

RAILWAY CLAIMS TRIBUNAL,

MUMBAI BENCH, MUMBAI

CORAM: Shri. Alok Upasani, Member (Judicial)

CLAIM APPLICATION No: OA (II u)/MCC/214/2019

1. Kiranbharti W/o Sangram Singh,
Aged 39 years, (Wife of deceased)
2. Master Rohit S/o Sangram Singh,
Aged 15 years, (Son of deceased)
3. Master Mohit S/o Sangram Singh,
Aged 14 years, (Son of deceased)
4. Master Rahulkumar S/o Sangram Singh,
Aged about 12 years, (Son of deceased)
5. Shri. Babuchand Singh,
Aged 65 years, (Father of deceased)

(Applicant No. 2, 3 & 4 being minor they apply through their natural guardian mother, Kiranbharti Sangram Singh, Applicant No. 1)

All R/at: E-101, R. B. Complex,
Plot No. 14, Opp. Bikaner,
Sector 16, Kamothe, Panvel

APPLICANTS

V E R S U S

Union of India, Through
The General Manager,
Central Railway,
CST, Mumbai-400 001

RESPONDENT

Appearances:

Mr. V. N. More

Ms. Shailaja Nair

- Counsel for the Applicants

- Counsel for the Respondent

Date of Institution: 26.02.2019

Date of Judgment: 25.02.2025

J U D G M E N T

1. This Claim Application is filed by the Applicants under Sec. 16 of the Railway Claims Tribunal Act, 1987, read with Sec. 123 (c) (2) & Sec. 124 - A of the Railways Act, 1989, for compensation arising out of an alleged untoward incident occurred on 14.02.2019, involving death of Sangram S/o Babuchand Singh (hereinafter referred as deceased). The Applicants claim that they being the wife, children and father are the dependents of the deceased, Sangram S/o Babuchand Singh.

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

2. It is stated that Sangram S/o Babuchand Singh, a resident of Kamothe, Panvel, was a labourer. It is alleged that 14.02.2019, he boarded in second compartment of local train from Vashi railway station for travelling to Mansarovar railway station, on the strength of a valid second class railway return ticket bearing No. 55951849, dated 14.02.2019. When the said local train started from Vashi railway station, due to sudden jerk and push of other passengers in the compartment, the deceased accidentally fell down from the running local train, on the railway track of platform No. 3, sustained serious multiple injuries and died subsequently. It is therefore contended that the deceased was a bona-fide passenger and died in an untoward incident.

3. In response to notice, Respondent Railway Authority appeared and opposed the claim application. The respondent the filed Written Statement and DRM Report along with other relevant documents. The DRM report reflects that on 14.02.2019 at 10.15 hours, SM/Vashi issued a memo to GRP/Vashi, stating that one person, aged about 40 years, was knocked down by an unknown local train, while crossing the railway track from platform No. 03 and sustained serious injuries. The GRP/Vashi attended

the site and took the victim to Municipal Hospital, Vashi, wherein he was declared dead. The GRP conducted the inquest panchnama and registered a case vide ADR No. 19/2019 dated 14.02.2019. The GRP/Vashi has mentioned about the recovery of a second class railway return ticket dated 14.02.2019, Ex. Mansarovar to Vashi railway station, from the possession of the deceased, in the inquest panchnama. As per memo of SM/Vashi's Memo, GRP/Vashi's documents and overall investigation, it is observed that the deceased was knocked down by local train No. PL-55, while crossing the railway track from platform No. 03 of Vashi railway station, sustained serious injuries and died subsequently. The alleged incident occurred due to the deceased's own criminal act and negligence for which Railway Administration is not responsible. Trespassing is an offence punishable under Sec. 147 of Railways Act, 1989.

