IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.657/2023

1. SAKHARAM MANIK SHINGARE

2. MANDAKINI SAKHARAM SHINGARE ..APPELLANTS

VS

THE UNION OF INDIA REP.BY
THE GENERAL MANAGER,
CENTRAL RAILWAY, MUMBAI ..RESPONDENT

Adv. G. J. Mohan Rao for appellants.
Adv. Niranjan P. Shimpi for respondent – railways.

CORAM : RAJESH S. PATIL, J.

RESERVED ON : 6 MAY 2026

PRONOUNCED ON : 15 JUNE 2026.

JUDGMENT :

1) The present first appeal has been filed by the original claimants u/s. 23 of the Railway Claims Tribunal Act, 1987, challenging the impugned judgment and order dated 7/4/2022, passed by the Railway Claims Tribunal, Mumbai Bench, Mumbai (for short 'the Tribunal'), dismissing the Claim Application No.OA (II u)/MCC/0538/2013.

2) The appellants filed Claim Application before the Tribunal for granting compensation on account of death caused to Vipul Sakharam Shingare, who died in the railway untoward incident on

22/9/2012. It was the case of the appellants that on 22/9/2012, Vipul Sakharam Shingare while travelling in the local train from Ambernath to Ghatkopar Railway Station, accidentally fell down from the running train near Ambernath Railway Station below Platform No.3 at Km No.59/35-36, sustained grievous head injury due to which he died. It is submitted that the deceased was travelling as a *bonafide* passenger, on the strength of a second class railway season ticket, but same was lost in the incident. It was submitted that the alleged incident is covered under the ambit of an "untoward incident" and the deceased was a *bonafide* passenger.

3) The railway contested the Claim Application by filing written statement, and they raised an objection that there was no untoward incident within the meaning of Section 123(c)(2) of the Railway Act. It is further stated that the deceased was not a *bonafide* passenger as ticket was not recovered from his body. Hence, the claimants are not entitled to any compensation.

4) On behalf of the appellants, appellant no.2 entered the witness box. She was cross-examined by learned counsel for the respondent – railway. There is no evidence led, on behalf of the respondent.

5) The Tribunal after hearing the parties by it's judgment and order dated 7/4/2022, dismissed Claim Application No.OA (II u)/MCC/0538/2013, on the grounds that the deceased was not a "*bonafide* passenger" and that the incident does not fall within the meaning of 'untoward incident' as defined u/s. 123(c)(2) of the Railways Act, 1989.

6) Being dissatisfied with the judgment and order dated 7/4/2022, passed by the Tribunal, the original claimants have filed the present appeal.

7) The following points arise for determination which are as follows:-

(a) Whether the appellants prove that the deceased was a *bonafide* passenger of the train, in question, on the relevant day ?

(b) Whether the appellants prove that the death of the deceased had occurred as a result of an untoward incident as alleged in the claim application ?

(c) Whether the appellants prove that they are the dependents of the deceased within the meaning of Sec. 123(b) of the Railways Act ?

(d) To what order/relief ?

8) I have heard learned counsel of both sides and with their help I have gone through the documents on record.

POINT – (a):- *Bonafide* Passenger:-

9) In the present proceeding, as per the inquest panchanama dated 22/9/2022, there was no valid ticket or pass recovered from the possession of the deceased. However, the appellant no. 2 has duly filed an affidavit stating, that her son (now deceased) was holding a valid second class railway ticket and while travelling from Ambernath to Ghatkopar, he accidentally fell down from the train, sustained grievous head injury and died.

10) Section 124-A of the Railways Act reads as under:-

> *124-A. 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 dependent 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 of 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.

11) Section 2(29) defines “passengers” as follows :-

> Section 2(29) “passenger” means a person travelling with a valid pass or ticket.”

12) The Supreme Court in the case of ***Union of India vs. Rina Devi***[1] held in paragraph 29 it was held that mere absence of ticket would not negate the claim that the deceased was a *bonafide* passenger, the victim’s legal heirs can discharge the burden of *bonafide* passenger by filing their requisite affidavit where they will give details of the fact that the victim had purchased railway ticket and hence, he was the *bonafide* passenger at the time of the accident had occurred. Paragraphs 19, 25, 29 and 30 read as under:-

> 19. Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay. Seeming conflict in *Rathi Menon and Kalandi Charan Sahoo* stands explained accordingly. The four-Judge Bench judgment in *Pratap Narain Singh Deo* holds the field on the subject and squarely applies to the

1 (2019) 3 SCC572

present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given.

