

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 68 of 2017

With

IA No.: CAN/1/2016 (Old No.: CAN/8785/2016)

Dibakar Haldar

VERSUS

Union of India

For the appellant:

Mr. P Ghosh, Adv.

For the respondent/Union of India:

Ms. Chandreyi Alam, Adv.

Last Heard on: June 16, 2026

Judgment on: July 01, 2026

Biswaroop Chowdhury,J:

The appellant before this Court was an applicant in an application under Section 16 of the Railway Claims Tribunal Act 1987 and is aggrieved by the Judgment and Order dated 14-07-2016 passed by Learned Railway Claim Tribunal Kolkata Bench Kolkata in OA-(11a)/0043/2011.

The case of the applicant/appellant before the Learned Tribunal may be summed up thus:-

On 27-05-2010 Sankar Halder son of the Appellant was travelling EX. Howrah to ITT by 2012 Janneswari Express vide Tkt No. 643927931. During the Course of working on 28-05-2010 due to negligence of railway staff the train was derailed in between Kherasuli Tata Section of Kharagpur Division. As a result of such accident his son died missing. It is contended that Rs. 500,000/- is already received and compensation claimed was Rs. 400,000/-.

The Railway Authority by filing written statement did not dispute the accident and the payment of ex-gratia to the applicant but did not admit that the name of the victim was included in the list of dead passengers and the applicant was put to establish the identity of the deceased on receipt of DNA report.

ISSUES were framed and evidence was adduced. Learned Tribunal by Judgment and Order dated 14th July 2016 was pleased to dismiss the claim case by observing as follows:

The respondent has submitted the copy of Reservation Chart for sleeper class S-3 compartment of Jnaneswari Express on 27-05-2010 wherein it is found that S. Halder's name is mentioned.

Thus from the above it is noted that S. Halder was a bona-fide passenger of 2102 Jnaneswari Express on 27-05-2010 in S-3 compartment. His body was

missing and an ex-gratia was paid to his father Dibakar Halder. But no death certificate has been issued. The respondent railway has also not admitted this case. Though I find that there is enough evidence to show that S. Halder was a bona fide passenger of Jnaneswari Express and his name is figuring in list of missing persons and ex-gratia amount has been paid to his father, but in absence of death certificate, I am not in a position to conclude that Sankar Halder expired due to accident. The Tribunal in my opinion is not empowered to decide on presumption as per Evidence Act that Sankar Halder died. This Tribunal has got limited power and therefore the applicant should approach proper judicial authority for declaring Sankar Halder is dead and then approach the Tribunal for compensation. Hence, ORDERED that OA is dismissed with liberty to file fresh application after necessary certificate of death as per law from the competent authority.'

The Appellant/applicant being aggrieved by the Judgment and Award passed by the Learned Tribunal has come up with the instant appeal.

Heard Learned Advocate for the appellant and Learned Advocate for the respondent. Perused the materials on record.

Learned Advocate for the appellant submits that the victim son of the appellant was travelling from Howrah Junction to Lokmaniyatilak Station by travelling in Jnaneswari Express 2102 having valid ticket bearing PNR Number 6439279319, corresponding to ticket no. 6439279319. Coach-no-3 Berth-No02. Learned Advocate further submits that during the course of journey the

train got derailed in between Khenasulia and Sardiha Railway Station under Kharagpur Division on 28-05-2010 at midnight which resulted death of uncounted passengers.

Learned Advocate also submits that the Divisional Commercial Manager South Eastern Railway Kharagpur issued a certificate dated 27-09-2010 thereby sanctioning a sum of Rs. 500,000/- (Rupees Five lakhs) only. It is submitted that the appellant lodged a missing diary with Jhargram GRPS on 30-05-2010.

It is further submitted that primary reasoning upon which the Tribunals decision is based is the non-production of the death certificate of the victim which cannot be sustained.

Learned Advocate submits that non-production of death certificate is explained by the admitted fact, that ex-gratia was paid.

Learned Advocate further submits that mere absence of the death certificate shall not negate the claim of the appellant. Learned Advocate also submits that in a similar situated case Learned Tribunal allowed claim application with regard to Jnaneswari Express 2120 derailment at midnight on 28/05/2010 thus the appellant is also entitled to payment of compensation.

Learned Advocate relies upon the following Judicial decisions:-

Union of India VS Probhakaran Viyaya Kumar and others.

(2008) 9 SCC P-527.

Rajni and Anr. VS Union of India and Anr.

2025 SCC. Online S.C. 2182

Learned Advocate for the respondent submits that there is no dispute with regard to the son of the appellant Shankar Halder travelling with valid ticket and there is no dispute that the appellant has received ex-gratia payment. Learned Advocate further submits that in order to obtain compensation from Tribunal a death certificate or a declaration that the person concerned is dead is required from competent court. Learned Advocate also submits that the respondent is not unwilling to pay compensation but a declaration from competent court be obtained. With regard to compensation being awarded to a similar case of missing namely Juthika Atta Learned Advocate submits that an appeal is preferred against the said order.