4. In view of pleading of both parties as well as relevant documents produced on record, this Tribunal framed the following issues on 26.02.2021, 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 incident as alleged in the Claim Application and the present case is covered under Sec. 123 (c) (2) of Railways Act, 1989?*
3. *Whether the Applicants prove that they are the dependents of the deceased within the meaning of Sec. 123 (b) of Railways Act, 1989?*
4. *To what Order/Relief?*

5. In order to establish the Claim, the Applicant No. 1, Kiranbharti W/o Sangram Singh, stepped into the witness-box as AW-1 and filed her Affidavit

dated 11.05.2023, marked AW-1/1 in lieu of her examination-in-chief on record. She has produced the following documents:

S. No.	Particulars	Exhibit
1.	Certified copy of SM Memo	A-1
2.	Certified copy of Inquest Panchnama	A-2
3.	Certified copy of Cause of Death Certificate	A-3
4.	True copy of Aadhar Card of Applicant No. 1	A-4
5.	True copy of Aadhar Card of Applicant No. 4	A-5
6.	True copy of Aadhar Card of Applicant No. 2	A-6
7.	True copy of Aadhar Card of Applicant No. 3	A-7
8.	True copy of Ration Card	A-8
9.	True copy of Bank Pass Book of Applicant No. 1	A-9
10.	Original Railway Ticket	A-10

6. Applicant No. 1, Kiranbharti W/o Sangram Singh (AW-1) in her affidavit dated 11.05.2023 (Exh. AW-1/1) submitted that on 14.02.2019, her deceased husband, while travelling by local train from Vashi to Mansarovar railway station, on the strength of a valid second class railway return ticket dated 14.02.2019, bearing No. 5595849, Ex. Mansarovar to Vashi railway station, accidentally fell down from the running local train, at Vashi railway station, platform No. 3, sustained serious multiple injuries and died subsequently.

In her cross-examination, Kiranbharti W/o Sangram Singh (AW-1), has stated as under:

“.....My husband was engaged in fabrication of grills at Vashi. He used to leave home at 08.00 AM and return back between 05.00 to 06.00 PM. On the day of incident he left home at about 08.00 AM. When I called on my husband's mobile at

09.00 AM, police picked up the phone and informed me that my husband had met with an accident. He used to travel on ticket based on his requirements. The clothes worn by my deceased husband had a wallet in which the journey ticket was available. I am filing the original railway ticket purchased, dated 14.02.2019, which may also be exhibited”.

During cross examination of AW-1, Kiranbharti W/o Sangram Singh, it was suggested on behalf of Respondent Railway, that her deceased husband had died due to knock down while crossing the railway track unauthorizedly and he was not a bonafide passenger at the time of the incident. But the AW-1, Kiranbharti W/o Sangram Singh, turned down these suggestions put forth on behalf of Respondent.

7. Respondent, on the other hand, has adduced the evidence of Shri Harshad Rawale, Train Manager at CSMT as R.W.-1. He has filed his Affidavit and deposed before the Tribunal on 20.07.2023. In his affidavit he has stated as under:

“I am working as Train Manager at CSMT Lobby (Suburban). I do not have any records pertaining to the incident at present, however, on perusal of the file at CCM (Claims) Office, I recall the incident. I was working as Train Manager of PL-55, on 14.02.2019 from CSMT to Panvel. As the train was entering Vashi station, platform No. 03, suddenly the emergency brakes were applied by my Motorman, Shri. S. A. Walavalkar. When the train halted, I was informed over the intercom by my Motorman, that a person who was suddenly trying to cross the track was run over by our train. I immediately informed the Controller and SM/Vashi about the incident. The Dy. SS/Vashi came on platform and advised me to take the train ahead since the victim was under the train and the incident happened at the entry point of platform No. 03. The victim was attended by the station staff. The incident is of knocked down while crossing the tracks as per my Motorman”.

During his cross examination by Ld. Counsel for Applicants, he has stated as under:

"I have not brought the Guard Rough Journal/Diary pertaining to this incident as the same is missing due to shifting of documents from locker maintained at lobby at CSMT. During the covid period a number of lockers were broken and accordingly, I didn't inform to any superior about the missing of the document. I have not personally witnessed the incident. It is correct to say that my Motorman did not inform that the victim had jumped in front of our train. The witness volunteered to say that the Motorman informed that a person who was trying to cross the track was hit by our train. The victim was lying under one of the coaches of my train. I can't say the exact location of the coach as I did not visit the place of incident. The victim was hit at the entry of the platform. Since, station staff had arrived to the place of incident, to avoid detention of train, I remained in my cab. As per advice of the Station Master, we pulled the train ahead. After clearing the victim, I could see the victim lying on the track from the rear window of my cab".

