

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1169 of 2021

Anima Sarkar (Dolui)

-Vs-

Union of India

For the Appellants : Mr. Navin Mittal

For the Respondent : Mr. Dhiraj Trivedi
Mr. Arijit Majumdar
Mr. Sukanta Chakraborti

Heard on : 11.12.2024, 18.07.2025, 02.09.2025,

Judgment on : 02.02.2026

Ananya Bandyopadhyay, J.:-

1. The instant appeal had been preferred against the judgment and order dated 19th September, 2019 passed by the Learned Railway Claims Tribunal, Kolkata Bench in Claim Application No. OA/IIU/2013/0380.
2. The victim succumbed to an accident which occurred on 15.03.2013, while he was travelling from Ex Chandrakona Road to Midnapore through a local train with a valid second class railway ticket. The claim application further stated during such journey the victim had accidentally fallen from the train which was over-crowded due to a sudden jerk at KM Post No. 128/26 in between Godapaisal and Midnapore and extraneously expired on the spot. The Kharagpur GRPS UD case No. 27/13 dated 15.03.2013 was registered against such accident as aforesaid.
3. The appellant being the wife of the deceased victim filed an application before the Railway Claims Tribunal seeking compensation of Rs. 4 lakh +

Advocate fee + costs etc. along with interest 18% per annum from the date of the accident. The aforesaid Railway Claims Tribunal thereby disposed of the claim application being OA/IIU/2013/0380 vide order dated 19.09.2019.

4. Being aggrieved by such dismissal, the appellant had filed the instant appeal.
5. The Learned Advocate representing the appellant submitted that the Learned Railway Claims Tribunal did not consider the inquest report, the complaint, Post Mortem Report and the final police report which concurred the fact of the deceased to be a passenger of the train and to have sustained severe injuries consequently to his fall on the railway line resulting in his death. The Learned Advocate representing the appellant relied on the following judgments:

a. Dola Rani Saha Vs. Union of India¹,

b. Union of India Vs. Rina Devi² and

c. Jameela & Ors. Vs. Union of India³.

6. The Learned Advocate representing the respondent/Union of India urged the deceased victim was not a bona fide passenger as per Section 2(29) of the Railways Act, 1989 since the appellant could not prove the deceased to be in possession of a valid railway ticket since the same was not recovered from the possession of the deceased body, though certain documents in respect of his joining his duty were recovered. It was further agitated that the accident did not result from the negligence of the railway authorities as the inspection and track fitness certificate issued by SSP (P.Way) Kharida confirmed that the railway track at KM Post No. 128/26 to be in proper

¹ (2024)8 S.C.R. 391

² Civil Appeal No. 4945 of 2018

³ Civil Appeal No. 1184 of 2003

condition on 15.03.2013 eradicating the possibility of sudden jerk or shock that could have contributed to the accident.

7. The Learned Advocate representing the respondent/Union of India further submitted that the deceased was recklessly leaning outside of the compartment of the moving train and contributed to the occurrence of the accident which was endorsed by the findings of the postmortem doctor in the postmortem report. The self-inflicted injury in view of Section 124 of the Railway Act, 1989 debarred the appellant from seeking compensation with respect to an accident which was caused by the negligent act on the part of the victim.
8. The investigating report under Section 174 of the Cr.P.C. specially stated *“no foul play could be detected behind the death of deceased. If any foul play detected in future, the case may be re-opened”*. The investigating Officer in column 9 being opined of the police officer as to the cause of death indicated in specific terms the injury sustained by the victim consequent to a fall from a moving train. The facts denoted in the report of the Investigating Officer corroborated the statements of the inquest report which was further fortified by the opinion of the doctor conducting the post mortem. The final report furnished under Section 174 Cr. P.C. endorsed as follows:

“During investigation I rushed to the spot along with CI 592 Durgapath Tudu and dead body currier. On arrived at P.O. I found the dead body lying up and down line in between Mid railway to Godapiasal. The line is cutting and dashed by the train due to sudden knock down or fall down from the train. I took photograph of the dead body from different angle and sent the dead body to Kharagpur S.D. Hospital after holding inquest report over the dead body to ascertain the actual cause of death with all connective purposes.

Collect the P.M. report from Kharagphur S.D. Hospital in which autopsy Surgeon Dr. Ashok Kr. Biswas opined that the cause of death due to severe blood loss and brain injury leading to neurogenic and hypertonic shock vide P.M. report No. 126 dated 16.03.2013.

