

**BEFORE THE RAILWAY CLAIMS TRIBUNAL,
MUMBAI BENCH, MUMBAI**

Claim Application No: OA (II U) /MCC/182/2019

1. Mr. Gaya Prasad Gupta
Age: 52 years,
(Father of the deceased)
2. Mrs. Jamuna Devi w/o Gaya Prasad Gupta
Age: 47 years,
(Mother of the deceased)
R/at: Gram Sivapur Urf, Siyarahi,
Post- Khajuri, Syapur Urf Siyarahee, Gurakhpur,
Uttar Pradesh- 273212. ... APPLICANT(s)

Versus

Union of India,
Through the General Manager,
Central Railway, CSMT,
Mumbai.

... RESPONDENT

Appearances:

Mr. D. V. Sadvilkar	: Advocate for Claimant
Ms. Rupali Nayak	: Advocate for Respondent

Date of Institution: 10.01.2019

Date of Judgement: 02.07.2025

CORAM: Shri. Mohit Sinha, Member (T) RCT, Mumbai

JUDGEMENT

1. This Claim Application is filed by the applicant u/s. 16 of the Railway Claims Tribunal Act, 1987 r/w. sec. 123 (c)(2) & sec. 124-A of the Railways Act, 1989 for compensation arising out of an alleged untoward incident occurred during the course of working Railway involving a death of deceased Kuldeep s/o Gaya Prasad Gupta.

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

2. It is stated that, Kuldeep s/o Gaya Prasad Gupta, (hereafter referred as deceased), aged 20 years, resident of Mankhurd was doing carpenter work. The Applicant No. 1 & 2 are the parents of unmarried deceased. On 07.12.2018 the deceased was travelling from Sandhurst Road to Mankhurd Railway Station. When the train reached in between Mankurd and Govandi railway station he accidentally fell down from train. He sustained serious injuries and died before admission in the hospital. The Applicant stated that the deceased was in possession of a season ticket bearing no. UFD 00753643 along with Id card for his travel between Mankhurd to Sandhurst Road Railway station. The season ticket was recovered from the deceased and the recovery is mentioned in the Inquest Panchnama and the same has been produced on record. It has been contented that the deceased was the bona-fide passenger and died in untoward incident occurred on 07.12.2018.

3. In response to notice-Railway Authority appeared and opposed the claim application. The Respondent filed Written statement and also produced on record the DRM reports accompanied with other relevant police papers marked as "R-1". It has been contented that the memo issued by CNC and station diary stated that the body of the above deceased was lying in two parts beside the track at the incident spot. It is not possible for the body to be cut into two parts after falling from a local train. The incident occurred while crossing the railway track. Crossing the railway track is a punishable offense under section 147 of the Railway Act. The GRP has mentioned in the inquest panchnama that the deceased was in possession of a railway pass for the details of the pass are mentioned but the photocopy or original copy of the railway pass has not been provided in the documents. Due to the absence of a railway ticket, the deceased cannot be considered a bona

fide passenger. Therefore, the monetary liability cannot be fastened on the Railway for the alleged incident.

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

Issues	
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 Applicants prove that they are the dependents of the deceased within the meaning under section 123(b) of Railway Act, 1989?
4.	To what order/ relief?

5. That, in order to establish the claim, the Applicant No. 1 Mr. Gaya Prasad Gupta, stepped into the witness-box and filed the Affidavit in lieu of his examination-in-chief on record. He deposed that, on 07.12.2018 the deceased was travelling from Sandhurst Road to Mankhurd Railway Station. When the train reached in between Mankurd and Govandi railway station he accidentally fell down from train. He sustained serious injuries and died before admission in the hospital. The Applicant stated that the deceased was in possession of a season ticket bearing no. UFD 00753643 along with Id card for his travel between Mankhurd to Sandhurst Road Railway station. The season ticket was recovered from the deceased and the recovery is mentioned in the Inquest Panchnama and the same has been produced on record.

6. In the cross-examination of Applicant No. 1 Mr. Gaya Prasad Gupta, it was suggested on behalf of Respondent- Railway, that the deceased died due to knocked down while trespassing. But, the AW-1 Mr. Gaya Prasad Gupta, turned-down this allegation put forth on behalf of Respondent.

