

**BEFORE THE RAILWAY CLAIMS TRIBUNAL,
MUMBAI BENCH, MUMBAI
CORAM: Dr. Ms. R. Sathyabama, Member (J)
RCT/Amaravati at Circuit Bench at RCT/Mumbai
Ms. Niva Singh, Member (T) RCT, Mumbai**

Claim Application No: OA (II U) /MCC/0001/2023

Smt. Mumtaz Aftab Ansari

Age: 33 years,
(Mother of the deceased)

R/at: Room no. 06, Chawl No.B/3,
90 feet Road, Trucck Terminal Road, Antop Hill,
Sion (East), Mumbai-400037.

.....APPLICANT(s)

- Versus -

Union of India, Through,
The General Manager,
Central Railway,
CSMT, Mumbai

.....RESPONDENT

Appearances:

Mr. C. K. Sable : Advocate for Claimant

CLA C.Rly : for the Respondent

Date of Institution : 29.12.2022

Date of Judgment : 09.04.2026

JUDGEMENT

1. This Claim Application is filed by the applicants under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 123 (c) (2) & Section 124 - A of the Railways Act, 1989 for compensation arising out of an alleged untoward incident occurred on 09.04.2022 involving death of Mohd. Danish Mohd. Hussain Shaikh, (herein after referred as the deceased). The Applicant claims that, being mother of the unmarried deceased son, she is sole dependent of Mohd. Danish Mohd. Hussain Shaikh.

The factual matrix of the matter in nut-shell is as below:

2. It is stated that, the deceased, Mohd. Danish Mohd. Hussain Shaikh, was a resident of Sion. It is alleged that, on 09.04.2022, the deceased was travelling from Reay Road to Govandi railway station. When the said train was running in between Reay Road and Govandi Railway Station, due to rush and push the deceased accidentally fell down from the running train. The deceased was taken to Sion Hospital for medical treatment wherein he was declared dead while undergoing medical treatment. The Applicants have alleged that the deceased was holding a 2nd class Railway Ticket, bearing no. UFL 32256157 from Govandi to CSMT Railway Station, dated 09.04.2022 the same is filed along with the Original Claim Application. It is therefore contended that the deceased was a bona-fide passenger and died in an untoward incident occurred on 09.04.2022.

3. In response to notice, Respondent - Railway Authority appeared and opposed the claim application. The respondent filed written statement and also produced on record the DRM's report accompanied with other relevant police papers marked as Ex.R-1. It has been contended in the DRM's Report that on 09.04.2022 at 21:58 hrs. the injured was picked up from the spot by the guard of the PL-166 local train, dropped off at Reay Road station, and handed over to the GRP. After receiving information about the above incident through phone from CNC/CTGN, issued memo to GRP for the treatment of the injured person and the above incident was given to GRP Wadala Road. When the said staff went to Reay Road station and took the said injured person to Sion Hospital for treatment, the on-duty doctor examined the said injured person and declared him dead at 23.30 hrs. Later, GRP Wadala Road prepared the Inquest Panchnama of the deceased person in which it was mentioned that on 09.04.2022 at 22.10 hrs, the deceased person fell

from an unknown local train near Km. No. 4/35 between Railway Station Cottongreen and Reay Road and was seriously injured. After CNC/CTGN issued a memo, and took the injured person to Sion Hospital for treatment and the on-duty doctor examined the said injured person and declared him dead at 23.30 hrs. In the Inquest Panchnama by GRP, it is shown that a brown colored pocket containing Rs. 205 in cash and a railway ticket No. 32256155 from Govandi to CSMT dated 09.04.2022 was found with the deceased. As per the documents received it is concluded that in the memo issued by CNC/CTGN, Form No. 1 and Station Diary, the deceased Mohd. Danish Mohd. Hussain Shaikh, age 16 years, has been shown to be injured near Km. No. 4/35 between Railway Station Cottongreen and Reay Road on 09.04.2022 at 21.58 hrs. In the report of GRP Wadala Road, it has been stated that Mohd. Danish Mohd. Hussain Shaikh, age 16 years, has been shown to be dead in Sion Hospital after being injured after falling from an unknown local train near Km. No. 4/35 between Railway Station Cottongreen and Reay Road on 09.04.2022 at around 22.10 hrs. In the above incident, the statement of Motorman of PL-166, Shri Santosh Pralhad Namugade was taken by the investigation officer in which it was told that on 09.04.2022, between Cottongreen Railway Station and Ray Road, two persons suddenly came in front of the train, out of which one person was on the side and the other person was injured after coming in the middle of the train, information about which was given to Shri Bharat Bachchu Chavan, the guard posted in the said train. In the above incident, the statement of Shri Bharat Bachchu Chavan, the guard of PL-166 was taken by the investigation officer, in which on 09.04.2022, between Railway Cottongreen and Reay Road, the motorman of the said local train, Shri Santosh Pralhad Namugade, told that two persons suddenly came in front of the train, one of whom was on the side and the other person

