



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

FIRST APPEAL NO. 685 OF 2025

- 1) Smt. Vandana wd/o Namdev Surnar,
Age 48 years, Occupation – Household,
- 2) Amol s/o Namdev Surnar,
Age 23 years, Occupation – Agriculturist,
- 3) Haribhau s/o Sitaram Surnar,
Age 77 years, Occupation – Agriculturist,
- 4) Sakhubai w/o Haribhau Surnar,
Age 81 years, Occupation – Household.

All R/o. Mangirwadi, Sadalapur,
Post – Pethpimpalgaon, Tq. Palam,
District Parbhani – 431 720.

.... **APPELLANTS**

VERSUS

Union of India,
through General Manager, South Central
Railway, Secunderabad.

.... **RESPONDENT**

Mr. D.S. Lambat, Advocate for the appellants,
Ms. N.G. Chaubey, Advocate for the respondent.

CORAM : ABHAY J. MANTRI, J.

DATE : 05-08-2025

ORAL JUDGMENT :

Heard. **Admit.** With the consent of the learned Counsel for
the parties, the appeal is taken up for final hearing forthwith.

2. The original applicants, being aggrieved by the judgment and order dated 03-01-2025 passed by the learned Member (Judicial), Railway Claims Tribunal, Nagpur Bench, Nagpur (hereinafter referred to as '***the Tribunal***'), whereby the claim of the applicants was dismissed, have preferred this appeal.

3. The facts of the case in a nutshell are as under -

(a) The applicants are the legal heirs of deceased Namdev Haribhau Surnar, who was travelling from Tirupati to Mudkhed by Train No. 17405. At midnight of 15.05.2022 and 16.05.2022 at about 02.30 a.m., the train reached Mudkhed. At that time, due to a sudden jerk while alighting from the train, the deceased fell at Mudkhed Railway Station and died on the spot. The deceased was having a valid journey ticket. He died due to the jerk of the moving train. Therefore, the applicants had filed the claim application before the learned Tribunal.

(b) The respondent-railways filed the written statement and resisted the claim of the applicants, contending that no such untoward incident as contemplated under Section 123 (c)(2) of the Railways Act, 1989 (for short, '***the Act***') occurred. Therefore, the claim application is not tenable under Section 124-A of the Act. The respondent categorically denied that the accident occurred due to a fall from the

train. On the contrary, it is averred that the deceased safely alighted from the train and after that suffered a heart attack, and therefore, he slept on the platform, and due to '*acute myocardial infarction*' he died. The respondent in support of its case has examined one R.W.1-Ashish Kumar Das and produced and proved the documents, as well as moved an application to call the Medical Officer, Mr. Kadam, as a witness. Pursuant to its application, the Court examined the Medical Officer, Dr. Kadam. Hence, the respondent urged the dismissal of the application.

4. Considering the rival pleadings of the parties, the learned Tribunal framed the issues. Accordingly, the applicants examined two witnesses and produced and proved the documents. On the other hand, at the request of the respondent, the Medical officer was examined by the Court as a witness, who proved the post-mortem report. After analysing the evidence on record, the learned Tribunal held that though the deceased was having valid journey ticket, he was not involved in any untoward incident as he was died due to '*acute myocardial infarction*' and not due to fall from the train to bring the case within the meaning of 'untoward incident' under Section 123(c)(2) of the Act and accordingly dismissed the claim application filed by the applicants. Being aggrieved by the same, the applicants have preferred this appeal.

5. Heard Mr. D.S. Lambat, learned Advocate for the appellants, and Ms. N.G. Chaubey, learned Advocate for the respondent. Perused the original record and proceedings along with the evidence on record and grounds raised in the memo of appeal, as well as the decisions relied upon by the learned Advocate for the appellants in (i) *Elambal v. Union of India, (2013) 09 MAD. CK 0298*; and (ii) *Dharitri Rath and others v. Union of India, MANU/OR/1462/2024*. The following point arises for my determination.