Respondent has also adduced the evidence of Shri. Sudhir Arjun Walawalkar, Motorman at CSMT Lobby, as RW-2. He has filed his Affidavit and deposed before the Tribunal on 06.10.2023.

In his Affidavit he has stated as under:

"...At present I have retired from Railways as a Motorman from CSMT Lobby. At present I do not have any records pertaining to this incident. I was working as Motorman of PL-55 on 14.02.2019 from CSMT to Panvel. When the train was entering Vashi Platform No. 3, suddenly a person came from my left side and jumped in front of my train. I blew the whistle and applied emergency brakes, inspite of this he was run over by my train on platform No. 03. When the train halted, I informed my Guard, Shri. Harshad Rawle over the intercom about the incident. Since, the incident was on the station, the station staff reached the spot and retrieved the victim from under the train after I moved the train slightly. The train halted again on platform No. 3 for other passengers to board and de-board".

During his cross examination, the RW-2 has stated as under:

"... I had taken the entry of the alleged incident in my Motorman Diary. Today, I have not brought my Motorman Diary, as the same is misplaced. The alleged incident occurred while my train was entering into the Vashi station and the incident took place prior to the platform area. It is not true that the deceased did not jump in

front of my train and I am deposing falsely about the same. I had given information about the incident to the Gurard as well as Station Master”.

During cross examination of RW-2, it was suggested by Ld. Counsel for the Respondent, that the victim had fallen down at the platform while boarding the train and that the RW-2 is deposing falsely in this matter. But the RW-2, turned down these suggestions put on behalf of Respondent.

Applicants closed their evidence on 11.05.2022.

Respondent closed its evidence on 06.10.2023.

8. During arguments, Ld. Counsel for Applicants submitted that on the date of incident the deceased was travelling on the strength of a valid second class railway return ticket dated 14.02.2019, bearing No. 55951849, Ex. Vashi to Mansarovar and back, which was recovered from the possession of the deceased during his personal search by Police and the original ticket has been filed on record by the Applicants. He further submitted that the incident involving the death of the deceased occurred as he had accidentally fallen from running train and died in an untoward incident as defined under Sec. 123 (c) (2) of Railways Act, 1989.

9. The Ld. Counsel for Respondent filed the written note of arguments and submitted that the contention of the Applicants that the deceased while travelling by local train from Vashi to Mansarovar on 14.02.2019, due to sudden jerk and push of other passengers, lost his balance and fell down from the running train at Vashi, Platform No. 3 track and was declared dead is based on presumptions, as applicants were not accompanying the deceased on the day of incident. The SM diary dated 14.02.2019 issued by Vashi Station, at around 10.15 AM, mentions that one unknown person was knocked down by Train No. PL-55 and fallen inside the track of PF. No. 3. The DRM

report concludes that the deceased was hit by Train No. PL-55 while crossing the railway track.

The deceased was not a bonafide passenger, as contended by the Applicants in Para 6 of OA. Though the inquest panchnama mentions recovery of ticket but details of said ticket are not mentioned. As per Para 6 of OA, deceased was travelling from Vashi to Mansarovar on 14.02.2019 i.e. Upside. The deceased left home at 08.00 AM on 14.02.2019 and at 09.00 AM, Police gave information about the accident to deceased's wife. Original ticket was not available at the time of incident as no details have been mentioned in inquest panchnama. The original ticket was produced later at the time of evidence. The permanent address of the Applicants is Panvel, but the ticket attached is from Mansarovar to Vashi. If the deceased was residing at Panvel, how can he purchase ticket from Mansarovar station.

Whatever is stated in Para 6 of OA is not true. As per deposition of Motorman (RW-2) and Train Manager (RW-1) of Train No. PL-55, the deceased was hit by Train No. PL-55, while trying to cross the railway track. Therefore, the contention of the applicants that the deceased, due to severe jerk, heavy rush and push of other passengers accidentally fell down from the running train and sustained grievous injuries, is totally false and concocted as enumerated in the above Paras.

