



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.294/2024

Asari Tirkey Wd/o Chabilal Tirkey,
Age about 65 years, Occu. Labour,
R/o Farasa Line, Paschimi Madati,
Kamala Bagan, Phansiwa,
Darjeeling (West Bengal) 734 426.

... Appellant

- Versus -

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

... Respondent

Mr. R.G. Bagul, Advocate for the appellant.
Ms. Neerja G. Chaubey, Advocate for the respondent.

CORAM: MRS.VRUSHALI V. JOSHI, J.
DATED: 22.08.2025.

JUDGMENT

A claim petition was filed before the Railway Claims Tribunal, Nagpur Bench, Nagpur by the wife of one Mr. Chabilal S/o Suklal Tirkey who died on 05.12.2018 in a train accident near Sindi Railway Station, Distt. Wardha. The Claims Tribunal rejected the claim petition by the impugned judgment dated 26.09.2023. Being aggrieved, this appeal has been filed by the appellant/claimant.

2. The deceased was travelling on 04.12.2018 from Khaltipur to Lokmanya Tilak Terminus, Mumbai by Train No.18030, Shalimar-LTT Express. Due to fall from running train at KM No.768/25-23 because of heavy rush of passengers and jerk received by the train, he sustained injuries and died during the course of treatment at Mayo Hospital, Nagpur. The appellant herein claims to be dependant of the deceased Chabilal residing in a remote area and thus was not aware about the provisions for claiming the compensation for the death in an 'untoward incident' arising out of a railway accident.

3. The respondent-Railway Authority had set out a defence for rejection of claim. According to them, there was no eye-witness or co-passenger who witnessed the alleged incident and that the deceased was not a *bona fide* passenger.

4. Learned Advocate for the appellant, Mr. Bagul, submitted that the respondent-Railway Authority has not

examined any witness, more particularly, an eye-witness to disprove the claim of the appellant and closed their side of evidence. He further submitted that the learned Tribunal erred in not considering the police documents prepared after the accident in proper manner in which it is clearly mentioned that the deceased, due to sudden jerk received by the train, lost his balance and fell down from the running train and died on the spot.

5. Learned Advocate for the appellant further argued that the Tribunal failed in considering the guidelines issued by the Hon'ble Apex Court in *Union of India vs. Rina Devi* (CA No.4945 of 2018 arising out of SLP (C) No.10223) in which it is concluded that boarding and de-boarding from the train will be an 'untoward incident', entitling the victim for compensation. Hence, he has prayed to allow the appeal.

6. *Per Contra*, Ms. Chaubey, learned Advocate for the respondent-Railway Authority denied the averments made by the

appellant in the instant matter. She denied that the deceased had purchased ticket and was not a bona fide passenger.

7. She further submitted that in paragraph No.(1) (h) of the claim petition, the appellant has stated that seizure memo was not prepared. Hence, in these circumstances, it is the appellant on whom the onus of proof regarding the alleged travel details, lies. Learned Advocate further relied on the observations made in case of *Union of India vs. Rina Devi* (supra) cited by the Tribunal in its reasoning while delivering the impugned judgment. The said observations read as under:-

“Mere presence of a body on railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained.”

On aforesaid counts, learned Advocate for the respondent prayed to dismiss the appeal.

8. Heard both sides and perused the record.

9. It is admitted position that the husband of the claimant was found on the track by one Locomotive Pilot and he was taken to hospital and was declared dead. It is a railway accident. The question remains that whether the death could be considered as an 'untoward incident' within the meaning of Section 123(c)(2) of the Railways Act.

10. On perusal of the documents, especially the post-mortem report and the spot-panchanama, it is clear that the deceased died due to railway accident. On perusal of inquest panchanama it appears that the railway ticket was found along with the body. The Railway Ticket No.33942764 from Khaltipur to Lokmanya Tilak Terminus (LTT) of Rs.455/- was found which proves that the deceased was a *bona fide* passenger of said Shalimar-LTT Express.

11. The eye-witness was not there. Nobody has pulled the chain and nobody informed about falling down of any

passenger, cannot be a ground to reject the claim of the claimant as it cannot be said that the deceased was not travelling and it was not an 'untoward incident' within the meaning of Section 123(c)(2) of the Railways Act. Nothing is there on record to disbelieve the case of the claimant that the deceased was travelling in said train and his body was found on the track.

12. The claimant has examined herself who is the widow of the deceased. Merely because the claimant was not an eye-witness and although she has stated about travelling of deceased from said train, her evidence cannot be disbelieved. In cross-examination, she has not properly stated from where and how the deceased was travelling. She is a rustic witness. Exact corroboration cannot be expected from her.

13. The documents which are filed on record, including the crime details form, post-mortem report and the inquest panchanama prove that (i) deceased had purchased the travel

ticket, it was valid and as such, he was a lawful passenger, (i) the deceased died because of fall from running train during the journey undertaken with the aforesaid valid ticket and (iii) the body of the deceased was located on the property of the Railways. As such, it can be inferred from the aforesaid that the deceased was a *bona fide* passenger and his death has occurred in a railway accident which could be termed as an 'untoward incident' as defined under Section 123(c)(2) of the Railways Act.

14. In the light of the above-stated discussion and the evidence available on record, it is well established by the appellant that she being the wife was dependent on the deceased, the deceased had fallen from the running train while travelling on a valid railway ticket and as such, was a *bona fide* passenger within the meaning of aforesaid provision. A support can be drawn from the explanation to Section 124A of the Railways Act. The Railway has not examined any one to disprove the claim of the appellant. As it is proved by the claimant that the deceased was travelling by said train and he died in an accident, only because

there was no eye-witness, the evidence of the claimant cannot be discarded stating that it was not an 'untoward incident' under Section 123(c)(2) of the Railways Act. As such, the claim on incomplete facts put-forth about travel in question, in my opinion, cannot be formed to be a basis for rejection of the claim of the claimant for the aforesaid reasons. As such, the impugned judgment delivered by the Tribunal on 26.09.2023 is hereby quashed and set aside.

It is held that the claimant is the wife of the deceased and was dependent on him who died in an 'untoward incident' having suffered fall from running train. It is further held that the claimant is entitled for the award of statutory amount of compensation which amount is directed to be delivered to the claimant forthwith.

The appeal stands allowed in the above terms. No costs.

(MRS.VRUSHALI V.JOSHI, J.)