25. 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 b 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 the judgment of this Court in *United India Insurance Co. Ltd. v. Sunil Kumar* laying down that plea of negligence of the victim cannot be allowed in claim based on "no fault theory" under Section 163-A of the Motor Vehicles Act, 1988. Accordingly, we hold c 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 not fall under the proviso to Section 124-A merely on the plea of negligence of the victim as a contributing factor.

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.

30. As already observed, though this Court in *Thazhathe Purayil Sarabils* held that rate of interest has to be 6% from the date of application till the date of the award and 9% thereafter and 9% rate of interest was awarded from the date of application in Mohamadi, rate of interest has to be reasonable rate on a par with accident claim cases. We are of the view that in absence of any specific statutory provision, interest can be awarded from the date of accident itself when the liability of the Railways arises up to the date of payment, without any difference in the stages. Legal position in this regard is on a par with the cases of accident claims under the Motor Vehicles Act, 1988. Conflicting views stand resolved in this manner.

(Emphasis supplied)

13) The Single Judge of this Court in the Judgment of ***Pinto Promothonath Sen and another vs. Talle Shubham Ashokrao and another***[2] while dealing with similar facts wherein the body of the deceased was cut into two pieces has held that the deceased was a *bonafide* passenger as initial burden of proof of the Applicant was to assert that the deceased was having a valid ticket and once such Affidavit was filed the burden stands discharged and onus shifts on the Railways and as the Claimants' evidence went un-controverted, the death was held to be caused in an untoward incident. It was also observed that considering the Judgment of Supreme Court in ***Rina Devi*** (supra) wherein the Supreme Court after considering various decisions on the subject has held that the concept of self inflicted injury would require intention to inflict such injury and not mere negligence of any particular degree. Paragraphs 15, 19 and 20 read as under:-

> *"15. In the cross-examination, there is not even a suggestion given by the Railways that the deceased did not have a valid railway ticket and was therefore not a bonafide passenger. The initial burden of the Applicant was to assert that the deceased was having valid ticket and once such assertion finds place in the affidavit the initial burden stands discharged and the onus then shifts on the railways. The evidence of the Applicant No. 1 has gone un-contraverted as regards the deposition of the purchase of the railway ticket by the deceased and the deceased must be held to be a bonafide passenger. Point no. 1 is accordingly answered in favour of the Applicants.*

2 2025 SCC OnLine Bom 280

> *19. In the present case, the station master's memo does not record any information being given by any motorman of having knocked down any person which was the bounden duty of the railway servant as per Rule 3 of the Rules of 2003. The information given to the police infact records that on 5th October, 2013 written memo was given that the deceased was lying between Vitthalwadi and Ulhas Nagar railway station near railway K.M. 56/36 in two pieces of body. It is therefore clear that the deceased was found lying near the railway track and no information was given by any motorman that the train had knocked down some person who was crossing the railway track. There is no evidence led by Railways of any guard or motormen to establish that the deceased was knocked down while crossing the tracks.*
>
> *20. It is the case of the Railways that it is self inflicted injury and has occurred due to carelessness and negligence of the Applicant. In the case of Union of India v. Rina Devi (supra) the Apex Court examined the concept of self inflicted injury and after considering the various decisions on the subject held that the concept of self inflicted injury would require intention to inflict such injury and not mere negligence of any particular degree. It further approved the view taken in the case of United India Assurance Company Ltd. v. Sunil Kumar that the plea of negligence of the victim cannot be allowed in claim based on no fault theory under Section 163-A of the Motor Vehicles Act, 1988."*

(Emphasis Supplied)

14) In the present case, the averments made in the Affidavit of the Appellant No. 2 are in consonance with the ratio laid down by the Supreme Court in paragraph No. 29 of ***Rina Devi's*** (supra) Judgment. Hence, the findings recorded by the learned Tribunal, according to me, are totally perverse in view of the ratio of ***Rina Devi's*** judgment, on the same issue.

