

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 81 of 2025

Fatema Khatun & Ors.

VERSUS

Union of India

For the appellants:

Mr. Soujanya Bandyopadhyay, Adv.

For the Union of India:

Mr. Animesh Mukherjee, Adv.

Mr. Ashok Halder, Adv.

Last Heard on: March 30, 2026

Judgment on: June 29, 2026

Biswaroop Chowdhury,J:

The appellants before this court were applicants in a case under Section 16 of Railway Claims Tribunal Act 1987 read with Section 124A of Railways Act 1989 and is aggrieved by the Judgment and Award dated 08-02-2017 passed by Hon'ble Railway Claims Tribunal Kolkata Bench in Railway Claim Application No-OA(IIu)/KOL/0165/2022;

The case of the appellant before Railway Claim Tribunal may be summed up thus;

On 22-09-2021 at night after purchasing valid railway ticket Harun Al Rasid boarded on 12377-Sealdah-New Alipurduar Padatik SF Express train from Sealdah R/S to Cooch Behar R/S. During his course of journey, Harun Al Rasid fell down from the said running train due to overcrowded pressure and sudden jerk in between Jamirghata R/S and Khaltipur R/S. As a result he died on the spot and his dead body was recovered at morning on 23-09-2021 and one railway memo was issued by on duty SM of Jamirghata R/S. Malda Town GRPS started an U/D case vide No. 50/21 dated 23-09-2021. He was a bona fide passenger of the said running train.

The respondent Railway Authority contested the case by filing written statement denying the contentions.

By Judgment and Award dated 08-10-2024 Learned Tribunal was pleased to dismiss the application by observing and directing as follows:-

This coupled with the fact that no journey ticket has been filed on record. Accordingly the Tribunal cannot conclude that the victim was a bona fide railway passenger at the time of occurrence of the alleged incident which resulted in his death.

7.19. In view of our above discussion we are of the view that the claimants have failed to prove that the deceased was a bona fide passenger or

sufferer of an untoward incident. Accordingly both the issues are decided against the applicants.

7.20 Since the ISSUE nos. 1 and 2 are decided against the applicants and in favour of the Railways as such it will be a redundant exercise to adjudicate qua the remaining issues.

7.21 In view of the discussion held above, the claim application being devoid of merits is hereby dismissed with no order as to costs.'

The appellants being aggrieved by the Judgment and Order of the Learned Tribunal has come up with the instant appeal.

Heard Learned Advocate for the Appellants and Learned Advocate for the respondents. Perused the materials on record.

Learned Advocate for the appellant submits that on 22-07-2021 night after purchasing valid superfast railway ticket from Sealdah railway station to Cooch Behar Railway station the victim boarded the trains. Learned Advocate draws attention to the report of the DRM and submits that the wife of the victim stated before RPF that her husband was returning from Calcutta in Padatik train and discussed with him over phone at 11.00 p.m.

Learned Advocate further submits that A.W. 1 stated that her son boarded train from Kolkata and just because she forgot the name of the train the same cannot be said to be fatal.

Learned Advocate also submits that the facts and circumstances of the case as revealed from the investigation conducted by the respondent authorities corroborate this position.

It is submitted by the Learned Advocate that the Learned Claim Tribunal has wholly misconstrued the evidence by holding that the conclusion as to cause of death as reported in police investigation report and final police report is based on hearsay and it is only a guess work.

It is further submitted that once it is established that a person has died of an untoward incident the burden shifts on the respondent railway to disprove the same. In the present case railway the respondent herein has not adduced any evidence to substantiate that the police report and investigation report are false and/or result of collusion. Moreover the respondent railway is not justified in disputing the said reports, since the authorities who prepared the said report are directly or indirectly under the control of the respondent railway. However the Learned Tribunal has in effect made out a third party case. It is also submitted that from evidence of R.W. 1 it is clear that he was not an eye witness to the incident. In his cross examination, R.W/1 has specifically stated that the on duty porter Saidul Rahaman informed him about the incident and the Inquest Report on which he had affixed his signature. It is alleged by him that half of the report was blank and half was filled in at the time of signing.

Learned Advocate submits that mere non-recovery of a railway ticket from the body of the deceased cannot by itself conclusively establish that the victim was not a bona-fide passenger. It is a matter of common experience that in cases of accidental falls from moving trains, tickets may be lost displaced or destroyed in the course of the incident. In the absence of positive evidence disproving the status of the deceased as a bona-fide passenger presumption ought to operate in favour of the claimant.

Learned Advocate further submits that the direct evidence by AW-1 and the statement made by Appellant No. 1 before Investigating Authority mutually corroborate each other and are fully consistent with the occurrence of the accident.

