

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1134 of 2024

Kharka Bahadur Chettri @ Khark Chettri @ Kharka Bahadur Chettri

VERSUS

Union of India Represented by General Manager Eastern Railway

For the appellant:

Mr. Navin Mittal, Adv.

For the respondent:

Mr. Mukesh Kumar Gupta, Adv.

Mr. Iswar Chandra Maiti, Adv.

Last Heard on: 02.12.2025

Judgment on: 20.02.2026

Biswaroop Chowdhury,J:

The appellant before this Court was an applicant in a case under Section 16 of Railway Claims Tribunal Act 1987 read with Section 124-A of the Railways Act 1989 where the applicant/appellant sought compensation on account of death of his son, and is aggrieved by the Judgment and Award dated 29-07-2024 passed by the Hon'ble Railway Claim Tribunal Kolkata Bench in Claim Application No. OA/IIU/Kol/73/2021.

The case of the claimant before the Learned Railway Claim Tribunal may be summed up thus:

On 11-09-2019, the deceased was travelling from Chennai City to New Jalpaiguri Railway Station by superfast train. During the course of journey on 12-09-2019 he accidentally fell from the running train due to overcrowding pressure and sudden jerk near Waria and died on the spot.

The respondent railway filed written statement denying the facts stated in the claim application. ISSUES were framed and evidence was adduced. The Learned Tribunal by Judgment and Award dated 29-07-2024 was pleased to dismiss the case.

The appellant/applicant being aggrieved by the Judgment and Award dated 29/07/2024 passed by the Railway Claim 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/applicant submits that the victim Pujan Chettri was covering a distance of more than 2000KM and was coming with a valid railway ticket which was verified by the railway department. Moreover the place where Pujan Chettri has fallen down from the train is 1000 KM away from his residence so the bonafide and fall both are proved in this case.

Learned Advocate further submits that the deceased was travelling with valid 2nd class railway ticket which was verified by the Railway Department.

Learned Advocate also submits that in the inquest report it was stated that the deceased fell down from an unknown train and was grievously injured in head and blood was coming out from nose and mouth and he died on the spot.

It is submitted that post mortem report mentions that death was due to injuries accidental in nature, which can only happen if someone falls down from the train. Learned Advocate further submits that the Station Master Memo also states that one person was lying inside the track near Waria. Thus it is admitted that deceased was found in railway area by the Railway Authority itself. Learned Advocate also submits that it is already stated in the case diary that one railway ticket along with EFT ticket was recovered from the possession of the deceased and the witnesses stated that deceased has fallen down from the train.

Learned Advocate relies upon the following Judicial decisions:-

- **Union of India VS Rina Devi.**

Civil Appeal No-4945/2018. (Supreme Court)

- **Smt. Yellamma VS Union of India.**

MFA No-6117 of 2016. Karnataka High Court.

- **Sudhir Yadav and ors. VS Union of India.**

FAO-240/2022. (High Court of Delhi.).

Learned Advocate for the Respondent submits that it is admitted by the appellant in paragraph 8(b) of the claim application that the victim did not make any phone call to any relative/friend at or during alleged travel by train or just before the alleged incident on the said alleged date so there is no evidence submitted by the appellant that the victim boarded any train on the said alleged date so there is no evidence submitted by the appellant that the victim boarded any train on the said alleged date of incident during alleged travelling of the victim by any train.

Learned Advocate further submits that the Railway Ticket attached by the appellant in the claim application is not a valid railway ticket and at the time of the alleged incident is mismatched with the said ticket. The alleged seizure list is also disputed by the respondent. The appellant did not mention any specific train number in the claim application involving alleged untoward incident. The appellant has no personal knowledge about such incident. There was no record of alarm chain pulling of any train and there was also no report of falling down of any person from any running train in the register of guard or driver of any train.

Learned Advocate also submits that the respondent has mainly opposed that the dead body was lying inside the track. During enquiry the I.O. of R.P.F recorded the statement of DK Mishra, Head Constable of RPF/Post/Durgapur

and R.K. Yadav constable of RPF/Post/Durgapur and they stated that during search of the deceased only a bunch of keys was recovered. Shri. D.K. Mishra also stated that the signature on the seizure list as Dhiraj Kumar Mishra was not done by him. No seizure list was prepared in his presence.