15) Hence, point – (a) is answered in affirmative in favour of the appellants and it is held that the deceased was a *bonafide*

passenger.

UNTOWARD INCIDENT :

16) Section 123(c)(2) of The Railways Act, 1989 defines the term “untoward incident”. Sec. 123(3)(c) reads as under:-

> 123. Definitions.—In this Chapter, unless the context otherwise requires,—
>
> (a)….
>
> (b)….
>
> (c)“untoward incident” means—
>
> (1) ….
>
> (2) the accidental falling of any passenger from a train carrying passengers.

17) In the present proceeding, in the inquest panchanama dated 22/9/2012, records the injuries sustained by the deceased as head broken and skull crushed, right elbow fracture, right leg ankle fracture, thumb broken, left leg thigh fracture and major injury below knee.

17.1) It is further records that the deceased while crossing the railway line near Ambernath railway station, was knocked down by an unknown train and sustained grievous injury on the head resulting in death on the spot. However, there is admittedly no eyewitness to the incident. Therefore, the case necessarily has to be adjudicated on the basis of circumstantial evidence and the documents on record.

17.2) Further, in the written statement filed by the railways, it is contended that the deceased was found lying on the railway tracks and GRP has not recovered any valid railway pass or ticket from the deceased. On that basis, the railway have alleged that the incident was a case of knock down while trespassing upon the railway tracks and the deceased, by his own negligence and criminal act, invited the disaster himself.

17.3) The respondent – railways in their written statement stated that the deceased was knocked down by a local train and said incident occurred due to the negligence and criminal act of the deceased. However, the memo mentions “trespassing and hit by unknown train” as reason for the incident.

17.4) It is submitted by the learned counsel appearing for the appellants that mere nature of injuries cannot by itself lead to any interference of trespass or self-inflicted injuries. The observations recorded in the Inquest panchnama and police report only indicate the condition in which the deceased was found. Such observations cannot substitute proof of the manner in which the incident actually occurred.

18) As per the prescribed procedure, information regarding the accident is first to be reported to the Station Master and the Station Master's memo must record that the deceased was hit by an unknown train while trespassing. The Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003 provides that any railway servant, including guard and driver of the train, upon becoming aware of the occurrence of an untoward incident shall report the same to the nearest station Superintendent.

19) In the present case, it is nowhere recorded receipt of any information from the motorman regarding any person having been knocked down by a train, despite such reporting being the bounden duty of a Railway servant under Rule 3 of the Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003. This circumstance indicates that the deceased was merely found lying near the Railway track and there was no report to that effect by any motorman stating that a train had struck a person while crossing the Railway track. Furthermore, no evidence has been led by the Railways through examination of any guard, motorman or other Railway personnel to establish that the deceased was knocked down while crossing the tracks.

20) The Supreme Court in the case of ***Jameela & ors. vs. Union of India***[3] while considering the fact that the deceased was standing at the open door of running train compartment when he fell down, the Court held that it may be an act of negligence of deceased, however, the railway would be liable to pay compensation. In paragraph 9, it held that, negligence is not the same thing as a criminal act mentioned in clause (c) to the proviso to section 124-A. Criminal act envisaged under clause (c) must have an element of malicious intent or *mens rea*. Therefore, standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but without anything else, it is certainly not a criminal act. Thus, the case of the railway must fail even after assuming everything in its favour. Paragraph 9 reads as under:-

> 9. The manner in which the accident is sought to be reconstructed by the Railway, the deceased was standing at the open door of the train compartment from where he fell down, is called by the railway itself as negligence. Now negligence of this kind which is not very uncommon on Indian trains is not the same thing as a criminal act mentioned in clause (c) to the proviso to section 124A. A criminal act envisaged under clause (c) must have an element of malicious intent or mens rea. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. Thus, the case of the railway must fall even after assuming everything in its favour.

(Emphasis supplied)

3 AIR 2010 SC 3705

21) The Supreme Court in the case of ***Union of India vs. Prabhakaran Vijaya Kumar & Ors.***[4] held that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In either case it amounts to an "accidental falling of a passenger from a train carrying passengers". Therefore, it is within the definition of 'untoward incident' as per Section 123(c) of the Railways Act.