came in the middle of the train and got injured after being hit by the train. After that, the motorman stopped the train and informed him. After that, the guard got down from the train and immediately put the said injured person in the train with the help of passengers and on reaching Reay Road station, when the injured person was handed over to the GRP, it was told that the injured person was alive. Based on the statements of the motorman and guard of PL-166, it is found that the deceased Mohammad Danish Mohammad Hussain Sheikh, was negligently crossing the tracks when he was hit by local train, resulting in his death after suffering serious injuries. The deceased is responsible for the incident.

4. In view of pleadings of both parties, and relevant documents produced on record, this Tribunal framed the following issues on 13.12.2023 for just and proper adjudication of Claim Application on merit within ambit of law.

1. *Whether the deceased was travelling on valid railway ticket and was a bonafide passenger of the train, in question, at the relevant time?*
2. *Whether the applicants prove that the death of the deceased had occurred as a result of an untoward accident incident as alleged in the Claims Application and the present case is covered under section 123(c)(2) of Railway Act, 1989?*
3. *Whether the Respondent prove that Respondent is protected under the exceptional clause (a) to (e) of Sec. 124(A) of / the Railways Act and not liable to pay any Compensation?*
4. *Whether the Applicants prove that they are the dependents of the deceased within the meaning under section 123(b) of Railway Act, 1989?*
5. *To what Order/Relief?*

5. That, in order to establish the claim, the Applicant Smt. Mumtaz Aftab Ansari, mother of the deceased stepped into the witness-box and filed her Affidavit dated 21.11.2024 in lieu of her examination-in-

chief on record marked as AW-1/1. She has produced the relevant documents comprising:

SN	Documents	Exhibit
1.	Original Ticket	A-1
2.	SM Memo	A-2
3.	Police Report	A-3
4.	Inquest Panchanama	A-4
5.	Cause of death certificate from Sion Hospital	A-5
6.	PAN card of Mumtaz Ansari	A-6
7.	Election Card of Mumtaz Ansari	A-7
8.	Aadhar card of Mumtaz Ansari	A-8
9.	Aadhar card of Mohd. Danish	A-9
10.	Birth certificate of Mohd. Danish	A-10
11.	Cause of death certificate from Rajawadi Hospital	A-11
12.	School Leaving Certificate Mohd. Danish	A-12

6. The Applicant Smt. Mumtaz Aftab Ansari has averred in her affidavit dated 21.11.2024, that on 09.04.2022, the deceased was travelling from Reay Road to Govandi railway station. When the said train was running in between Reay Road and Govandi Railway Station, due to rush and push the deceased accidentally fell down from the running train. The deceased was taken to Sion Hospital for medical treatment wherein he was declared dead while undergoing medical treatment. The Applicants have alleged that the deceased was holding a 2nd class Railway Ticket, from Govandi to CSMT Railway Station, dated 09.04.2022 the same is filed along with the Original Claim Application.

During cross-examination of Applicant Smt. Mumtaz Aftab Ansari, she has stated as under:

"The deceased Mohd. Hussain Danish Shaikh was my son. At the time of incident, I was at my place of work. No known person was with my son, the

deceased, at the time of incident. Railway Police informed me about the incident. Wallet, Ticket and Rs. 205/- recovered from the possession of my deceased son were handed over to me by the Police. I have three children including the deceased. On the day of incident, my son went to Dargah at Reay Road. At the time of incident, we were residing at Mankhurd. The contents of my Affidavit is based on the information given by the Police. I got divorced with my first husband Mohd. Hussain Rehman Shaikh. I may be permitted some more time to file the relevant documents pertaining to my divorce."