7. I have heard the Ld. Counsels appearing for the Applicant and Respondent. I have also gone through the documents filed by the Counsel for the Applicant and entire documents produced on record. It is not put into controversy that the victim succumbed to injuries received to him during the course of Railway accident. Before embarking into the merits of the matter, it would be appropriate to set-forth the relevant provisions of the Railways Act 1989.

In the backdrop of aforesaid legal provisions, I proceed to scrutinize the evidence produce on record. It is also imperative to bear in mind that the provisions of Evidence Act as well as Procedural law are not strictly applicable to the proceeding before this Tribunal.

ISSUE NO. 1

8. The sec. 2 (29) in general refers to a person travelling with a valid pass or ticket to be a passenger. The Explanation to Section 124-A provides that a passenger includes a person who has purchased a valid ticket for travelling, by a train carrying passengers on any date and becomes a victim of an untoward incident. In case there is a valid ticket for the journey that is sufficient to hold that he was bonafide passenger. The Applicant No. 1 Mr. Gaya Prasad Gupta categorically deposed in his affidavit that one valid Railway season ticket bearing No. UFD 00753643 Ex- Mankhurd-Sandhurst Road Railway station valid from 02.12.2018 to 01.01.2019 was recovered from the possession of deceased. The said ticket is produced on record. The document of Inquest Panchnama corroborate the version of Applicant. It is for the

respondent to demonstrate that the season ticket was not valid or that the passenger was not a bona-fide passenger or that the season ticket was not purchased by him. However, the respondent did not succeed to discharge the burden. There is no contrary evidence or material available on record to falsify the theory of purchasing season ticket put forth on behalf of Applicant. In such circumstances, there is no impediment to conclude that the deceased was a bona-fide passenger, as defined in sec. 2(29) of the Railways Act as well as Explanation (ii) to sec.124-A of the Railways Act.

Hence, I answer the issue no. 1 in affirmative.

ISSUE NO. 2

9. I have carefully perused the CNC/Govandi's memo issued to the GRP wherein it is stated that as per information from unknown passenger that one unknown person aged about 30 years found lying in two pieces at Km No. 19/12 A in between Govandi and Mankurd Railway station. The Inquest Panchnama disclosed that the deceased fell down from an unknown train. The DRM report disclosed that the memo issued by CNC and station diary stated that the body of the above deceased was lying in two parts beside the track at the incident spot. It is not possible for the body to be cut into two parts after falling from a local train. The incident occurred while crossing the railway track. Crossing the railway track is a punishable offense under section 147 of the Railway Act.

It is worth to mention that there is no direct evidence of motorman or guard of concerned train involved in the accident to bring on record that the victim was hit by the train while trespassing. There is no an eyewitness to the incident. The contentions referred in documents of DRM report reflects that all the allegations of knock-down, made by the respondent all rest on hearsay basis. The allegations based on

figment of imagination cannot take place of proof. It was the responsibility of respondent to prove the factual aspect of knock down of victim by adducing cogent and reliable evidence. The Ld. Counsel for Respondent harped on the circumstances that the nature of injuries received to the deceased indicate that he was hit by train while trespassing and such kind of injuries are not possible after being fallen from train. But, the argument advanced on behalf Respondent appears to be hypothetical and imaginary in nature. As referred above all the allegation of knock down are based on surmises and conjecture. The Respondent failed to discharge its burden by adducing positive evidence to falsify the pleadings of claimant. Therefore, it can be inferred that the deceased had fallen down from the train while travelling.

10. It is settled proposition that provisions of section 124-A are based on the principle of strict liability or no fault liability and it is mandated that the railway administration is bound to pay the compensation regardless of any wrongful act, negligence or default on the part of the railway administration. The Railways can escape the liability to pay the compensation only when the alleged incident comes within the exception clauses (a) to (e) of the proviso to Section 124-A of the Railways Act, 1989, which are reproduced as below.

- 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.

11. In this case Ld. Counsel for the Respondent did not lead any evidence to fortify that any of the activities of the deceased during travelling, leading to his death was as a result of any exception clauses under Section 124-A of Railway Act, 1989.