Learned Advocate further submits that DRM's report concluded that the position of the dead body of the deceased clearly indicated that the deceased was knocked down by any running train. No Railway ticket was found from the possession of the deceased. The incident did not fall under the definition of 'untoward incident' because the person was neither passenger of any train nor did he fall down from any train.

Learned Advocate also submits that the Inquest Report prepared by the police is based on the assumption and presumption of the fact which has got no evidentiary value in the eye of law. In the Inquest Report who put their signatures as witnesses are not the eye witnesses of the alleged incident.

Nothing mentioned in the Inquest Report regarding recovery of any railway ticket from the possession of the victim. So it is well established that the deceased person had come on Railway track by trespassing and there was knocking down by any running train.

Learned Advocate relies upon the following Judicial decision:-

- **Union of India VS Rina Devi.**

Civil Appeal No-4945/2018. (Supreme Court)

As the present case relates to claim of compensation on account of untoward incident under Section 124A of the Railways Act 1989 at the outset it is necessary to discuss Section 124A of the Railways Act 1989.

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

S. 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 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 purpose 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.

The instant case arose from recovery of a dead body from railway track.

On 12/09/2019 post commander/Durgapur has submitted a report of untoward incident that on 12-09-2019 SM/DGR. Railway Station intimated through memo vide no. SM/B/183/DGR/19 dated 12-09-2019 that at about 19.40 hrs driver of EC No.34020/BOBRN reported that one male person aged about 12 years was lying inside the track on UP Line No. 02 at km 175/21-23. Accordingly on duty RPF staff MC/DK Mishra and CT/RK Yadav of RPF/Post/DGR attended at the spot and found one male person aged about 22 years lying inside the track. Officers and staff of GRPP/DGR also arrived on the spot and searched the dead body when no railway ticket was found from the possession of the deceased. After observing all legal formalities the dead was removed from the spot and sent to S.D. Hospital Asansol for post mortem.

In this connection GRPS/UDC registered case ide. No. 50/19 dated 12/09.2019.

Pursuant to the report enquiry was made by RPF. On completion of enquiry report was submitted with the following observation.

‘On the basis of documentary and circumstantial evidences it is clear that the actual cause of death of the deceased is knocked down by any running

train. Similarly no railway ticket was found from the possession of the deceased. The incident does not fall under the definition of Untoward Incident because neither the deceased person was a passenger nor he has fallen down from any passenger carrying train. Hence no claim should be entertained by the Railway for the death of the deceased.

As such ADRM/ASN is requested to refer the case to CCM/ER/KOAA for onward submission to the concerned RCT.'

On the self some incident of recovery of dead body from the railway track the Police Authority started enquiry upon receipt of information from the Railway Authority.

The officer in charge of Andal GRPS on receipt of information on 12-09-2019 at 20.15 hours from Deputy Station Master Durgapur Railway Station about recovery of male dead body about 22 years at the railway track registered Andal GRPS UD Case No-50/19 dated 12-09-2019. On institution of the case the police authority proceeded towards the spot took photographs of the dead body and, searched the dead body with the help of Domes and found one Railway Ticket from Chennai CTC to New Jalpaiguri vide ticket number 04473008. Journey date was 11-09-2019 with one journey ticket Number 795890 made by CTI South Railway. Seized the ticket under seizure list The Surathal Report over the dead body was prepared in presence of witnesses. During enquiry it was learnt that the victim fell down from the Running Train Compartment and got grievous injury and died on the spot. The body was

thereafter sent for post mortem examination. The police officer conducting the enquiry came back to Durgapur GRPP and asked local people and railway passengers by showing photographs of the dead body for identification but the same could not be done.

As the identification could not be made of the dead body message for identification through P.S. Enq. System, with full description on the said day was send.

