locomotive to carry log book on his person. He also submits that it is the duty of every driver to record incidents of this nature in the log book and also report the same to various authorities including the Station Master on Walkie Talkie.

4. Considering that the moot issue revolves around the

*fact whether it was a suicide or not, the Respondent Railways is directed to produce before this Court with a copy to the appellants, the entire manual containing instructions to drivers and to Railways Authorities on how to and what to enter in the concerned log book, within a period of two weeks, without fail.
5. List the matter on 27/09/2022."*

7. On 26th September, 2022, the railways has filed an affidavit explaining the difference between the Loco Log Book and Loco Pilot Memo Book/Diary. It is submitted in the said affidavit that a Loco Log book is a record book purely technical in nature for maintaining the record of Loco defects/problems during the run which are entered by the driver, assistant driver. No unusual incidents are recorded in the said Loco Log Book. It has been submitted that unusual incidents in the route are in fact recorded in the Loco Pilot Memo Book/Diary, which is an item of personal store of Loco Pilot.

8. In the said affidavit, it is further stated that the original Loco Pilot Book has been misplaced by the Loco Pilot as the Loco Pilot had demolished his old house in April, 2018 and shifted to a rented home and later on shifted to newly constructed house in

2019. It is stated in the affidavit that during this process, the memo book was also misplaced and is still untraceable. That the said Loco Pilot was working as Crew Controller in Control Office since July, 2018 and hence he did not pay attention for searching the memo book as it was not required in his office. It is further submitted in the said affidavit that the incident was recorded by the guard of the train and he has also given a memo in writing to the station master in this regard. Perusal of the said communication reveals information of one person who came in front of the said train and got cut. There is also a reference to the Train Signal Register (TSR), which refers to the said train no. 12723 and the information received by the cabin incharge of the route relay interlocking that one person was run over on approaching Ajani platform.

9. Mr. Deshpande, learned counsel for the appellants submits that this is a case of a bonafide passenger who met with an untoward incident while going to receive his son at Ajani Railway Station and therefore appellants are entitled to compensation under Section 124A of the Act.

10. He draws the attention of this Court to the affidavit of the deceased's wife as well as her deposition in support of his contention. He further submits that the very fact that the railways has not been able to produce either the Loco Log Book or Loco Pilot Memo Book/Diary, clearly establishes that there is no evidence to suggest that this was a case of suicide. He refers to the affidavit of the Loco Pilot and submits that although the incident was of 1st March, 2018, the affidavit is dated 27th January, 2020 and no evidence has been adduced in support thereof on the ground of the Loco Pilot memo book having been misplaced.

11. Learned counsel further draws the attention of this Court to the Accident Manual to submit that in the case of an untoward incident, the Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003 as amended in 2007 (the "Railway passenger untoward Incidents Investigation Rules"), clearly require any railway servant including guard and Loco Pilot of the train on coming to know of occurrence of an untoward incident to report the incident immediately to the

nearest station superintendent. He refers to page 202 of the said manual and submits that the guard and/or the Loco Pilot are duty bound to collect and enter in the memo book the particulars such as time and place when the body was found, position of the body, blood stains on the ballast, rail, sleeper etc., extent of injuries, whether inflicted by a train or otherwise and other personal details of the deceased. The said paragraph is usefully quoted as under:-

“(b) When life is extinct.

i) When a dead body is found on or near the railway track by any railway employee or any person is run over and killed by a train, the Guard and/ or Loco Pilot of the train or the railway employee concerned must ensure recording of all available evidence.

The dead body should not be removed until the arrival of the police as the chances of some clues which may lead to detection of causes may be interfered with. However, to clear the line for the movement of subsequent trains, the deadbody may be removed from the line, but in doing so, the movement should be minimum required. Handling of the dead body by many people should be avoided so as to keep the available finger prints undisturbed. Information of the fact must be given to the police authority and RPF without loss of time.

ii) The following particulars must be collected and furnished in the memo by the Guard and/or Loco Pilot of the train or by the person who happens to find the body-

(a) time and place the body was found ;

(b) position of the body in relation to the track;

(c) blood strains on the ballast, rail, sleeper etc.,

- (d) extent of injuries ;
- (e) whether injuries inflicted by a train or otherwise;
- (f) approximate age;
- (g) sex;
- (h) name, father's name and address if available;
- (i) position of clothing and any other evidence found on or near track;
- (j) the name of the informer, his father's name and full address."