Learned Advocate also submits that in view of such cogent and consistent evidence on record there was no justification for drawing an adverse presumption against the appellants.

Learned Advocate relies upon the following Judicial decisions:

Union of India VS Rina Devi

(2019) 3 SCC. 572.

Dali Rani Saha VS Union of India

Civil Appeal No-8605 of 2024.

Supreme Court of India.

FMA-1133 of 2024.

Manju Agarwal and ors VS Union of India

Calcutta High Court.

FMA 959 of 2011.

Kakali Kurmi VS Union of India and Anr.

FMA-1133 of 2024

Calcutta High Court.

Learned Advocate for the respondent Railway Authority submits that the present appeal is devoid of merits.

Learned Advocate further submits that the claimant failed to prove that the victim was a bona-fide passenger, as no journey ticket was recovered from the possession of deceased, no co-passenger was examined no eye-witness was examined and further the time of boarding was not disclosed.

Learned Advocate also submits that the evidence indicates, run over Case. Learned Advocate submits that as per Surathal Report Form II submitted by ASI/RPF Sketch Map Statement of on duty porter at Jamirghata Statement of ASI/RPF/KTJ statement of Loco Pilot of Padatik Express, and statement of Guard of the said train the incident was not a case falling from a running train.

Learned Advocate further submits that the nature and multiplicity of injuries indicate a run over incident.'

Learned Advocate also submits that on-duty Guard and Loco Pilot categorically stated that they did not notice any such incident and no report was received from any source regarding a fall.

Learned Advocate submits that the Learned Tribunal upon considering the evidence rightly rejected the claim.

As the present case relates to compensation on account of untoward incident it is necessary to consider the provisions contained in Section 124A of the Railways Act 1989.

Section 124A of the Railways Act 1989 provides as follows:-

S. 124A. Compensation on account of untoward incidents-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 travelling by a train carrying passengers on any date or a valid platform ticket and becomes a victim of an untoward incident.

This instant case arose on the receipt of Railway Memo from Deputy Station Manager Eastern Railway Malda Town by Malda Town GRPS that one unknown male dead body aged about 35 years old is lying outside track of UP line at railway KM No. 277/8 under Jamirghata R/S limit.

On receiving this information Malda Town GRPS UD. Case No. 50/2021 dated 23/09/2021 was started and investigation taken up. An inquest of the body of the victim was done and injuries on different parts of the body

recorded. The ASI of Police preparing the inquest report stated that upon interrogation of the present witnesses and the persons who signed on next page came to know that the victim might fell from any up or down train in the morning and died. Yet to ascertain the cause of death he send the dead body to morgue of Malda Medical College and Hospital.

The Post Mortem Report stated that death was due to effects of ante-mortem injuries. In the report submitted by the Police Authority under Section 174 of the Code of Criminal Procedure before the Learned Magistrate the Police Authority stated that during investigation it is learnt that the deceased fell down from any unknown train and died at the spot. It was further stated that till date no foul play could be detected.

Apart from the enquiry conducted by the Police Authority with regard to the unnatural death of the victim an enquiry was also conducted by the Railway Authority. Enquiry Officer recorded the statement of the wife of the victim Fatema Khatun, elder brother of the victim Nurul Haque on duty porter on duty SML/JMO Loco Pilot of Train 02377 up (Padatik Express) Train No. 02377up (Padatik Express) and three others RPF personnels. Upon considering the statements RPF/ A and D Wing/MLDT the Enquiry Officer observed as follows:

‘under above facts, circumstances and evidences collected so far could be learnt that no Railway ticket was found from the possession of the deceased person as well as no eye witness was found who could prove that the deceased

person has fallen down from the alleged Train No. 12377/02377UP (Padatik Express). Moreover on duty Guard and Loco Pilot of the said train stated that neither they noticed any such incident nor received information from any corner. Hence the reason of the incident could not be ascertained.'

Thus upon perusal of the Enquiry Report it will appear that the cause of death could not be ascertained by Railway Authority, although no journey ticket could be collected from the possession of the victim.

As Railway Authority is a State under Article 12 of the Constitution it is the duty of the Authority to see that genuine claims are honoured and frivolous claims are dismissed. Thus in case of genuine claims it is also the duty of the Authority that the matter is resolved and family of the victim is not required to wait to contest the case in Tribunal. Even Railway Authority can make Ex-gratia payment. In this regard it is necessary to consider provision contained in Rule 10 and Rule 12 of Railway Passengers (Manner of Investigation of Untoward Incidents) Rules 2020.

Rule 10-Action on the Report by the Divisional Railway Manager. The Divisional Railway Manager, on receipt of the report mentioned in sub-rule (3) of rule 9 shall examine the same within fifteen days.