On 13-09-2019 one Kharka Bahadur Chetri son of Jita Bahadur Chhetri of Simulbari Tea Garden Kurseong District Darjeeling came to police Station, and asked about the unknown dead body. On showing the photograph of the dead body he identified the same to be the dead body of his son Pujan Chetri and produced Aadhar card, and voter card of his son. The matter was informed to officer in charge of the police station. The superintendent of District Hospital Asansol was informed for handing over the body to the father of the victim upon holding post mortem examination. The steps taken by the police Authority in conducting enquiry is recorded in the case diary which is Part of the record.

Upon completion of enquiry Police Authority submitted report under Section 174 of the Code of Criminal Procedure. In the said report it was mentioned that on enquiry it was learnt that the victim fell down from the running train compartment suffered grievous injury and died on the spot.

In the instant case there were two conflicting reports with regard to cause of death of the victim.

The report submitted by the Railway Authority (DRM) provides that the actual cause of death of the victim is knocking down by any running train. No Railway ticket was found from the possession of the victim. It was stated that the incident does not fall under the definition of untoward incident, thus no claim should be entertained. On the other hand the report submitted by the Police Authority states that the victim fell from running train compartment suffered grievous injury and died on the spot. It was further stated that railway ticket being ticket from Chennai CTC to New Jalpaiguri vide ticket number 04473008 journey date 11-09-2019 another journey ticket number being 795890 issued by CTI South Railway was seized.

The conflicting report for which compensation was not paid by the Railway Authority resulted in filing Compensation case before the Railway Claims Tribunal at Kolkata by the Appellant/Applicant, under Section 16 of Railway claims Tribunal Act 1987 read with Section 124A of Railways Act 1989.

Now the Point for consideration is whether the applicant/appellant is able to prove that death of his son Pujan Chetri is an untoward incident under Section 124A of the Railway Act 1989.

Before proceeding to decide the material in issue it is to be remembered that Railway Compensation provision under Section 125A of the Railways Act

1989 is a beneficial provision thus a liberal approach is to be taken so that the object of the legislation is achieved and not frustrated. The Railway Authority which is a State under Article 12 of the Constitution if upon detail enquiry and considering Police report has reasonable grounds to believe that it is an untoward incident should pay the compensation to the victim or his family without relegating them to Courts or Tribunals for such compensation.

In the case of compensation claim before Tribunals or Courts it is also necessary to consider that in case of death of a person by railway accident in a place far from his residence it is not possible to arrange for eye witnesses, thus the applicant has to depend on the report of the Police Authority Railway Authority and his knowledge of the victim travelling in a train.

In the case of Smt. Yellomma and others VS Union of India (Supra) 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.'

The applicant/appellant in the instant case examined himself as a witness.

The appellant Kharka Bahadur Chethri @ Khark Chetri in his examination in chief has stated that on 11/09/2019 his unmarried son Pujan Chethri since deceased was travelling Ex-Chennai City to New Jalpaiguri by

Superfast train (ticket lost). During course of working a railway on 12/09/2019 his son accidentally fell from the running train due to overcrowded pressure and sudden jerk near Waria and died on the spot.

The appellant was cross examined. Although he stated that he has no personal knowledge of the incident but nothing could be shaken as to the son of the appellant being a bona-fide passenger of the train. It is true that the incident of falling down from the train is not witnessed by the appellant but the specific statement of the appellant that his son was the passenger of Ex-Chennai City to New Jalpaiguri Super Fast train cannot be discarded when it is not the case of Respondent Railway Authority that Ex-Chennai-City to New Jalpaiguri Super fast train does not ply through the area where the body of the victim was found.

The Railway Authority in the absence of identification of the body came to the findings that it is a case of knocking down by running train but when the body is identified and the place of residence of the victim is ascertained there is no scope to accept the findings of running down by train in absence of direct evidence when the victim is not residing in the area where incident took place nor has any place of business or employment in the nearby area but resides in a place about more than 1000 Kilometres from the place of incident. Now the point for consideration is whether the victim was a passenger of the train with valid ticket.