(emphasis supplied)

12. From the above, it is clear that not only collection, entry and furnishing of the aforesaid details of an untoward incident in the Loco Pilot's Diary is mandatory but also its maintenance as well as its preservation.

13. Mr. Deshpande, submits that all such details would clearly indicate as to how the incident took place on the date of the incident. He submits that no document dated on the date of incident indicates that Shri Pruthviraj Gajbhiye slept or lied down in front of the train no. 12723, Telangana Express. The entire evidence only indicates that an unknown person came in front of the train and got cut. He submits that this does not suggest that it was a case of suicide or alleged paralysis or stomach disease as a reason for Shri. Gajbhiye to commit suicide; these are only surmises and would not be a tenable ground without any record

or investigation that was required to be carried out as per the Railway Passenger Untoward Incidents Rules.

14. Learned counsel relies upon the decision of the Apex Court in the case of ***Kalandi Charan Sahoo and another Vs. General Manager, South-East Central Railway, (2018 ACJ 1460)*** and submits that in that case, although as per the Railways, the deceased detrained from the moving train at D Cabin without stoppage of the train and invited the accident, resulting in rejection of the claim by the defendants, the Apex Court observing that if no inquiry as mandatory by Rule 7 of the Railway Passenger Untoward Incidents Rules was conducted immediately after the incident has occurred, the appellant would be entitled to compensation payable under Section 124A of the Railways Act. In this view of the matter, learned counsel submits that the impugned order herein be set aside and the appeal be allowed.

15. On the other hand, Ms. Neerja Chaubey, learned counsel for the Railways relies upon the impugned decision as well as on the affidavit of the Loco Pilot and the affidavit dated 23rd

September, 2022 filed on behalf of the Railways to submit that this is a clear case of suicide as Shri Prithviraj Gajbhiye lied down in front of the train and despite warning failed to move and invited his death.

16. I have heard the learned counsel for the parties and with their able assistance, I have perused the papers and proceedings and giving my anxious consideration to the rival contentions.

17. The issue that arises for consideration of this Court is whether the Railways has proved that Shri Pruthviraj Gajbhiye had committed suicide or whether this was a case of an untoward incident not being a suicide. Obviously if it is held to be a case of suicide, then the same would fall within exception (a) in the proviso to Section 124A of the Railways Act making the appellants ineligible to receive any compensation thereunder.

18. Before proceeding further, it would be apposite to set forth some relevant provisions of the Railways Act.

19. Section 2 (29) defines passenger as under:-

"2. Definitions.-.....

.....

.....

(29) "passenger" means a person travelling with a valid pass or ticket;"

20. Section 123 (C) defines "untoward incident" as under:-

"123. Definitions.-

.....

.....

(c) "untoward incident" means—

(1) (i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers."

21. Section 124A, with respect to compensation payable in the case of an untoward incident is also useful and is quoted as

under:-

"124A. Compensation on account of untoward incident.—*When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependent of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident: Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to—*

- (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.*

Explanation.—For the purposes of this section, "passenger" includes—

- (i) a railway servant on duty; and*
- (ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident."*

(emphasis supplied)

22. From the above, it is apparent that a person who has purchased a valid platform ticket and became a victim of an untoward incident is to be considered a passenger. Platform ticket at page A-48 and its translation at page A-49 of the record and proceedings clearly indicates that it is for 1st March, 2018 and the same was purchased for a sum of Rs. 10/- at 15.37 hours and the same was valid for two hours. The time of the incident which led to the death of Shri Prithviraj is indicated from the various documents in the record and proceedings, to be around 16.05 hours, which is within the said period of validity of 2 hours, (memo issued by DSM to GRP, Nagpur on 1st March, 2018). It is not disputed that the death of Shri Pruthviraj was a result of an impact/hit by train no. 12723, Telangana Express on 1st March, 2018 at 833.30 down line, Ajani railway station, platform BB end. No evidence has been adduced to demonstrate that the aforesaid platform ticket is a planted one. Thus, in view of the definition of passenger contended in the explanation (ii) to Section 124A, Shri Prithviraj was holding a valid platform ticket and as such a bonafide passenger.