The deposition of RW-2, that he witnessed the deceased crossing the railway track, applied emergency brake but the deceased was hit by his train, clearly shows that the alleged incident occurred due to deceased's own negligence, due to which he sustained self-inflicted fatal injuries, which is covered under the exceptional clause (b) and (c) of Sec. 124-A of Railways Act, 1989. As such the alleged incident cannot be termed as an untoward incident

as defined under Sec. 123 (c) (2) of the Railways Act, 1989 and as such the Applicants cannot be compensated.

10. I have heard the Ld. Counsels appearing for the Applicants and Respondent. I have also gone through the entire 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 Railways Act, 1989 as below:

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

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

(ii) 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."

(iii) 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.*

11. 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.

12. These issues are interconnected and therefore taken up together for consideration for the sake of brevity and better appreciation.

13. I have carefully perused the SM/Vashi's memo, wherein it is stated that, one male person aged about 40 years, found lying injured inside track of platform No. 03. The SM/Vashi has tick marked the reason for the incident as "Hit by unknown train while trespassing". The Police report states that the victim was injured in a railway accident at Vashi railway station, platform No.

3. The Inquest Panchnama reflects that the victim was knocked down by an unknown local train, sustained serious injuries and died subsequently. unknown local train, sustained serious injuries and died. Referring SM/Vashi's Memo, GRP/Vashi's inquest panchnama and overall investigation, the DRM report concludes that the deceased was knocked down by local train No. PL-55, while crossing the railway track from platform No. 03 of Vashi railway station, sustained serious injuries and died subsequently. The alleged incident occurred due to the deceased's own criminal act and negligence for which Railway Administration is not responsible. Trespassing is an offence punishable under Sec. 147 of Railways Act, 1989.

train while crossing the railway track, for which Railway Administration cannot be held responsible.

14. In this case, AW-1, Kiranbharti W/o Sangram Singh, is not a witness of the incident and has no personal knowledge of the incident, nor any known person was accompanying the deceased on the date of incident. She was informed by Railway Police about the incident. Onus to prove that the death of the deceased had taken place in an untoward incident and that the death occurred while the deceased was travelling as a passenger in a train carrying passengers with valid ticket, within the meaning of Section 123 (c) read with section 124-A of the Railways Act, 1989 lies with the Applicants first. The Applicants did not produce any concrete witness/document to substantiate travel and accidental fall of the deceased from the train of the deceased.

In this connection, reliance on the judgments of Hon'ble Delhi High Court in case of Jamirul Nisha and Others Vs UOI, 2009 ACJ 1393 and Hon'ble High Court of Andhra Pradesh in case of *Jetty Naga Lakshmi Parvathi Vs. Union of India*, 2011 SCC Online AP 828 : 2013 ACJ 1061 are relevant. In case of Jamirul Nisha and Others (Supra), Hon'ble High Court has observed that:

"from the perusal of section 123 (c) (2) and 124 A, it is clear that 'sine qua non' for claiming compensation, on account of death or injury sustained in a train accident is that the victim of a train accident or his dependents as the case may be must first establish that the victim or the deceased had accidentally fallen from the train".

In case of *Jetty Naga Lakshmi Parvathi* (Supra), Hon'ble High Court of Andhra Pradesh after referring to the provisions of the Evidence Act which is as follows : (SCC On Line AP para 24)

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

In absence of any cogent evidence, by relying upon the version of Applicants in Claim Application and Affidavit, it could not be held that the deceased was travelling from Vashi to Mansarovar railway station and met with untoward incident at Vashi railway station, platform No. 03. I now proceed to examine the evidences and documents on record produced by Respondent.

15. Per contra, Respondent has produced Motorman Shri. Sudhir Arjun Walawalkar (RW-2) & Guard Shri. Harshad Rawale (RW-1) of the Local Train No. PL-55, involved in this incident. Motorman Shri. Sudhir Arjun Walawalkar (RW/2) is a direct witness to the incident as he has seen the deceased suddenly come in front of his train and get knocked down by his train, while crossing the railway track from left side to another. The deposition of both Shri. Sudhir Arjun Walawalkar (RW-2) and Shri. Harshad

Rawale (RW-1) remained consistent with their respective Affidavits during their Cross Examinations.