“Whether any interference is required in the impugned judgment and order in the appeal?”

6. The learned Advocate for the appellants vehemently contended that on the day of the incident, the deceased, while alighting from the train, due to a sudden jerk, fell and accordingly sustained injuries and died. Therefore, the appellants are entitled to the compensation as the accident comes within the ambit of Section 123(c) (2) of the Act as an ‘untoward incident’. However, the learned Tribunal has erred in holding that it does not come within the purview of Section 123(c)(2) of the Act. He has drawn my attention to the evidence of A.W. 2-Keshav Kandhare and also spot panchanama (Exhibit 148), and argued that it categorically demonstrates that the deceased fell from the train and, therefore, incident comes within the

purview of Section 123(c)(2) of the Act; however, the learned Tribunal erred in discarding the above facts and the evidence in that regard.

7. He has emphasised that the facts in the *Elambal* case (supra) and the facts in the case at hand are identical, and therefore the case in hand is squarely covered by the observations made in the said judgment. He has drawn my attention to paragraph Nos. 3, 7.1, 7.2, 7.3, 7.5, 8 and 8.2 of the said judgment and canvassed that the Madras High Court has held that though the deceased had been suffered from heart ailment and no injuries occurred on his person and cause of death was shown as heart attack, but the fact remains that the deceased ran along the platform along with the train and suffered an attack and died instantly at the same place and, therefore, he contended that in the case at hand also while alighting the deceased from the train suffered a shock and died due to heart attack and, therefore, the observations made in the said judgment are squarely applicable in the case at hand. He has specifically pointed out paragraph Nos. 7.3, 7.5, and 9.3, where the Madras High Court dealt with the meaning of ‘*untoward incident*’ and contended that the death of the deceased is not covered under any of the exceptions as embodied under Section 124-A of the Act, and, therefore, it can be termed that the death of the deceased was caused due to an untoward incident. He further canvassed that the said

judgment was challenged before the Hon'ble Apex Court and the Hon'ble Apex Court dismissed the Special Leave Petition by confirming the said order, and, therefore, he urged that the case of the applicants is covered by the said judgment.

a) He further relied on the judgment of *Dharitri Rath and Others* (supra) and pointed out paragraph Nos. 4.1, 4.2, 4.3, and 6, and argued that in the said case, the deceased also fell from the running train while trying to board it at Titlagarh Railway Station and, therefore, the Orissa High Court has held that the said incident came within the meaning of '*untoward incident*' under Section 123(c)(2) of the Act. In the said case also, the post-mortem report denotes that the deceased died due to a '*cardiac attack*' and not having sustained any physical injury, and, therefore, the Orissa High Court held that the deceased came within the purview of '*untoward incident*' under Section 123(c)(2) of the Act and, therefore, allowed the appeal.

b) Having relied on the observations made in the above decisions, the learned Advocate for the appellants emphasized that in both the judgments; the Madras High Court and the Orissa High Court, even though the deceased died due to '*cardiac arrest*' and having no external injuries, have held that the deceased therein came within the purview of '*untoward incident*' as envisaged under Section 123(c)(2) of the Act. Therefore, he submitted that the findings recorded by the

learned Tribunal holding that the deceased died due to the '*acute myocardial infarction*' and, therefore, do not come within the purview of Section 123(c)(2) of the Act. He has further drawn my attention to paragraph No. 7.2 of the judgment in *Elambal* (supra) and submitted that the learned Tribunal has erred in holding that the facts in the case at hand and the facts in the judgment of the Madras High Court are distinct and, therefore, the observations in the said judgment are not applicable in the present case. The said finding is contrary to the facts on record and, therefore, he urged for allowing the appeal by setting aside the impugned judgment and order.

c) Alternatively, the learned Advocate for the appellants has drawn my attention to Section 123(c)(1) of the Act and submitted that the deceased was slept on the platform and died there, which came within the purview of Section 123 (c)(1) of the Act and, therefore, also it can be said that the deceased died due to untoward incident as he died within the precincts of a railway station. Hence, the impugned order is liable to be set aside.