23. Coming to the issue whether the incident which led to the death of Shri Pruthviraj was an untoward incident, the affidavit of Loco Pilot as well as other documents filed on behalf of the Railways suggests that it is a case of run over as Shri Prithviraj slept in front of the Telengana Express on the fateful day and did not move himself despite warnings and that he committed suicide as he was fed up of his paralysis and stomach disease. However, the affidavit of the widow of the deceased viz. Smt. Motilila dated 27th January, 2020, nowhere suggests any such frustration or suicidal tendency on the part of Shri Prithviraj Gajbhiye. A wife would always know and understand the feelings of her husband whether happy or distressed. There is no such indication. Paragraphs 3 , 4, 5, 6, 7, 8(6) of the said affidavit are usefully quoted as under:-

“3) That, my son Sawan, applicant No.2 was in private service. On 28.02.2018 he communicated his father i.e. deceased Pruthviraj that he was coming to Nagpur on 1.03.2018 for HOLI festival and told his father Pruthviraj to come on Ajani railway station to receive him. This fact was communicated by my husband deceased Pruthviraj to me.

4) That, accordingly my husband went to Ajani railway station on 1.03.2019 to receive son Sawan and met with an accident and died on spot. I say that I do not know, how the accident took place. My sons also do not know how the accident took place.

5) That, the my son Sawan arrived at Ajani station on 1.03.2018. As he had no knowledge about the accident of his father Pruthviraj and his father not seen on platform, he came to home. I say that as my husband had not came to home we had taken the search to find him. Thereafter we came to know that someone accident took place on Ajani railway station. The unidentified body was kept in mortuary and it was identified by my son Pawan and we came to know that my husband was died in accident due to railway occurred on Ajani railway station.

6) I say that after postmortem dead body of Pruthviraj was handed over to us for cremation.

7) That, I say that we have filed the application for grant of compensation on account of death of Pruthviraj Mukaji Gajbhiye in untoward accident.

8) (6) Original Certified copy Platform Ticket No. 18302453 dated 01.03.2018 issued at Ajani railway station as document No.6."

24. The Railways have not adduced any contrary evidence. For an exception under Section 124A to apply, the Railways has to prove the exceptions beyond reasonable doubt, which I am afraid the Railways has miserably failed to do. This Court has held in the number of decisions that once an accident has taken place which does not fall within the exception in the proviso to Section 124A and when the deceased was a bonafide passenger (as held in this case) then the dependents would be entitled to the compensation as per Section 124A of the Railways Act. The

Accident Manual with reference to untoward incidents as quoted above clearly requires the Loco Pilot to mention on the date of the incident, complete details of the body of the person who has died by the accident including the time and place, the position of the body, blood stains on the ballast, rail, sleeper etc., extent of injuries, whether inflicted by a train or otherwise and other details of the deceased in his Loco Pilot Memo Book/Diary. In this case, admittedly, the Loco Pilot Memo Book/ Diary has been misplaced. An extra ordinary explanation has been given in the affidavit dated 23rd September, 2022 on behalf of the Railways where it has been submitted that in the process of the demolition of his old house in April 2018 and the shifting to a rented house and later on to newly constructed house in 2019, the memo book was misplaced by the Loco Pilot and is still untraceable. The affidavit of Shri Y. K. Somesh, the Loco Pilot of the said train is dated 27th January, 2020, stating that one unknown person came in front of the Telangana Express on 1st March, 2018 and slept and did not remove himself despite warnings, is almost two years after the said incident, which in the absence of Loco Pilot Diary though which was mandatory to

maintain and preserve clearly suggests that the railways have not been able to prove their theory of suicide by Shri Pruthviraj Gajbhiye.