16. Further, the multiple serious head injuries and other injuries, inflicted on the body of deceased, recorded in the post mortem report, further strengthen the submission of the Respondent that the deceased was knocked down while trespassing on railway tracks.

In this context it will be pertinent to refer to the decision of Hon'ble Bombay High Court in Meenadevi and Ors. Vs. UOI, First Appeal No. 290 of 2021 wherein, the Hon'ble High Court, considering the nature of injuries, have inferred that it was not an 'untoward incident'. The relevant Para of the observation is produced as under:

"12. Coming to the nature of injuries sustained by the deceased which are reflected in the inquest panchnama and the post-mortem report, it is apparent that the injuries are deeply eschewed on the body of the deceased and from the stomach back side, the injury is described to be 15 X 16 cm long curve injury, with flesh being protruding out. The accident had broken the left ear of the deceased and right leg ankle was found to be torn and skin was seeing hanging. The nails of the toe were removed and stretching marks were noticed on various parts of the body. The nature of injuries that has been described in the inquest panchnama and in the post-mortem note which referred A. A. Mudaliyar 8/10 First Appeal No.290-2021.doc to fracture of upper femur as well as lower hip radius bone and fresh injuries to the ankle as well as multiple abrasions over various parts of the body like the upper arm, abdomen and chest are reflective of the deceased being dragged over some distance and the injuries are not indicative of fall from the running train. The cause of death is opined as "Haemorrhagic shock due to poly-trauma".

13. Having a close assessment of nature of injuries sustained by the deceased, it is indicative of he being knocked down by a train and the Tribunal has rightly concluded that the injuries are not a result of accidental fall. Further since no material brought on record by the applicants to establish that the injuries are sustained by a fall, in these circumstance the Tribunal is justified in placing reliance upon the DRM report, recording that the alleged incident dated 28.04.2013 occurred due to the deceased's own negligence and

carelessness as he sustained serious injuries as the deceased was present in the Railway operational area (tracks) unauthorizedly.

Considering the nature of injuries sustained by the deceased which include crush injuries, fracture of left lower radius bone, right upper femur and multiple abrasion as well as contusion lacerated wound, back/from right upper back extending towards abdomen which is described as 10 X 3 muscle deep, are rightly considered by the Tribunal, to be injuries caused by the deceased on being hit by a unknown train and is not a case of accidental fall."

17. In this case, except for the affidavit of Applicant No. 1, Kiranbharti W/o Sangram Singh (AW-1) who is not a witness of the incident, nothing has been produced by the Applicants in support of their averment in O.A. about the journey of the deceased and subsequent fall from the train. On the other hand Respondent has produced substantial documentary and oral evidence to prove its defence and rebut the claim. There is no reason to disbelieve the evidence produced on oath.

18. In view of evidence of Motorman and Guard of Local Train No. PL-55 and related documents on record, serious head injuries inflicted on the deceased, location of the body on the tracks, it is concluded that the deceased was not travelling by any train at the time of incidence but was trespassing on the railway tracks and was knocked down by Local Train No. PL-55 at the time of incidence. Moreover, from the deposition of Motorman wherein, he has stated that the victim suddenly came in front of his train from the left side, clearly reflects that the victim was not travelling by any train at the time and place of the incident.

19. Here it would be relevant to refer the judgment of Hon'ble Bombay High Court, in the F.A. No. 1309/2009 *Union of India Vs. Shantabai Ganpatrao Pote* passed on 21/02/2019, which squarely covers the issue in hand, wherein

the Hon'ble High Court, in Para 8 of the said judgment has observed and held as under:

"I have heard the learned counsel for the appellant and I have perused the records of the case. It is the specific case of the claimant that while attempting to cross the railway line for proceeding from platform No. 1 to platform No. 2, the husband of the claimant was dashed by a train that was proceeding from one of the railway lines. This fact has been deposed by the applicant herself in her affidavit at AW-1. It is also the case of the appellant that this accident occurred when said Ganpat attempted to cross the railway line. The Station Master, the Loco Pilot and Guard of the train have deposed on the same lines. It was admitted that there was no over-bridge at the said railway station for proceeding from one platform to another. It is thus claimed that the accident occurred when Ganpatrao had attempted to cross the railway line.