Although in the report submitted by the Railway Authority (DRM) it was stated that no railway ticket was found from the possession of the victim but in the inquest report of the Police Authority it was stated that railway ticket being ticket from Chennai CTL to New Jalpaiguri vide ticket number 04473008 journey date 11-09-2019 another journey ticket number being 795890 issued by CTI South Railway was seized. On the question being put by trial Court Anup Kumar Ghosh ASI of Police/GRPS who conducted enquiry stated that the incident occurred on 12-09-2019. He got information regarding the incident from Dy.S.M. He came to know that one person fell down from the train and died thereof. He asked DY. S.M. regarding the incident and he told him that one person fell down from the train. He further stated that the victim fell down from the train. It seemed to him that the victim fell down from the train. The police Officer first stated that nothing was seized from the possession of the victim at the place of occurrence. Thereafter stated that the victim was identified at the place of occurrence. He also stated that he prepared the Final Police Report and the victim fell down from the train at Waria Railway Station. He stated that the ticket was recovered from the pocket of the victim and he prepared a seizure list. In Cross examination by respondent Railways Anup Kumar Ghosh, ASI of Police stated that according to his observation he has written that the victim fell down by the train. Someone told him that the victim was hit by a post and fell down from the train but he did not write his name in his Investigation Report.

He stated that he has written that the victim fell down from the train based on the opinion of the signatories of the Investigation Report. He also stated that he has written in his case diary that a railway journey ticket was recovered from the possession of the victim.

As the plea of the Railway Authority that the victim was knocked down by train cannot be sustained in view of the observation made hereinabove, the statement of the appellant, read with statement of ASI of Police who conducted the enquiry his cross examination and his recordings in the Report submitted under Section 74 of the Code of Criminal Procedure and recordings in the case diary will go to show that the victim fell down from the running train and a railway tickets were found from his pocket as reflected in the seizure list as well as mentioned in case diary which is part of the record. As Railway Compensation Legislation is a beneficial legislation, and to allow a compensation claim it is not necessary to prove the case of untoward incident beyond reasonable doubt but to show preponderance of probability, the claim can be allowed if from the materials on record and evidence adduced there is probability of untoward incident.

In the instant case the Appellant has proved that death of victim was due to fall from running train and railway tickets were found from the possession of the victim.

With regard to the validity of the ticket recovered from the possession of the victim it appears from record that during pendency of the claim case being

RCT/Case No-MA/4/2021 the ticket seized by police was sent for verification. Upon necessary enquiry with regard to the ticket seized by police the following statements appear in the Enquiry Report of Railway Authority:

‘3) During enquiry E.O of the case has collected seizure list from GRPS/UDL in which one Railway ticket bearing no. 04473008 Ex MGR Chennai CTL to NJP issued on 11.09.2019 at 09.28 hrs was shown in the seizure list.

4) During enquiry E.O of the case has recorded the statement of HC/D.K.Mishra & CT/R.K.Yadav both of RPF/Post/DGR who attended the place of occurrence. In their statement they stated that during search of the dead body, no travelling authority was recovered from the possession of the deceased, only bunch of key was recovered. HC/D.K.Mishra also stated in his statement that the signature made on the seizure list as Dhiraj Kumar Mishra was not made by him. Moreover, no seizure list was prepared in his presence.

5) During enquiry, the railway ticket which was found from the possession of the deceased as mentioned in the seizure list was verified from Dy.CCM/SR/Chennai and learnt the said ticket was issued from Booking office/MAS.’

Hence from the Enquiry Report of the Railway Authority it is established that the railway ticket seized by Police Authority from the victim was valid railway ticket.

As valid railway ticket was found from the possession of the victim it can be concluded that the appellant/applicant is able to prove that death of his son is an untoward incident under Section 124A of the Railways Act. Thus this Appeal should succeed.

Hence this Appeal FMA-No-11340 of 2024 stands allowed. Judgment and Order dated 29/07/2024 passed by the Learned Railway Claims Tribunal Kolkata Bench in OA/IIU/KOL/73/2021 is set aside. The claim application before the Learned Tribunal also succeeds. The Appellant/applicant is entitled to compensation of Rs. 800,000/- from along with interest @6% per annum from the date of filing claim case till today.

The Respondent shall pay Rs. 800,000/- along with interest @6% per annum from date of filing claim case till today by depositing the said amount before Registrar General High Court Calcutta. Such deposit shall be made within 8 weeks from the date of communication of the order.

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.)