8. *As against*, Ms. N.G. Chaubey, learned Advocate for the respondent, strenuously argued that the impugned judgment is just and proper and no interference is required in it as the learned Tribunal has rightly considered the provisions of Sections 123 and 124 of the Act in

its proper perspective and held that the incident does not come within the purview of Section 123 (c)(1) or (2) of the Act. She has drawn my attention to the post-mortem report, RPF report, cross-examination of the eyewitness A.W.2-Keshav Kandhare and submitted that during the cross-examination, Keshav categorically admitted that *'though the deceased alighted from the train, he was lying on the platform, it cannot be said that he died due to the untoward incident occurred as contemplated under Section 123 (c)(2) of the Act.*

9. She has further drawn my attention to the examination-in-chief of C.W.1-Dr. Kadam, Medical Officer and submitted that in his testimony, he has categorically deposed that the cause of the death was due to *'acute myocardial infarction'*; also, he did not find any type of injuries on the person of the deceased. Therefore, she submitted that the deceased died due to acute myocardial infarction and the cause of death was due to heart attack and not by the untoward incident as embodied under Section 123(c)(1) or (2) of the Act. Lastly, she submitted that the applicants have not come to the Court with clean hands and suppressed the said fact; therefore, the applicants are not entitled to the reliefs as claimed. Hence, she urged confirmation of the impugned judgment and order.

10. Having considered the arguments and record, at the outset, it appears that the respondent does not dispute that the deceased was holding a valid ticket and was a passenger in the train. The defence of the respondent was only that the deceased died due to an “***acute myocardial infarction***” and not by the occurrence of any untoward incident; therefore, a short but crucial question arises to determine is, ‘how the deceased died due to the untoward incident or by natural death, i.e. ‘*acute myocardial infarction*’.

11. While dealing with the above question, the testimony of Medical Officer C.W.1-Dr. Kadam is material as he had conducted the post-mortem examination and categorically deposed that the cause of death of the deceased was ‘***due to acute myocardial infarction***’. He also produced and proved the post-mortem report. He further clearly deposed that ‘*he did not find any type of injuries on the body of the deceased*’. He also explained that ‘***acute myocardial infarction***’ means there is no supply of blood to the muscle of the heart by the arteries. It can be ‘*due to genetic, stress, and precipitating factors like diabetes, hypertension and atherosclerosis, and sudden shock may cause a heart attack*’. However, applicants neither cross-examined him nor put any suggestion nor denied his testimony, and, therefore, there is no reason to disbelieve his testimony. When the Medical Officer, who is an expert

in the medical field, had given his opinion that “*the deceased died due to acute myocardial infarction, then the burden lies on the applicants to prove that he died due to an untoward incident.*” Moreover, the Medical Officer is the independent witness; he has no reason to depose against the applicants nor he has grievance or grudge against them, but based on the medical examination, he came to the conclusion that the cause of death of the deceased was due to ‘*acute myocardial infarction*’ and accordingly, he gave his opinion, therefore, there is no reason to discard the same.

12. It is further pertinent to note that the applicants have examined A.W. 2-Keshav in support of their claim. During his cross-examination, he categorically admitted that “*it is true that all the co-passengers, including the deceased, have safely de-boarded the train at Mudkhed Railway Station.*” He further admitted that “*it is true that the deceased had not got any injury on his body due to the alleged incident.*” He further categorically admitted that “*after de-boarding from the train deceased lay down (slept) on the platform at Mudkhed Railway Station.*”

13. The aforesaid testimony itself categorically shows that the deceased, after de-boarding from the train, lay down on the platform. However, it does not appear that while alighting from the train due to a

sudden jerk to the moving train, he fell on the platform/Mudkhed railway Station as claimed by the applicants.