During investigation on the basis of which one Smt. Anima Sarkar wife late Biswa Ranjan Sarkar of Digha Anandpupr, Ghatal, Dist Paschim Medinipur came to P.S. 16.03.2013 and identified the deceased through his photographs as her husband namely Biswa Ranjan Sarkar (47), son of Chittaranjan Sarkar of Digha Anandpupr, Ghatal, Dist Paschim Medinipur to also handed over the following supported documents to her claim

- 1) Certificate of Anima Sarkar from Mohanpur Gram Panchayat Ghatal*
- 2) Department I. Card of Biswa Ranjan Sarkar.*
- 3) Departmental certificate of Biswa Ranjan Sarkar (Original) issued from SP Paschim Midnapore*

Till date no foul play detected behind the death of the deceased. On completion of investigation consult the case with my superior I/C Khp GRPS who pleased to advised me to submit final report in this case.

Hence I submitted final report in this case no foul play would be detected behind death till date, if any foul play detected later on the court may kindly be re-opened”.

9. In the decision of the Hon’ble Supreme Court held in **Union of India**

Vs. Rina Devi⁴ observed as follows:

16.4 In Pushpa (supra) a hawker died in the course of boarding a train. It was held that he was not entitled to compensation as it was a case of ‘self inflicted injury’. The relevant observations are :

“Such an attempt by a hawker has been viewed by the trial Court as something amounting to criminal negligence on his part and also an effort to inflict injuries to himself. The trial Court reasoned that if the deceased had to sell his goods by boarding a train, he should have ensured to do so only when it was quite safe for him to get on to the train or otherwise he could have avoided catching the train and waited for another train to come. It also hinted that there was absolutely no compulsion or hurry for the deceased in the present case to make an attempt to somehow or the other board the train while it was gathering speed.” 16.5 In Shyam Narayan (supra), same view was taken which is as follows :

“6(ii) I cannot agree with the arguments urged on behalf of the appellants/applicants in the facts of the present case because there is a difference

⁴Civil Appeal No. 4945 of 2018

between an untoward incident and an act of criminal negligence. Whereas negligence will not disentitle grant of compensation under the Railways Act, however, once the negligence becomes a criminal negligence and self-inflicted injury then compensation cannot be granted. This is specifically provided in the first proviso to Section 124-A of the Railways Act which provides that compensation will not be payable in case the death takes place on account of suicide or attempted suicide, self inflicted injury, bona fide passenger's own criminal act or an act committed by the deceased in the state of intoxication or insanity.” 16.6 We are unable to uphold the above view as the concept of ‘self inflicted injury’ would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on ‘no fault theory’. We may in this connection refer to judgment of this Court in United India Insurance Co. Ltd. versus Sunil Kumar³⁴ laying down that plea of negligence of the victim cannot be allowed in claim based on ‘no fault theory’ under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an ‘untoward incident’ entitling a victim to the compensation and will 34 2017 (13) SCALE 652 not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor. Re: (iii) Burden of Proof When Body Found on Railway Premises – Definition of Passenger :

17.1 Conflict of decisions has been pointed out on the subject. As noticed from the statutory provision, compensation is payable for death or injury of a ‘passenger’. In Raj Kumari (supra) referring to the scheme of Railways Act, 1890, it was observed that since travelling without ticket was punishable, the burden was on the railway administration to prove that passenger was not a bona fide passenger. The Railway Administration has special knowledge whether ticket was issued or not. 1989 Act also has similar provisions being Sections 55 and 137. This view has led to an inference that any person dead or injured found on the railway premises has to be presumed to be a bona fide passenger so as to maintain a claim for compensation. However, Delhi High Court in Gurcharan Singh (supra) held that initial onus to prove death or injury to a bona fide passenger is always on the claimant. However, such onus can shift on Railways if an affidavit of relevant facts is filed by the claimant. A negative onus cannot be placed on the Railways. Onus to prove that the deceased or injured was a bona fide passenger can be discharged even in absence of a ticket if relevant facts are shown that ticket was purchased but it was lost. The Delhi High Court observed as follows :

