

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

Claim Application No: OA (II U) /MCC/2019/0189

1. Sukha Mondal s/o Bhutnath Mondal
Age: 53 years,
(Father of the deceased)
2. Shikha Sakha Mondal
Age: 48 years,
(Mother of the deceased)
R/at: Sanjay Gandhi Nagar,
Jhopadpatti, Sion Chunna Bhatthi,
Mumbai-400022.

... APPLICANT(S)

Versus

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

... RESPONDENT

Appearances:

Mr. H. Hussain	: Advocate for Claimant
Ms. Rupali Nayak	: Advocate for Respondent

Date of Institution: 04.02.2019

Date of Judgement: 05.08.2025

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 Kusho Mondal Sakha Mandal .

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

2. It is stated that, Kusho Mondal Sakha Mandal, (hereafter referred as deceased), aged 19 years, resident of Sion Chuna Bhatthi. The Applicant No. 1 & 2 are parents of unmarried son. On 13.12.2018 the deceased along with his co-worker Dilip Nilkamal Naskar was travelling from CSMT to Chunabhatti Railway Station by an unknown local train. When the train was running in between GTBN and Chunabhatti railway station, due to overcrowding and push by the co-passengers the deceased accidentally fell down from the train. He was escorted to Sion Hospital for medical treatment but he succumbed to the injuries on 14.12.2018. The Applicant stated that the deceased was in possession of a second class monthly season ticket bearing No. UFC 87922144 from Govandi to CSMT Railway Station on record. It has been contented that the deceased was the bona-fide passenger and died in untoward incident occurred on 13.12.2018.

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 report accompanied with other relevant police papers marked as “R-1”. It has been contented that on 14.12.2018 at around 00.00 hrs an EPR message from Sion Hospital was received by H D Tadvī/Thane Amaldaar about a person aged 18 years was injured near Chunabhatti railway station. As per the report prepared by GRP and statement of Arjun Kangal Halidar the deceased person died after falling from the railway and got injured. From which it is clear that the deceased person fell down from the local train while

travelling by standing on the door of the local train and died during treatment. The act of the deceased is punishable offence under Section 156 of Railways Act 1989. The GRP/Wadala has mentioned about recovery of second class Railway season ticket bearing no. 87922144 Ex. Govandi to Mumbai CSMT railway season pass has been attached. The documents received from GRP the deceased died after falling down while travelling on the footboard/ near the door of the train. 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 Sukha Mondal s/o Bhutnath Mondal, stepped into the witness-box and filed the Affidavit in lieu of his examination-in-chief on record. He deposed that, on 13.12.2018 the deceased along with his co-worker Dilip Nilkamal Naskar was travelling from CSMT to Chunabhatti

Railway Station by an unknown local train. When the train was running in between GTBN and Chunabhatti railway station, due to overcrowding and push by the co-passengers the deceased accidentally fell down from the train. He was escorted to Sion Hospital for medical treatment but he succumbed to the injuries on 14.12.2018. The Applicant stated that the deceased was in possession of a second class monthly season ticket bearing No. UFC 87922144 from Govandi to CSMT Railway Station on record.

6. The Ld. Counsel for the Respondent stated that, as per investigation papers and EPR, the deceased was found injured near Chunabhatti railway station. The Inquest Panchnama disclosed that the deceased died after falling down from an unknown local train. The DRM report disclosed that the deceased had fallen down while travelling on footboard/near the door of the train in negligent and careless manner. The act of deceased is a punishable offence under Section 156 of Railways Act, 1989.

7. I have heard the Ld. Counsels appearing for the Applicant and Respondent. I have also gone through the written arguments filed by the Counsel for the Respondent 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 profitable to set-forth the relevant provisions of the Railways Act 1989.

In the backdrop of aforesaid legal provisions, I proceed to scrutinize the evidence produced 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 this case there is a valid ticket for the journey that is sufficient to hold that he was bonafide passenger. The Applicant No. 1 Sukha Mondal s/o Bhutnath Mondal categorically deposed in his affidavit that the extract of a second class monthly season ticket bearing No. UFC 87922144 from Govandi to CSMT Railway Station on record. It is for the respondent to demonstrate that the ticket was not valid or that the passenger was not a bona-fide passenger or that the 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 ticket by the deceased put-forth on behalf of Applicant. In such circumstances, there is no impediment to conclude that he was a bona-fide passenger, as defined in Sec. 2 (29) of the Railways Act, 1989, as well as Explanation (ii) to Sec. 124-A of the Railways Act, 1989.

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

ISSUE NO. 2

9. This issue is as to whether the incident of causing the death of victim after his falling down from the moving train, would be an untoward incident as envisaged under section 123 (c) (2) of Railway Act 1989.