25. The Apex Court in the case of ***Union of India Vs. Prabhakaran Vijaya Kumar and Others (2008 ACJ 1895)*** has observed that the expression “accidental falling of a passenger from a train carrying passengers” has to be given a liberal and wider interpretation and not a narrow or a technical one as the provision for compensation in the Railways Act is a beneficial piece of legislation. It has been observed in the said decision that if the words used in a beneficial or welfare statute are capable of two constructions, then the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. The Apex Court goes on to observe that if we adopt a restrictive meaning of the said expression, then we will be depriving a large number of railway passengers from getting compensation in railway accidents. That it is well-known that in our country there are crores of people who travel by train since everybody

cannot afford travelling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents, particularly poor and middle class people, from getting compensation under the Railways Act. Therefore, a purposive and not literal interpretation should be given. The following paragraphs of the said decision are usefully quoted as under:-

“10. We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an 'accidental falling of a passenger from a train carrying passengers'. Hence, it is an 'untoward incident' as defined in [Section 123\(c\)](#) of the Railways Act.

11. No doubt, it is possible that two interpretations can be given to the expression 'accidental falling of a passenger from a train carrying passengers', the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the [Railways Act](#) is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence, in our opinion, the latter of the abovementioned two interpretations, i.e. the one which advances the object of the statute and serves its purpose should be preferred vide [Kunal Singh vs. Union of India](#) (2003) 4 SCC 524 (para 9), [B. D. Shetty vs. CEAT Ltd.](#) (2002) 1 SCC 193 (para

12). [Transport Corporation of India vs. ESI Corporation](#) (2000) 1 SCC 332 etc.

12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide [Alembic chemical Works Co. Ltd. Vs. The Workmen](#) AIR 1961 SC 647(para 7), [Jeewanlal Ltd. Vs. Appellate Authority](#) AIR 1984 SC 1842 (para 11),[Lalappa Lingappa and others Vs. Laxmi Vishnu Textile Mills Ltd.](#) AIR 1981 SC 852 (para 13), [S. M. Nilajkar vs. Telecom Distt. Manager](#) (2003) 4 SCC 27 (para 12) etc.

14. In our opinion, if we adopt a restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in [Section 123\(c\)](#) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford traveling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the [Railways Act](#). Hence, in our opinion, the expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a bona-fide passenger i.e. a passenger traveling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression."

(emphasis supplied)

26. In the aforesaid decision, the Apex Court also observed that if the accident has not occurred because of any of the reasons mentioned in the Clauses (a) to (e) of the proviso to Section 124A, then such a case would be covered by the main body of Section 124A and not its proviso. Section 124A lays down strict liability or no fault liability in case of railway accidents and if a case comes within the purview of section 124A, it is wholly irrelevant as to who was at fault. Paragraphs 15 to 17 are also usefully quoted as under:-

"15. [Section 2](#) (29) of the [Railways Act, 1989](#), defines 'passenger' to mean a person traveling with a valid pass or ticket. [Section 123\(c\)](#) of the Railways Act, 1989, defines 'untoward incident' to include the accidental falling of any passenger from a train carrying passengers. [Section 124A](#) of the Railways Act with which we are concerned states :

"124A. Compensation on account of untoward incident. - When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to -

- (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.*

Explanation - For the purposes of this section, "passenger" includes -

- (i) a railway servant on duty; and*
- (ii) a person who has purchased a valid ticket for traveling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident".*

16. The accident in which Smt. Abja died is clearly not covered by the proviso to 124A. The accident did not occur because of any of the reasons mentioned in clauses (a) to (e) of the proviso to [Section 124A](#). Hence, in our opinion, the present case is clearly covered by the main body of [Section 124A](#) of the Railways Act, and not its proviso.

17. [Section 124A](#) lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of [Section 124A](#) it is wholly irrelevant as to who was at fault."

(emphasis supplied)

27. In view of the above, the incident of train no. 12723, Telangana Express hitting Shri Prithviraj Gajbhiye on 1st March, 2018 leading to his instant death, was an untoward incident within the meaning of Section 123 (c) of the Railways Act.