Now as the argument of the respondent and order of the Learned Tribunal is with regard to obtaining declaration from competent Court as to death of the appellant's son Shankar Halder it would be reasonable to consider the provisions contained in Section 107 and Section 108 of the Evidence Act.

Section 107-Burden of proving death of person known to have been alive within thirty years-When the question is whether a man is alive or dead and it is shown that he was alive within thirty years the burden of proving that he is dead is on the person who affirms it.

Section-108-Burden of proving that person is alive who has not been heard for seven years-provided that when the question is whether a man is alive or dead and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

Thus upon plain reading of the provision of Section 108 of the Evidence Act it is clear that the presumption under the said Section arises on completion of seven years from the date when the missing person was last seen or heard alive. As the matter before the Tribunal for compensation came up for consideration much before completion of seven years from the date of accident when the victim was last heard alive there was no scope for the Tribunal to apply the provision of Section 108 of the Evidence Act. Moreover when the power to make declaration under Section 108 of the Evidence Act lies with the Civil Court such power cannot be exercised by the Railway Claim Tribunal.

Now the point for consideration is whether Compensation can be granted by the Railway Authority or by the Tribunal in case of railway accident where many people died many injured and bodies of some passengers went missing in case the body of a bona-fide passenger could not be recovered. The answer is in the affirmative.

It is to be remembered that provision of Section 108 of the Evidence Act is a general provision. However, compensation scheme of Railway Accident is a beneficial legislation where strict rules of evidence do not apply and the

Railway Authority if convinced after enquiry that death has taken place although body of the person concerned is not recovered the Railway Authority has discretion to make ex-gratia payment and Railway Claims Tribunal has power to Award compensation upon considering the Enquiry Report of Railway Authority with regard to the accident.

When in ordinary circumstances, a person goes missing and general diary is lodged before Police Authority and publication of missing information is made in newspapers and police Authority inspite of several efforts is unable to know the whereabouts of the person missing, necessary declaration can be obtained from Civil Courts that the said person is dead by invoking Section 108 of the Evidence Act.

The principle and procedure to be applied by the Railway Authority or Railway Claims Tribunal in case of railway accident where many passengers died and many injured and bodies of some bona-fide passengers are missing, is not the same in case of missing persons under ordinary circumstances. Where it is proved that a person was travelling in the train and the train met with an accident and many people died and the body of certain passengers are missing and could not be traced out inspite of all endeavours, the Railway Authorities are not powerless to make ex-gratia payments and Railway Claims Tribunals are also not powerless to award compensation.

As in case of missing in ordinary circumstances police Authority is to make publication in newspapers and media, and carry out enquiry in different

places taking considerable time. However, in case in missing passengers of railway accident the searching operation with regard to bodies are carried out in the area where accident takes places which falls within the jurisdiction of Railway Authority. In such cases search operation and enquiry about missing persons is within the area where accident takes place and in case where injured are shifted to hospital in the said hospital. Non-filing of General Diary before Police in such cases is always not fatal as list of passengers of Reserved Compartment are with the Railway Authority and search operation, and enquiry are carried by Railway Authority in the accident spot. In the instant case the name of the victim is in the passengers list as he travelled in the reserved compartment, it is also not the case of Railway Authority that no death took place in the accident, and there is no other case of body missing moreover the appellant approached the authority with blood group of the victim for the convenience of the Authority and also lodged general diary.

Thus there is no ground as to why compensation should not be awarded. Further the Railway Authority after conducting necessary enquiry made ex-gratia payment of 5 lakhs after a period of four months. Thus this decision of Railway Authority goes to show that the Authority is prima facie convinced after enquiry about death of Shankar Halder.

As under the ex-gratia rules there is no bar for the victims or their family to apply for compensation inspite of receipt of ex-gratia payment and there is

no provision for adjustment the Appellant is entitled to compensation as prayed for.

Hence this Appeal FMA-68 of 2017 stands allowed. Judgment and Order dated July 14th 2016 passed by Learned Railway Claim Tribunal Kolkata Bench in OA-(11a)/0043/2011 is set aside. The appellant is entitled to compensation of Rs. 4 lakhs along with interest @6% per annum from date of filing of claim case till today. The respondent shall deposit before Registrar General High Court Calcutta Rs. 4 lakh along with interest @6% p.a. Such deposit shall be made within 8 weeks from the date of communication of this order. It is hereby clarified that this order is only confined for the purpose of compensation from respondent Railway Authority and not for any other purpose.

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.)