14. Thus, it is evident that the applicants failed to adduce cogent and reliable evidence in support of their pleadings that due to a sudden jerk, the deceased, while alighting from the moving train, fell on the Station and died on the spot. On the contrary, the evidence adduced by the applicants explicitly denotes that after de-boarding the train safely, the deceased lay down (slept) on the platform. The evidence of A.W. 2-Keshav does not support the pleading in the application and appears inconsistent with it. This itself indicates that the applicants/claimants have not come to the Tribunal/Courts with clean hands, stating the real facts but suppress the actual facts from the Tribunal with a view to take undue advantage of the fact that the deceased was died within the precincts of a railway, they have filed the claim application before the learned Tribunal alleging that due to a sudden jerk, the deceased while alighting from the moving train fell on the platform. It is a settled position of law that the person who comes to the Court must come with clean hands, and, therefore, the person who suppresses the real facts from the court and thereby tries to mislead the Court is not entitled to any claim any relief from the Court.

15. Perused the judgment in *Elambal* (supra), wherein the facts were that the deceased therein got alighted from the train, however, his two family members could not get down from the train and train started moving so he ran along the platform along with the train and in the said process, he suffered shock, heart ailment and fell on the platform and, therefore, the Madras High Court has held that the accident that occurred had come within the purview of the ‘*untoward incident*’ under Section 123(c)(1) and (2) of the Act. I would like to reproduce paragraphs 7.1, 7.2, 7.3, and 8.2 of the said judgment.

“7.1. The learned Counsel for the Respondent strongly relies upon the admission made by the Legal Representatives of the deceased that the deceased had been suffering from heart ailment for a period of ten years and therefore, when he died on account of cardiac arrest as supported by the Post-mortem Certificate, the death must be construed only as a natural death and not a death on account of untoward incident. In other words, the contention is that this incident would not come within the purview of "accidental falling of a passenger from a train carrying passengers" as defined under Section 123(c) of the Railways Act.

7.2. It is not in dispute that the ultimate cardiac arrest was on account of the "untoward incident" that occurred on the date of the journey. So, whether it should be construed as a case of natural death, under the stated circumstances, is the main issue to be considered.

7.3. In order to appreciate the contention, with regard to the cause of death, it is necessary to look into the scope and object of Sections 123, 124 & 124-A of the Railways Act.

8.2. Pointing out these details, it is contended by the learned Counsel for the Appellants that the stress and strain of running along with the train, leading to death, in pursuance of the family members travelling in the train and not being able to get down, should be considered as an "untoward incident". It is also contended that the liability, contemplated under the Railway Claims Tribunal Act, is not a liability on fault, and it is a strict

liability, and once it is proved that the accident was due to an untoward incident, the liability is automatic.”

16. A bare perusal of the above observations reveals that the deceased therein died due to cardiac arrest in consequence of the stressful running along with the train, leading to death, and, therefore, held that the said incident comes within the purview of Section 123(c) of the Act and granted compensation. However, in the case at hand, the applicants claimed that due to a sudden jerk, the deceased fell while alighting from the train. On the contrary, A.W.2-Keshav Kandhare, to whom he has examined as a witness, in his cross-examination has categorically admitted that “*all the co-passengers, including the deceased have safely de-boarded the train at Mudkhed Railway Station and after de-boarding from the train, the deceased lay down (slept) on the platform*”, which does not show that due to the jerk or crowd in the train he fell from the train, while alighting from it. No material on record indicates that the deceased was under stress and, therefore, he had suffered a cardiac arrest as observed in the judgment in *Elambal* (supra). Moreover, it is not the case of the applicants that the deceased was under stress and strain while de-boarding the train, and, therefore, I do not find substance in the contention of the learned Advocate for the appellants that the observations made in *Elambal* (supra) are applicable in the case at hand. On the contrary, it is apparent that there is a

distinction between the facts in the case cited above and the case at hand. Hence, the observations made in the said judgment are hardly of any assistance to the appellants in support of their contentions.