28. This Court, in a number of cases has held that for the railways to refuse compensation under Section 124A had has to prove beyond reasonable doubt that the passenger died or suffered injury due to suicide or committed suicide or fell under the other exception from (b) to (e). The very fact that the prime evidence of the Loco Pilot diary has not been adduced in evidence, itself demonstrates that the railway administration has been unable to prove this as a case of suicide. In compensation cases like these where evidence has to be led separately, it is not enough if the SDM has accepted the case of suicide. As observed above, nowhere from the affidavit of the widow of the deceased it appears that Shri Prithviraj would commit suicide. Even the Railways have not been able to produce the mandatory Loco Pilot diary which was an important piece of evidence. As also noted above, the affidavit by the widow of deceased has not been controverted by the railways by adducing any evidence. Paragraph 17.4 of the decision of the Apex Court in case of *Union of India Vs. Rina Devi, II (2018) ACC 591 (SC)* clearly provides that once initial burden has been discharged by filing an affidavit of relevant facts, the burden will

then shift on the railways. The initial burden has already been discharged by the widow of the deceased by filing the affidavit dated 27th January, 2020 which ought to have been controverted by the railways by adducing the Loco Pilot Diary. However, the same has not been done. Therefore this is a case of untoward incident not being a suicide.

29. In this view of the matter, the appellants are entitled to compensation under Section 124A of the Railways Act, the death of Shri Pruthviraj Gajbhiye being an untoward incident and who was a passenger holding a platform ticket in accordance with the Railways Act.

30. **The Apex Court in the case of *Kalandi Charan Sahoo and another Vs. General Manager, South-East Central Railway, (Supra)*** as submitted on behalf of the Appellants, has clearly observed that the railway administration is mandated to conduct an inquiry into an untoward incidents immediately after the incident has occurred under the Railways Passengers Untoward Incidents Investigation Rules which admittedly, has

not been conducted as the incident is of around 1st March, 2018, but the same appears to have been conducted more than a year later as can be seen from the record and proceedings. Paragraphs 3 and 4 of the said decision are usefully quoted as under:-

“3. Though rule 7 of the Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003 (hereinafter referred to as ‘Rules’) mandates the railway authorities to investigate into such an untoward incident. Admittedly, no such inquiry was conducted immediately after the incident. It is only when the appellants filed the claim before the RCT on 27.2.2009 that investigation into the incident was ordered on 23.4.2009. According to the Railways, the said investigation revealed that the deceased detrained from the moving train at D Cabin without stoppage of the train and invited the accident. The claim was rejected on the aforesaid basis and the aforesaid plea of the Railway was accepted by the RCT resulting into the dismissal of the claim of the appellants. The appellants filed the appeal, i.e., FAO No. 535 of 2013 challenging the aforesaid order of the RCT. The High Court has dismissed the same by cryptic and non-speaking order with the only observations that findings of the Tribunal in the impugned award and the reasons assigned in support of the same do not warrant any interference.

4. It is in these circumstances the appellants are before us in these proceedings via Article 136 of the Constitution. After hearing learned counsel for the parties, we find that it is not even necessary to go into the issue as to whether it was the fault of the deceased or that he accidentally fell down. Learned counsel for appellants has drawn our attention to the provisions of section 124-A of the Railways Act, 1989, which warrants payment of compensation whenever untoward incident occurs whether or not such an incident has occurred by any wrongful act, neglect or default on the part of the railway administration. Going by the aforesaid provisions and in the peculiar facts of

this case, where no inquiry as mandated by the Rules was conducted immediately after the incident had occurred, we are of the view that the appellants shall be entitled to compensation payable under section 124-A of the Railways Act, 1989. We are informed that at the material time compensation payable under the said provision was Rs.4,00,000."

31. Therefore, also going by the decision of the Apex Court in the above case, the Appellants would be entitled to compensation under Section 124A of the Railways Act.

32. In the circumstances, the impugned judgment dated 21st December, 2020 passed by the Railway Claims Tribunal, Nagpur in case no. OA(IIu)/NGP/22/2019 deserves to be set aside and is hereby set aside.

33. The appellants would be entitled to a claim of Rs. 8,00,000/- (Rupees Eight Lakhs Only) as compensation in accordance with the prevailing law.

34. The Railways are directed to pay the appellants in equal proportion a sum of Rs. 8,00,000/- (Rupees Eight Lakhs Only) to be deposited in their respective savings bank account, subject to verification of their identity and bank details within a period

of six weeks.

35. The appeal is allowed in above terms. No costs.

(ABHAY AHUJA, J.)