2) The Divisional Railway Manager on receipt of the report, mentioned in sub-rule (3) of rule 9 shall examine the same within fifteen days. In case the statutory time periods mentioned in the rules for filing of Form 1 and Form 2

have not been adhered to then Divisional Railway Manager shall call for explanation for delay from the concerned authorities.

3) When on examination, Divisional Railway Manager is satisfied that the investigation is complete, he shall pass an order accepting the said report.

4) If the Divisional Railway Manager has reason to believe that some more inquiry is required in the matter it shall refer the same back for investigation to the officer of the Force along with his observations for further investigation.

5) On receipt of the reference under sub-rule (4) the officer of the Force shall investigate the matter further and submit the report immediately to the Divisional Railway Manager.

12. Sending report to Claim Officer-1) The investigation report along with acceptance of Divisional Railway Manager there on shall be sent within fifteen days to the administrative in-charge of the claim office of the Zonal Railway where the incident has occurred.

2) The administrative in charge of claim office of the Zonal Railway who has received the notice of the claim for that particular incident shall arrange to collect the report from the claim office of Railway where the incidence has occurred, shall initially have the claim examined by presenting officer (Railway Claims Tribunal), and associated legal branch and on the basis of their submission and recommendation of Divisional Railway Manager as provided

under sub-rule (3) of rule 10 and pass a speaking order whether the claim is to be admitted or contested and shall submit the same to the concerned Bench of the Railway Claims Tribunal along with the written statement.

Thus from the written statement of Respondent nowhere it appears that there was compliance of Rule 10 and Rule 12 of Railway Passengers (Manner of Investigation of untoward Incidents) Rules 2020. As the compensation claim rule is a beneficial legislation and Railway Authority is state under Article 12 of the Constitution of India compensation cases under Section 124A of the Railways Act 1989 should not be treated by the Railway Authorities like other litigation in view of enabling provision of Rule 12 of the Rules. In the instant case the wife of the victim made specific statement before Enquiry Officer that the victim went to Kolkata to search good job and when he could not find good job he returned from Kolkata by Padatik train. The matter was discussed over mobile phone at 11.00 p.m. dated 22-09-2021. Now the point for consideration is whether the statement of Fatema Khatoon regarding her husband going to Kolkata and boarding Padatik Express along with the report of Police Authority that the victim probably fell from the train is sufficient for the Railway Authority to be Satisfied and treat the same as an untoward incident, and whether Learned Tribunal was justified in dismissing the claim of the appellants.

It is to be remembered that in the case of compensation claim before Tribunals or Courts with regard to death of a person by railway accident in a

place far of from his residence it is not possible to arrange for eye witness thus the applicant has to depend on the report of the Police Authority, and Railway Authority and his knowledge of the victim travelling in the train.

In the case of Union of India VS Rina Devi (supra) the Hon'ble Supreme Court observed as follows:

'29. We thus hold that mere presence of a body on the 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. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.'

In the case of Dali Rani Saha VS Union of India (supra) the Hon'ble Supreme Court observed as follows:

'14. In the present case, the appellant had duly filed an affidavit stating the facts and adverting to the report arising from the investigation conducted by the respondent, which showed that the deceased was travelling on the train and that his death was caused by a fall during the course of his travel. The burden of proof then shifted to the Railways, which has not discharged its burden.'

Therefore, the presumption that the deceased was a bona fide passenger on the train in question was not rebutted.

15. Further, the report of the IO indicates the details mentioned in the post-mortem report. It states that the cause of death was due to an injury sustained on the head and that all injuries were antemortem and caused by “blunt force impact”. It also states that forty-eight to seventy-two hours had passed since the time of death.’

In the case of Manju Agarwal VS Union of India (supra) this Hon’ble Court observed as follows:

‘11. The primary reasoning upon which the tribunal’s decision rest is the non-recovery of travel ticket from the possession of the body of the deceased. The non-recovery of the ticket was plausibly explained by the admitted fact that the wallet wasnot recovered as confirmed by the RTI’s response from the GRP. The Hon’ble Supreme Court in the decision cited in Union of India vs. Rina Devi (2019) 5 SCC 572 observed “Mere absence of ticket with the deceased will not negate the claim.....”

12. The burden shifts to the railways to prove the contrary is set up by the claimant. Furthermore, in Kamukayi and others vs. Union of India, 2023 SCC Online 642, the Apex Court reiterated that the mere non-recovery of the ticket is not fatal to the claim and plausible explanation hearing such as non-recovery of the wallet justified the legal presumption of bona fide travel.’