During cross-examination, it was suggested on behalf of Respondent - Railway, that the incident occurred as deceased was knocked down while trespassing by train no. PL-166. But, the AW-1 Smt. Mumtaz Aftab Ansari turned-down this suggestion put forth on behalf of the Respondent.

7. The Applicant closed their evidence vide pursis dated 21.11.2024.

The Respondent closed its evidence on 03.02.2025.

8. During the arguments, Ld. Counsel for Applicants submitted that the AW-1 Smt. Mumtaz Aftab Ansari, has filed her affidavit to prove that the deceased was travelling as a bonafide passenger, on the strength of a second class ticket, the same was filed along with the Original Application.

In its defence Ld. Counsel for the Respondent submitted that Applicants witness, Smt. Mumtaz Aftab Ansari (AW-1) is not an eye-witness to the incident. Further, the SM Memo, states that the deceased was lying injured in between Cotton Green and Reay Road railway station, at K.M. no. 4/35. The Inquest Panchnama reflects that the deceased had fallen down from an unknown train and died. Moreover, the fall of the deceased from running train as alleged by the Applicants is not substantiated as the victim was knocked down by Local Train No. PL-166, as the deceased was walking close to the track when he was hit by the train, which has been witnessed by the Motorman of Train No. PL-166 and

accordingly informed to the Guard of his train. The deposition of Santosh Namugade (RW-1), Motorman of Train No. PL-166, at the time of incident clearly establishes that on 09.04.2022, he was working as Motorman of Train No PL-166 from Panvel to CSMT railway station. When the train was running in between Cotton Green and Reay Road railway stations, two persons on the UP track in front of his train, he blew the whistle to alert them, applied emergency brakes but one person out of two was hit by his train. Immediately, he informed the Train Manager, Shri, Bharat Chavan over the intercom. A copy of his Motorman Journal has been taken on record exhibits R-2. As such the alleged incident, dated 09.04.2022, cannot be termed as an Untoward Incident, as defined under Sec. 123 (c) (2) of the Railways Act, 1989 and therefore the Applicants cannot be compensated under Sec. 124 A of the Railways Act, 1989.

9. We have heard the Ld. Counsels appearing for the parties. We have gone through the entire evidence and documents produced on record. Now, before embarking into the merits of the matter, it would be profitable to set-forth the relevant provisions of the Railway Act 1989 as below:

Sec. 2 (29) defines "passenger" as under:

"passenger" means a person travelling with a valid pass or ticket".

Sec. 123 (c)(2) defines "untoward incident" as under:

"(c) "untoward incident" means-

xxxxx

(2) the accidental falling of any passenger from a train carrying passengers."

Sec. 124 - A of the Railways Act is also useful to quote 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 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 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.*

In the backdrop of aforesaid legal provisions, we proceed to scrutinize the evidence produce on record.

ISSUE No. 1, 2 & 3

10. All these issues being interconnected with each other are taken up together for better appreciation of evidence on record.

At the outset, it needs to be mentioned here that Section 124-A of the Railways Act, 1989 (for short, "the Act") entitles a passenger to claim compensation, who has been injured or the dependents of the deceased, who has been killed in an untoward incident as defined under section 123(c) of the Act. The word 'passenger' has been defined under section 2(29) of the Act, as a person traveling with a valid pass or ticket. It is only when the fact of the injured or the deceased being a bonafide passenger of train is established; the question of payment of compensation would arise in case the incident is held to be an untoward incident.

11. A return ticket bearing No. UFL 32256157 for travel from Govandi to CSMT railway station was recovered from the possession of the

deceased. The Applicants, in their Affidavit, have relied upon this fact to contend that the deceased was a bonafide passenger. However, learned Counsel for the Respondent submitted that the mere possession of a ticket does not absolve the deceased of his obligation to adhere to the Railway Safety Rules and Regulations, particularly when the incident occurred in between tracks Cotton Green and Reay Road Railway Station. The evidence on record particularly that of RW-1, the Motorman of Train No.PL-166, clearly demonstrates that the deceased was run over while the deceased was on the track. The contemporaneous entries maintained by the Railways further corroborate the version of RW-1. In such circumstances, the uncorroborated statement of AW-1 deserves to be discarded. Considering these facts, the mere recovery of a ticket after the incident does not conclusively establish that the deceased was actually travelling by a train carrying passenger though he was holding a valid ticket. The evidence, on the contrary, supports a case of run-over, not an accidental fall from a moving train.