12. It is evident from above Judicial precedent that in order to bring the case under the proviso of sec. 124-A, for "self-inflicted injury", it is imperative for respondent to produce the material on record that the victim was intending to inflict injury to himself intentionally and purposely. But such intention cannot be inferred bare on his own action or act of negligence. The proviso of sec. 124-A is apparently rest on the principle of "no fault theory".

13. In the present case, if it is considered that the incident occurred due to the negligence of the deceased, even though these circumstances itself are not sufficient to draw the inference that he had an intention to inflict self-injury. It cannot be ignored that the Victim was travelling by a train. He purchased a ticket for his journey. Had there been any intention on his part for self-inflicting injury, he would have indulged in such dangerous activities by other means.

14. In the backdrop of facts and circumstances of this case and preponderance of evidence on record, I have no hesitation to come to the conclusion that the deceased Kuldeep s/o Gaya Prasad Gupta, on 07.12.2018, while travelling as a bonafide Railway passenger from Sandhrust Road to Mankurd Railway station, had accidentally fallen down from a running train, sustained grievous injuries and died. Accordingly, the incident would be an "untoward incident" as defined under Section 123 (c) (2) read with Section 124-A of the Railways Act, 1989.

Hence, answer to the issue No. 2 in affirmative.

ISSUE NO. 3

15. The Applicant No. 1 categorically deposed in his Affidavit by way of examination-in-chief that both the applicants are dependants of victim Kuldeep s/o Gaya Prasad Gupta. The Applicant produced the

Aadhar card, Ration Card, Election Card and Death Certificate to establish array of dependent of the deceased. There is no dispute that Applicant No. 1 & 2 are parents of the deceased. The Respondent did not disagree with these factual aspects. Therefore, there is no impediment to hold that all the applicants are dependents of victim Kuldeep s/o Gaya Prasad Gupta as contemplated under sec. 123 (b) of Railways Act, 1989.

ISSUE NO.4

16. It is evident that incident leading to death of the deceased was an “untoward incident” as defined under sec. 123 (c) of the Railway Act 1989, therefore, in view of part - I of the Schedule appended to Rule 3 of Railway Accident and Untoward Incident (compensation) Rules, 1990, the applicant is entitled for compensation of Rs. 8,00,000/- (Rupees eight lacks only) from Respondent – Railway on the day of incident. The date of incident is 07.12.2018 therefore, in view of norm laid down by Hon’ble Supreme court in case of Union of India V/S Rina Devi 2018 ACJ 1441, the aforesaid applicant/dependent of the deceased are entitled for Rs. 8,00,000/- (Rupees Eight Lakh only) (revised compensation effective from 1st January 2017), with interest @ 9% from the date of incident i.e. 07.12.2018 till the date of this award as a compensation on account of death of Kuldeep s/o Gaya Prasad Gupta, in an untoward incident.

Hence I pass the following order.

ORDER

- a) The Claim Application filed under section 16 of Railway claims Tribunal Act 1987, is hereby allowed.
- b) The Respondent shall pay **Rs.8,00,000/- (Rupees Eight Lakh only)** to the Applicant as a compensation with interest @ 9% p.a. from the date of incident till date of this order/award.

c) The Respondent shall deposit entire amount of award in the office of Additional Registrar, RCT Mumbai within 30 days from the date of receipt of this order.

d) In case of default in payment within the stipulated period of 30 days as referred above, the Respondent shall pay the interest @9% per annum from the date of receipt of this order till the date of deposit of payment in RCT.

e) As per the guidelines delineated by the Ministry of Railways (Railway Board) vide notification dated 3rd June, 2020 under GSR 347 (E) which came into effect from 1st day of January, 2020, after considering the status of the Applicant and to protect the amount from being frittered away, the amount of Rs. 8,00,000/- (Eight Lakhs only) plus interest, if any, shall be disbursed in the following manner:

- i. Applicant No. 1 Mr. Gaya Prasad Gupta and Applicant No. 2 Mrs. Jamuna Devi w/o Gaya Prasad Gupta shall be permitted to withdraw an amount of Rs. 40,000/- (Rupees Forty Thousand only) each from their Saving Bank Account through NEFT/RTGS, from the total awarded compensation amount of Rs. 8,00,000/- (Rupees Eight Lakh only).
- ii. The balance amount of Rs 7,20,000/- (Rupees Seven Lakh Twenty Thousand only) plus interest if any accrued till date, be kept in the name of Applicants in FDR account/Annuity scheme in any nationalised Bank located nearer to the permanent residential address of Applicant, in the manner described below.