I have carefully perused the EPR demonstrates the deceased was found injured near Chunabhatti railway station. The Inquest

Panchnama disclosed that the deceased died after falling down from an unknown local train. The DRM report disclosed that the deceased had fallen down while travelling on footboard/near the door of the train in negligent and careless manner. The act of deceased is a punishable offence under Section 156 of Railways Act, 1989.

10. The Respondent has also submitted written notes of arguments stating that the victim was not a bonafide passenger and the incident occurred due to his own negligence. With these averments, a prayer is made for the dismissal of the claim application.

11. The Applicant adduced the evidence of co-worker AW-2 Dilip Nilkamal Naskar of the deceased. The AW-2 filed his affidavit by way of examination-in-chief and deposed that on 13.12.2018 he accompanied with the deceased, were travelling by local train from CSMT to Chunabhatti railway Station. When the train was running in between GTB Nagar and Chunabhatti railway station due rush and push by the co-passengers the deceased accidentally fell down from the train. After the incident he along with 4-5 unknown persons helped to escort the deceased to hospital by taxi.

12. As per the evidence of co-worker, the deceased fell down in between GTBN and Chunabhatti railway station while travelling by standing near the door of the train. In view of the same there is no impediment to keep implicit reliance on the version of Applicant that the deceased had fallen down from the train and died in an untoward incident.

The Respondent failed to discharge its burden to falsify the pleadings of claimant. After considering the attending circumstances

mentioned above, it is discernable that while travelling in an unknown train the deceased fell down from the moving train and sustained fatal injuries.

13. In the case of *Jameela & Ors vs. Union of India* reported 2020 (12) SCC 375, the Hon'ble Apex court has held that the manner in which the accident is sought to be reconstructed by the Railways, that the deceased was standing at the open door of the train compartment from where he fell down, is called by the Railways 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 Sec. 124-A. A criminal act envisaged under clause (c) must have an element of malicious intent or mens-rea. Bare act of 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 Railways must fail even after assuming everything in its favour.

14. 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.

15. In this case Ld. Counsel for the Respondent did not lead any evidence to show that the act of the deceased, leading to his death was as a result of any exception clauses as contemplated under Section 124-A of Railway Act, 1989. Even if it is considered that deceased fell down from the moving train, it does not mean that he was intending to inflict injuries to himself. Therefore, in absence of ill intention or mensrea, the act of victim cannot be considered as self-inflicting injury.

16. In the above premises, I have no doubt that the victim during the course of travelling accidentally fallen down from the train and sustained fatal injury. He succumbed to the injuries received in train accident. It is a clear case of an accidental falling down from train. He died due to untoward incident as defined in sec. 123 (c) (2) of Railway Act. 1989 and Respondent cannot be exempted from the liability to pay compensation under section 124 A of Railways Act, 1989.

17. In view of facts and circumstances of this case and preponderance of evidence on record, I have no hesitation to conclude that the deceased, on 14.12.2018, while travelling as a bonafide Railway passenger from CSMT to Chunabhatti Railway station, had accidentally fallen down from running train, sustained serious injuries. Accordingly, the incident is covered under "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

18. The Applicant No.1 categorically deposed in his Affidavit by way of examination-in-chief that both the applicants are dependants of victim Kusho Mondal Sakha Mondal. The Applicant produced the copy of Aadhar card 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 both the applicants are dependents of victim Kusho Mondal Sakha Mondal as contemplated under sec. 123 (b) of Railways Act, 1989.

ISSUE NO. 4

19. 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 Lakhs only) from Respondent – Railway on the day of incident. The date of incident is 14.12.2018 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 Lakhs only) (revised compensation effective from 1st January 2017), with interest @ 9% from the date of incident till the date of this award as a compensation on account of death of Kusho Mondal Sakha Mondal, 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 Sukha Mondal s/o Bhutnath Mondal and Applicant No. 2 Shikha Sakha Mondal shall be permitted to withdraw an amount of Rs. 40,000/- (Rupees Forty Thousand only) each along with interest, if any, 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 Applicant 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
Sukha Mondal s/o Bhutnath Mondal (Father) (Applicant No. 1)	Rs 40,000/- (Rupees Forty Thousand only)	Rs.3,60,000/- (Rupees Three Lakh Sixty Thousand only) plus accrued pro-rata interest in Annuity scheme on similar line as MACAD with monthly payment of Rs. 15,000/- (Rupees Fifteen Thousand only) till entire deposit amount is exhausted.
Shikha Sakha Mondal (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 3 (Three) 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)