22) Further, it was held that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, the beneficial and welfare statutes should be given a liberal and not literal or strict interpretation. The expression "accidental falling of a passenger from a train carrying passengers" including accidents when a *bonafide* passenger is trying to enter into a Railway train and falls down during the process. Section 124-A lays down strict liability or no fault liability in case of Railway accidents. Hence, if a case comes within the purview of Section 124-A, it is wholly irrelevant as to who was at fault. Paragraphs 10, 12, 14 and 17 read

4 2008 ACJ 1895

as under:-

> *"10. We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an 'accidental falling of a passenger from a train carrying passengers'. Hence, it is an 'untoward incident' as defined in section 123(c) of the Railways Act.*
>
> *12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, the beneficial or welfare statutes should be given a liberal and not literal or strict interpretation.*
>
> *14. In our opinion, if we adopt a restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in section 123 (c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well-known that in our country there are crores of people who travel by the railway trains since everybody cannot afford travelling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger, i.e., a passenger travelling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression.*
>
> *17. Section 124-A lays down strict liability or no fault liability in case of rail-way accidents. Hence, if a case comes within the purview of section 124-A it is wholly irrelevant as to who was at fault."*
>
> (Emphasis supplied)

23) The Single Judge of this Court in the Judgment of ***Mr.Sadashiv Ramappa Kotiyan Vs. Union of India***[5] while considering facts where the body was cut into two pieces, has held that in

5 First Appeal No.658/2018 decided on 15/3/2021.

absence of expert evidence, the tribunal should not have rendered its personal opinion while adjudicating the claim. The contentions of the Railways could not have been accepted. The tribunal based on the injury held that such grievous injury could not be sustained after having fallen down from the train, whereas it needs to be noted that injuries have to be considered in overall circumstances. Paragraph 16 of the Judgment reads as under :-

> *"16. In paragraph 13 of the impugned Judgment, the Tribunal observed and I quote;*
> *"It is also worth mentioning that when a person falls down from the running train, his/her body will fall away, where as in this case the deceased body – had been cut into two pieces and was laying in the tracks. This circumstantial evidence indicates that deceased was crossing the railway track and was not run over by a local train".*
> *There was no evidence of an expert before the Tribunal to opine as to under what circumstances a person's body would cut into two pieces and when it would not. The Tribunal should not have rendered it's personal opinion while adjudicating the claim under the present Statute. Since the provision for compensation in the Railways Act is a beneficial piece of Legislation, it should receive liberal and wider interpretation and not narrow and technical one. It should advance the object of the Statute."*
>
> (Emphasis Supplied)

24) The Single Judge of this Court in the Judgment of ***Vidya wd/o Dyaneshwar Wankhede and others vs. Union of India***[6] has held that the observation of the tribunal that the death of the deceased is not possible by falling from the train merely because he was cut into pieces, is completely unjustified and misconceived conclusion. The

6 First Appeal No.1710/2019 decided on 24/2/2023.

Court further observed that it is not uncommon for a passenger's body to be badly cut or crushed if they fall and become entangled in the train's wheels. Paragraph 16 of the Judgment reads as under:-

> *"16. In the present case, there was no eyewitness to the incident in question. The deceased was resident of Dhamangaon, district Amravati. The Railway Ticket found with deceased shows that he had obtained a Railway Ticket to proceed to Ijapur, district Wardha. The Railway Administration has not adduced any evidence to show that the deceased has attempted to commit suicide. On the contrary, the admission given by the witness examined by the Railway Administration shows that he had not received any information about suicide or dash by any train to any person. Thus, the Railway Administration has not adduced any evidence to show that the deceased, while crossing the railway track, was dashed by the train and he sustained injuries and his body was cut into two pieces. The Railway Administration has also not adduced any evidence to show that the deceased has attempted to commit suicide. Therefore, the conclusion of learned Member of the Tribunal that the nature of injuries shows that it is the case of the deceased coming under the wheels of the train is once again misconceived conclusion because types of injuries along with other facts pertain to decide whether the accident is of a fall from the train or injuries were on account of a person being run over by the train. It is not unknown that a body may badly cut up and crush up after falling from the train either on account of bonafide passenger getting entangled in the place of the train and thereafter in the wheels or the other equipment of the train in which he was travelling or that the deceased on account of fall from the train dashed by the various equipment of the railways which are joined to the tracks, such as polls, singles, wires etc. Therefore, in the facts of the present case, the observation of the tribunal that the death of the deceased is not possible by felling from the train merely because he was cut into pieces, is completely unjustified."*
>
> (Emphasis Supplied)