In the case of Kakali Kuemi VS Union of India (supra) this Hon'ble Court observed as follows:

'18. Here in this case also report under Section 174 of Cr.P.C (exhibit-4A) was filed in support of an 'untoward incident' as defined in Section 123 (c)(2) of the Railways Act and in this case principle of strict liability applies and naturally, proof of negligence is not required. In our case, from the Police Reports, I find that no foul play was detected and accordingly final report was submitted.

*19. In **Suchitra** (supra) Hon'ble Division Bench our Court also relied on that ratio of **Rina Devi** (supra).*

*20. Gamut of aforesaid discussion boils down to the conclusion that Nitya Gopal Kurmi died in an accident by the involvement of 103 Up Lalgola train which is an 'untoward incident' within the meaning of Section 123 (c)(2) of the Railways Act, 1989 and therefore claimant is entitled to compensation in terms of ratio of **Rina Devi** (supra).'*

'16 Therefore even in absence of railway ticket it does not make any difference unless burden is discharged by the railway authority while dead body was found on the railway track. In our case evidence of AW-1 was duly corroborated by the eye-witness AW-2.

In the case of Yellomma and others VS Union of India MFA-No-6117 of 2016. (Karnataka High Court) the Hon'ble Court observed as follows:

'22. It is not possible for the claimants to examine a person as they have witnessed that the deceased has purchased tickets and also it is not possible for the NC: 2025:KHC:16279 MFA No. 6117 of 2016 claimants to examine a person as eye witness to the incident. If any passenger accompanied his friend or relative, then it may be possible to examine that person as eye witness. But whereas a passenger travels alone along with other stranger passenger, then after the incident and when the claim petition is filed before the Tribunal, it is not possible for the claimant to examine any person as witness to the incident. It is not expected in this regard that the claimants to examine any person as eye witness. Expectation by the railway administration that the claimants should examine eye witness is ridicule on the part of the railway administration and it is wholly unwarranted. What the Railway Department prepares report by the Divisional Railway Manager as stated above certain duties are prescribed on the railway authorities as per Rules 6 to 13 of Rules, 2003 (stated supra).

23. Rules 6 to 13 as above stated impose bounden duty on the officials of railway authorities to perform their duties and discharge their functions when an untoward-24-NC: 2025:KHC:16279 MFA No. 6117 of 2016 incident occurs. Therefore, what the railway authorities could do and ought to perform their functions, it cannot be expected from the claimants' side. Therefore, it is not a rivers burden on the claimants to prove each and every from the claimants, which the railway authorities ought to do.

24. When the respondent-Railway has taken the contention that the claimant has not produced the railway ticket, but certain duties are cast on the Railway as per Rule 4 of Rule, 2003.'

In the instant case the appellants claimants have discharged their duties by affirming affidavit that the victim boarded 12 377 Sealdah-New Alipurduar Padatik Express. In cross examination nothing could be shaken that the victim did not board Padatik Express. Further the Inquest Report of Police Authority under Section 174 CrPC before Magistrate and statement of Fatehma Khatoon before Railway Enquiry Officer corroborates the case of the Appellant.

Although no ticket was found from the possession of the victim it should not be presumed that he was a ticketless traveller. A person while travelling in long distance express trains usually does not take the risk of travelling without tickets for the fear of being caught and prosecuted by Ticket Examiners as during long journey examination of ticket is done by Railway Authority. Moreover when a person who is alive is unable to produce his ticket may be charged as ticketless traveller but it would not be reasonable to charge a dead person as ticketless traveller as he would not be able to defend himself. A person may keep his train ticket in money bag shirt pocket pant pocket or even inner portion of shirt pocket so that it is not lost, he may also keep inside luggage bag. In the instant case the money bag found from the possession of the deceased was checked and ticket not found thus it cannot be said with certainty that ticket was not kept in shirt pocket or pant pocket or misplaced.

The plea of the Railway Authority that it is a case of run over cannot be sustained. When the residence of the victim is more than 100 km from the place of incident there is no scope to presume that the victim was run over by train in absence of direct evidence, when the victim is not residing in the area where the incident took place nor has any plea of business or employment in the nearby area. Any presumption of running down by train in such cases in absence of direct evidence would be totally unreasonable. Hence when doubt arises as to whether victim was bona fide passenger with ticket or not the benefit of doubt should go in favour of claimants.

In the facts and circumstances this Appeal FMA 1315 stands allowed. Judgment and Award dated 8/2/2017 passed by Learned Hon'ble Claim Tribunal Kolkata Bench on OA(Ilu)/KOL/0165/2022 is set aside. Respondent is directed to pay compensation of Rs 800,000/- along with interest @6% per annum from date of filing claim case till today. The compensation amount shall be deposited before Registrar General High Court Calcutta within 8 weeks from the date of communication of this Order. The Appellants will be entitled to withdraw compensation upon compliance of necessary formalities.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)