12. At this juncture, it is necessary to ponder over the issue as to whether the alleged incident about the death of deceased was an untoward incident as envisaged u/s 123 r/w provision of section 124(c) of the Railway Act.1989.

13. In the present matter, the CNC/Cotton Green's memo records that the deceased was lying injured in between Cotton Green and Reay Road railway station, at K.M. no. 4/35. The Inquest Panchnama reflects that the deceased had fallen down from an unknown train and died. As per the evidence of Motorman of the train No. PL-166, one person was hit by his train. The RW-1 produced a copy of his personal dairy marked as Exhibit R-2 which corroborates his evidence. The evidence of Motorman, demonstrate that the death of the deceased was due to knock-down by his train. The Respondent further submitted that there is no eyewitness to

corroborate the version of the Applicants that the deceased was travelling in the train and he fell down from the train. These circumstances create doubt about the theory propounded on behalf of Applicant that the deceased had fallen down from moving train.

14. It would be reiterated that the RW-1 Santosh Namugade, Motorman filed his Affidavit by way of examination-in-chief and deposed that, on the day of incident i.e. on 09.04.2022 he was working as Motorman of Train No PL-166 from Panvel to CSMT railway station. When the train was running in between Cotton Green and Reay Road railway stations, two persons on the UP track in front of his train, he blew the whistle to alert them, applied emergency brakes but one person out of two was hit by his train. Immediately, he informed the Train Manager, Shri. Bharat Chavan over the intercom. A copy of his Motorman Journal has been taken on record exhibit R-2.

15. The Respondent further adduced the evidence of Guard Shri. Bharat Chavan as RW-2. He stated that on 09.04.2022 he was assigned the duty as Train Manager of train no. PL-166 from Panvel to CSMT railway station. When the train was running in between Cotton Green and Reay Road stations, suddenly emergency brakes were applied by the Motorman Santosh Namugade. When the train was halted, the motorman informed that two person suddenly came and stood in front of the UP Harbor track in front of the train but one out of two was hit by the train. RW-2 alighted and located the victim at K.M. no. 4/35 in between the two rails of UP track and with assistance from other people loaded the victim on the train and was handed over to GRP staff at Reay Road station. A copy of his Guard memo Book and Identity card has been taken on record exhibits R-4 & R-5. The version of RW-2 is consistent and supported by contemporaneous railway records. Such facts go to the root of the case and shatter the version of the claimants badly, particularly, when no evidence relating to untoward

incident has been put forth. These circumstances create doubt about the theory propounded on behalf of Applicant that the deceased had fallen down from moving train.

16. The Respondent further submitted that as per Motorman's dairy records the was a case of Trespassing runover at K.M. no.4/35. The Respondent also submits that the alleged incident occurred due to self-inflicted/own deliberate criminal act.

The respective Section 191 of the Railways Act, 1989. The same are reproduced below:-

Proof of entries in records and documents.-Entries made in the records or other documents of a railway administration shall be admitted in evidence in all proceedings by or against the railway administration, and all such entries may be proved either by the production of the records or other documents of the railway administration containing such entries or by the production of a copy of the entries certified by the officer having custody of the records or other documents under his signature and stating that it is a true copy of the original entries and that such original entries are contained in the records or other documents of the railway administration in his possession.

Therefore, the entry in the Motorman's dairy is primary evidence in this case.

17. Taking recourse to above legal guidelines and attending circumstances on record, it can be perceived that the victim was walking besides the track at K.M. no. 4/35 and was hit by train no. PL-166. Therefore, it was not the case of falling victim from train as contemplated u/s 123 (c) (2) of Railway Act 1989.