25) The Single Judge of this Court in the Judgment of ***Motilila wd/o. Pruthviraj Gajbhiye and others vs. Union of India***[7] while

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dealing with the fact that the deceased went to Railway station with a valid platform ticket to receive his son but was struck by another train and died on the spot, has held that the deceased was a *bonafide* passenger and his death constituted an untoward incident.

26) Considering the evidence led in the present proceeding and law as laid down by the Supreme Court and the High Court in various Judgments discussed above, the ratio laid in the said Judgments are squarely applicable to the present proceedings. Hence, this First Appeal deserves to be allowed. Interference is required in the impugned Judgment and Order.

27) The Point for determination (b) is answered in affirmative in favour of the appellants.

POINT – (c) – Dependents:-

28) The appellant No.1 in its claim application has mentioned that the deceased was his son and the appellant No.2 is the mother of the deceased. The appellants have also filed a copy of ration card, election card, bank passbooks along with the death certificate of the deceased to prove their relationship with the deceased. There is no evidence to the contrary led by the Railways.

28.1) Thus it is held that the Appellants, being the father and mother of the deceased, under Section 123(b) of the Railways Act, 1989, are the dependents of the deceased. Hence, the Point for determination (d) is answered in Affirmative in favour of the appellants.

29) Considering the date of the accident i.e. 22/9/2012, the provisions of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, as they stood prior to 01.01.2017, would be applicable, and the compensation payable for death would be Rs.4,00,000/-.

30) The Supreme Court in the Judgment of ***Rina Devi*** (supra) in paragraph No. 30 has held that, interest will be payable from the date of the accident. Having regard to the legal position, which is held to be on par with claims under the Motor Vehicles Act, 1988, interest @ 9% p.a. (i.e. Rs.36,000/- p.a. or Rs.3,000/- per month) appears to be just and reasonable. It is well settled that Section 124A of the Railways Act is a beneficial piece of legislation. The Rules of 1990 are framed in exercise of the powers conferred by the Railways Act, 1989.

31) Taking into account the date of the Award i.e. 7/4/2022, which is subsequent to the amendment to the said Rules of 1990 in the year 2016 (whereby the compensation payable for death has been revised to Rs.8,00,000/-), paragraph 18 of ***Rina Devi*** (supra) would apply. Accordingly, a comparison between the two amounts is required to be made, and the higher of the two amounts is liable to be awarded, this being under a beneficial piece of legislation. The date of the incident is 22/9/2012 and the amount as compensation as claimed on that date was Rs.4,00,000/-. The Award was passed by the Tribunal on 7/4/2022. By that time, the compensation payable pursuant to the amended Rules was enhanced to Rs.8,00,000/-. However, considering the interest from the date of accident till today on Rs.4,00,000/-, @ 9% would be Rs.4,98,000/-. The total amount as of today would be Rs.8,98,000/-. As per the ratio of the Judgment of ***Rina Devi*** (supra), the higher of the two amounts is Rs.8,98,000/-.

ORDER

A) The first appeal is **allowed** and the impugned judgment and order dated 7/4/2022 is hereby quashed and set aside.

B) The claim of the appellants stands allowed to Rs.8,98,000/-. As the appellants are two, being father and mother of the deceased, being the dependents, the said amount be equally

distributed between them.

C) The said amount of Rs.8,98,000/- be deposited by the railways in bank account of appellants within a period of eight weeks from the date when the appellants furnish the bank details to the Chief Claim Officer, Central Railway.

D) If the said amount is not deposited in their bank accounts within a stipulated period, it will carry further interest @ 9% p.a. till time of the payment.

32) The first appeal stands disposed of accordingly.

33) All concerned to act on an authenticated copy of this Judgment.

(Rajesh S. Patil, J.)