17. Apart from this, according to the applicants, the deceased fell from the train, but the post-mortem report and the evidence of the doctor do not indicate that the deceased had sustained any injury on his person due to a fall from the train. A.W.2-Keshav Kandhare has categorically admitted that the deceased had not sustained any injury on his body due to the alleged incident. Similarly, the Medical Officer C.W.1- Dr. Kadam clearly deposed that he had not found any type of injuries on the body of the deceased, and the cause of death of the deceased due to acute myocardial infarction. The said evidence does not corroborate or support the case of the applicants.

18. On perusal of the judgment in *Dharitri Rath and Others* (supra), it appears that in the said case, the deceased, while boarding the moving train, fell on platform No. 1 at Titlagarh Railway Station. He was declared brought dead since the deceased died due to falling from the train, and the same has been brought to the notice of the Tribunal through the examination of the witnesses. In the said case, the learned Tribunal rejected the application on the ground that the

deceased died due to cardiac arrest, having not sustained any physical injuries. Therefore, the Orissa High Court has remanded the matter back to the Tribunal for fresh consideration. However, in the case at hand, as discussed above, they are distinct from the above judgment; therefore, the observations made in the said judgment are not helpful to the appellants in support of their contentions.

19. It appears that the learned Tribunal in **paragraph No.7.11** of the impugned judgment has categorically observed that it is not a case where the deceased had an accidental fall from the train during the course of travel. *After completion of his journey, the deceased safely de-boarded the train and suffered “acute myocardial infarction”* (natural death), and, therefore, he died. Hence, the Orissa High Court held that the deceased died due to an acute myocardial infarction. As such, it does not come within the purview of Section 123(c)(2) of the Act.

20. It further appears that the learned Tribunal in **paragraph 7.12** has considered the judgment of the Madras High Court and observed that the facts in the said case and in the present case are different, and he also discussed the same in detail in the said paragraph and held that what has been laid down in the said judgment is not applicable in the present case. In **paragraph 7.14**, the learned Tribunal has categorically

held that the incident in question is not an untoward incident. The applicants have not been able to prove that the deceased had fallen from the moving train and, therefore, observed that he did not agree with the pleadings of the applicants on the said point and thus concluded that the applicants failed to prove the case as against it was held that the deceased died a natural death and, therefore, dismissed the claim application.

21. For the sake of argument, even assuming that the provisions for compensation in the Act are a beneficial piece of legislation, in that circumstances also, in my view, neither the applicants have come to the court with clean hands nor proved their case that due to the sudden jerk, the deceased fell from the moving train and therefore, the incident can be termed as the untoward incident as contemplated under Section 123 (c)(2) of the Act. Therefore, in my opinion, the applicants are not entitled to claim the benefit of the intent and object of the Act.

22. To summarise the above discussion, it is apparent that the appellants failed to demonstrate that on the day of the incident, due to crowd and sudden jerk of the train the deceased fell from the train, while alighting, on the contrary, the evidence on record indicates that the deceased safely de-boarded the train and lay down (slept) on the

platform and died due to “*acute myocardial infarction*”. Therefore, it cannot come within the purview of an ‘*untoward incident*’ as contemplated under Section 123 (c)(2) of the Act to claim the benefit under Section 124-A of the Act. *Moreover*, the appellants failed to point out that the findings recorded by the learned Tribunal are unjust or improper. On the contrary, it appears that the learned Tribunal, after considering the evidence on record, has rightly held that the deceased died due to natural death and he was not a victim of the untoward incident as contemplated under Section 123(c)(2) of the Act. The judgment of the learned Tribunal is justifiable and proper, and, therefore, in my view, no interference is called for in the appellate jurisdiction. Hence, *I answer the point negatively*.

23. As a result, the appeal lacks merit, stands dismissed. No order as to costs.

(ABHAY J. MANTRI, J.)