18. It is pertinent to mention here that as per the statement of mother of the deceased wherein she stated that she got information about the incident from deceased's friend Nazir Ansari whereas in the deposition

she stated that she received information about the incident from railway police. However, it is hard to believe that Nazir Ansari being a co-passenger and friend of the deceased; he neither made any attempt to pull the Alarm Chain in the compartment nor even reported the matter to the concerned authorities. The counsel for the respondent stated that this witness was also not produced as he was an eye witness of the said incident. In *Jetty Naga Lakshmi Parvathi and Other Versus Union of India 2013 ACJ 1061* “...*The best evidence rule, which governs the production of evidence in courts, requires that the best evidence to which the case in its nature is susceptible should always be produced....*” Such facts go to the root of the case and shatter the version of the claimant badly.

19. The Inquest Panchnama records an opinion that the deceased had fallen from an unknown train; however, such observation appears to be merely presumptive in nature as neither the pancha witnesses nor the GRP officials were eyewitnesses to the incident. There is no independent eyewitness who has seen the deceased boarding a train or falling from a train.

20. Based on the facts, circumstances of this case and preponderance of evidence on record, wherein Motorman Santosh Namugade RW-1 had also given evidence who is an eye-witness to the incident, we have come to conclusion that the Applicants have failed to prove that the deceased had accidentally fallen down from the said train. On the other the Respondent has disproved the case of the applicants by adducing an eye witness, RW1 and substantiated their case. As such the alleged incident, dated 09.04.2022, cannot be termed as an Untoward Incident as defined under Sec. 123 (c) (2) of the Railways Act, 1989.

21. In the backdrop of above referred circumstances, there is no impediment to draw the inference that the death of victim was not caused due to fall from the moving train but he was knock-down by the train no.

PL-166 of R.W.1 Santosh Namugade. Therefore, the respondent cannot be held responsible for the monetary liability as per the provisions of Railway Act.

22. It would be reiterated that in view of evidence of RW-1 Santosh Namugade we find that the deceased did not accidentally fall from the train but he was hit by the train while walking besides the track.

23. In the above premises we are of the considered opinion that the present case cannot be considered as “untoward incident” as envisaged u/s 124 (A) of the Railway Act. The evidence adduced on behalf of Applicant on record found incredulous, doubtful and dubious in nature. It does not inspire confidence. The statement of motorman (RW-1) Santosh Namugade recorded by the police during inquiry u/s 174 of Cr. PC, after the occurrence of alleged incident to ascertain the cause of death, appears much more significant and relevant for appreciation in this case. It also strengthens the veracity and truthfulness of evidence of Motorman (RW-1) Santosh Namugade.

24. In view of factual aspect and circumstances of the case, discussed above there is no impediment to arrive at the conclusion that the applicant has failed to establish that the deceased had fallen from the train at the time of alleged incident which may be considered as “untoward incident”. In contrast, there is force in the arguments advanced on behalf of Respondent that the deceased was knock-down by the train no. PL-166 on the day of incident and the respondent is entitled to avail benefit of proviso to sec 124 (A) of Railway Act 1989. Therefore, we answer the issue in negative.

Thus issues no. 1, 2 & 3 are decided against the applicants.

ISSUE No. 4:

25. The applicant has filed a copy of PAN Card, Election Card Aadhar Card of Applicant & deceased, Birth Certificate of deceased and School Leaving Certificate of deceased to prove her relationship with the deceased. It is not in dispute that the Applicant is mother of the deceased. The Respondent also did not put this factual aspect in controversy. Therefore, there is no impediment to hold that the Applicant being sole dependent of victim Mohd. Danish Mohd. Hussain Shaikh as contemplated under sec. 123 (b) of Railways Act, 1989.

Thus issue no. 4 is answered accordingly.

ISSUE NO. 5

26. In view of our findings on Issue No. 1, 2 & 3 above, the Applicants are not entitled to any compensation or relief.

Issue No. 4 is decided accordingly against the Applicants.

ORDER

The Claim Application is dismissed. There shall be no order as to costs.

Registry is directed to send a certified copy of this judgment to the parties in view of Rule 34 (3) of the Railway Claims Tribunal (Procedure) Rules, 1989.

With these observations the application is disposed of accordingly. File be consigned to Record Room after due compliance.

(Niva Singh)
Member (Technical)

(Dr. R. Sathyabama)
Member (Judicial)/ RCT/Amaravati
@ Circuit bench at RCT Mumbai

HPM