“3(ii) In my opinion, the contention of the learned counsel for the appellants/claimants is totally misconceived. The initial onus in my opinion always lies with the appellants/claimants to show

that there is a death due to untoward incident of a bona fide passenger. Of course, by filing of the affidavit and depending on the facts of a particular case that initial onus can be a light onus which can shift on the Railways, however, it is not the law that even the initial onus of proof which has to be discharged is always on the railways and not on the claimants. I cannot agree to this proposition of law that the Railways have the onus to prove that a deceased was not a bona fide passenger because no such negative onus is placed upon the Railways either under the Railways Act or the Railway Claims Tribunal Act & Rules or as per any judgment of the Supreme Court. No doubt, in the facts of the particular case, onus can be easily discharged such as in a case where deceased may have died at a place where he could not have otherwise been unless he was travelling in the train and in such circumstances depending on the facts of a particular case it may not be necessary to prove the factum of the deceased having a ticket because ticket as per the type of incident of death can easily be lost in an accident. I at this stage take note of a judgment of a learned Single Judge of this Court in the case reported as Pyar Singh Vs. Union of India 2007 (8) AD Del. 262 which holds that it is the claimant upon whom the initial onus lies to prove his case. I agree to this view and I am bound by this judgment and not by the ratio of the case of Leelamma (supra)."

17.2 In Jetty Naga Lakshmi Parvathi (supra) same view was taken by a single Judge of Andhra Pradesh after referring to the provisions of the Evidence Act as follows :

"22. So, from Section 101 of the Indian Evidence Act, 1872, it is clear that the applicants, having come to the court asserting some facts, must prove that the death of the deceased had taken place in an untoward incident and that the death occurred while the deceased was travelling in a train carrying passengers as a passenger with valid ticket. Therefore, having asserted that the deceased died in an untoward incident and he was having a valid ticket at the time of his death, the initial burden lies on the applicants to establish the same. The initial burden of the applicants never shifts unless the respondent admits the assertions made by the applicants. Such evidence is lacking in this case. Except the oral assertion of A.W.1, no evidence is forthcoming on behalf of the applicants. The court may presume that the evidence which could be, and is not produced, would, if produced, be unfavourable to the person who withholds it. The best evidence rule, which governs the production of evidence in courts, requires that the best evidence of which the case in its nature is susceptible should always be produced. Section 114(g) of the Indian Evidence Act, 1872 enables the court to draw an adverse presumption against a person who can make available to the court, but obstructs the availability of such an evidence. The Claims

Tribunal, upon considering the material on record, rightly dismissed the claim of the applicants and there are no grounds in this appeal to interfere with the order of the Tribunal.”

17.3 In Kamrunnissa (supra), from the circumstances appearing in that case it was held that there was no evidence that the deceased had purchased the ticket. In the given fact situation of that case, this Court inferred that it was not a case of ‘untoward incident’ but a case of run over. It was observed :

“7. The aforestated report also reveals, that the body of the deceased had been cut into two pieces, and was lying next to the railway track. The report further indicates, that the intestine of the deceased had come out of the body. The above factual position reveals, that the body was cut into two pieces from the stomach. This can be inferred from the facts expressed in the inquest report, that the intestines of the deceased had come out of the body. It is not possible for us to accept, that such an accident could have taken place while boarding a train.

8. In addition to the factual position emerging out of a perusal of paragraphs 7 & 8 extracted hereinabove, the report also reveals, that besides a pocket diary having been found from the person of the deceased a few telephone numbers were also found, but importantly, the deceased was not in possession of any other article. This further clears the position adopted by the railway authorities, namely, that the deceased Gafoor Sab, was not in possession of a ticket, for boarding the train at the Devangere railway station.”

17.4 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.”

10. The respondent authorities could not have expected the complainant to prove the nature and circumstances leading to the death of the victim. Both the parties are to rely on the final report furnished by the investigating authority. The complainant was not present either on the train nor at the spot of accident, to have vividly narrated the cause of

accident, the presence or absence of the valid ticket. The police report categorically mentioned 'no foul play' to have been detected to obliterate the possibility of a self-inflicted injury. The investigating report, the post mortem report and the final police report in unequivocal terms endorsed the accident to have occurred while the victim had been the passenger of the train. The absence of ticket under otherwise proven case will not deter the complainant from legitimate claim in view of the judgments cited above.

11. The complainant is entitled to a compensation of Rs. 4,00,000/- along with interest @ of 6% per annum from the date of filing claim application till date of its actual realization.
12. The Learned Advocate for the respondent/Union of India is to deposit the sum of Rs. 4,00,000/- along with 6 % per cent interest per annum from the date of filing of the claim application before the office of the Learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order.
13. On receipt of the said amount, the office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellant/claimant on proof of proper identification of the appellant/claimant subject to payment of ad valorem Courts fees.
14. The instant appeal and connected applications, if any, are disposed of accordingly.
15. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)