Applicant's name.	Amount to be disbursed in favour of Applicant(s) by NEFT/RTGS	Amount to be invested in annuity/FDR in Nationalized Bank
Mr. Gaya Prasad Gupta	Rs 40,000/-	Rs.3,60,000/- (Rupees Three Lakh Sixty

(Father) (Applicant No. 1)	(Rupees Forty Thousand only)	Thousand only) plus accrued pro-rata interest in Annuity scheme on similar line as MACAD with monthly payment of Rs. 10,000/- (Rupees Ten Thousand only) till entire deposit amount is exhausted.
Mrs. Jamuna Devi w/o Gaya Prasad Gupta (Mother) (Applicant No. 2)	Rs.40,000/- (Rupees Forty Thousand only)	Rs.3,60,000/- (Rupees Three Lakh Sixty Thousand only) plus accrued pro-rata interest in Fixed Deposit Scheme for a period of two years. <i>After maturity the entire amount including interest shall be credited in the Applicant's Savings Account of the Awardee.</i>

iii) The Claimants are directed to open an individual Savings Bank Accounts in any Nationalized Bank located nearer to the place of permanent residence of Applicants. This Savings Account will be linked with Annuity (term) Deposit Account on similar line as of MACAD (Motor Accident Claim Annuity (Term) Deposit Account).

iv) The Bank is hereby directed not to permit any joint name(s) to be added in the Savings Bank Account or Annuity deposit scheme/Fixed Deposit Accounts of the Applicant i.e. the Savings Bank Account of the Applicant shall be an individual Savings Bank Account and not a Joint Account. The concerned Bank is further directed not to issue any Cheque Book and/or Debit Card in the name of Applicant for the above referred S.B. Account. If the same is issued, the concerned Bank authority is requested to take step to cancel/revoke the same before making any payment of awarded amount to the Applicant. Moreover, the concerned

Bank shall take care for not issuing any Debit Card relating to above referred S.B. Account of the Applicant by any other branch of the Bank. The Bank shall put an endorsement on the Passbook issued in favour of Applicant to the effect that no Cheque Book and/or Debit Card shall be issued to the Applicant without the permission of this Tribunal.

v) The concerned Bank of the Applicant is directed to permit the Applicants to withdraw money from their Savings Bank Account by means of a withdrawal form only. The Applicant is directed to produce the copy of this order before the concerned Bank for requisite endorsement in the Passbook. The Original Annuity deposit scheme/ Fixed Deposits shall be retained by the Bank in safe custody. However, the statement containing Annuity deposit scheme/FDR number, amount and date of maturity shall be furnished by Bank to the Applicant. The maturity amount of the Annuity deposit scheme/FDR be credited by ECS in the Savings Bank Account of the Applicant operated in the Nationalised Bank located nearer to the place of permanent residence of Applicant.

vi) The Bank shall not grant any loan, advance, withdrawal or pre-mature discharge on the Annuity Deposits without permission of this Railway Claims Tribunal.

vii) The Claimant is directed to produce the original Bank Passbook with the necessary endorsement as well Aadhaar Card and PAN Card before the Additional Registrar, RCT, Mumbai. The ADR shall take the following documents on record from the Claimants before releasing the awarded amount for disbursement as mentioned above.

(a) Details of the Bank Account of the Claimant near to the place of his permanent residence with necessary endorsement.

(b) Aadhaar Card and PAN Card or any other appropriate ID card;
and

(c) Two sets of photographs and specimen signatures of the
Claimant.

viii) There shall be no order as to cost.

ix) The certified copy of this Judgement be given to Applicant free
of cost.

x) Accordingly, the application stands disposed of in above
terms.

(Mohit Sinha)
Member (Technical)

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