In First Appeal No. 1294/2017 a similar accident had occurred and the claim for compensation was adjudicated. It was held that only in case of an accident of falling of passenger from the train would entitle that grant of compensation on the ground that same was an "untoward incident". When an attempt is made to cross the railway line, same is not a legal act. Hence the Railways could not be saddled with such liability. In the present case also it is clear that the accident occurred when there was an attempt to cross the Railway line. Without considering this relevant aspect, the learned Member proceeded to hold that the death had occurred out of an untoward incident. It is found that provisions of Section 123 (c) of the Railways Act, 1989, do not contemplate such situation for being treated as an untoward incident. Hence, the Claims Tribunal erred in allowing the claim for the incident. The point as framed is accordingly answered by holding that the Claims Tribunal could not have saddled liability on the appellant".

I would like to refer section 123 (c) of Railways Act, which reads as follows:

"Untoward incident" means:

(1)

(i) the commission of a terrorist act within the meaning of sub-section (1) of Section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987), or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot out or arson, by any person in or any train

carrying passengers, or in any other place within the precincts of a railway station; or

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

That in statutes Words or expressions are defined by employing the words “means”, “includes”, denotes and “is deemed to be”. When “*means*” is employed it shows that the definition is a hard and fast definition and that no other meaning can be assigned to the word or the expression defined than is put down in the definition.

If we minutely look at the definition of ‘untoward incident’ as defined under Railway Act, 1989 which clearly begins with “***untoward incident***” *means*— where, the word ‘mean’ is employed which literally means it implies a restriction. At this juncture, it would be relevant to cite the Judgment delivered by Hon’ble Supreme Court in ***Feroz N. Dotivala Vs. PM Wadhwani (2003) 1 SCC 433*** which laid down the following position of law:

“13. It can also restrict the meaning of a word by defining it in that manner. Generally, when the definition of a word beings with “means” it is indicative of the fact that the meaning of the word has been restricted; that is to say, it would not mean anything else but what has been indicated in the definition itself. There can also be extensive definitions when the definition starts with “includes”.

14. Generally, ordinary meaning is to be assigned to any word or phrase used or defined in a statute. Therefore, unless there is any vagueness or ambiguity, no occasion will arise to interpret the term in a manner which may add something to the meaning of the word which ordinarily does not so mean by the definition itself, more particularly, where it is a restrictive definition. Unless there are compelling reasons to do so, meaning of a restrictive and exhaustive definition would not be expanded or made extensive to embrace things which are strictly not within the meaning of the word as defined.”

17. From the above context it is clear, that it is not the intention of the legislature to include any other act/incident except those enumerated in

Section 123(c) to be an 'untoward incident'. That if the language is plain, clear and explicit, it must be given effect to and the question of interpretation does not arise so also Court/Tribunal cannot substitute the words or phrases or supply casus omissus. It is pertinent to refer the legal maxim "*A Verbis legis non est recedendum*" which means that you must not vary the words of the statute while interpreting it. The object of interpretation of statutes is to determine the intention of the legislature conveyed expressly or impliedly in the language used. I am not oblivious of the fact that grant of compensation under Section 124-A of Railways Act is beneficial legislation and concept of strict liability is applicable, but under the garb of interpreting the statutory provision it must be so construed, so that only absurdity and mischief is avoided but the words used by the legislature are given their plain and grammatical meaning.

Therefore in view of judgement dated 21/02/2019 passed by Hon'ble High Court at Bombay in *F.A. No. 1309/2009 Union of India Vs. Shantabai Ganpatrao Pote (Supra)* as well as in view of the Hon'ble Supreme Court in *Feroz N. Dotivala Vs. PM Wadhwani (2003) 1 SCC 433 (Supra)*, I find no difficulty in holding that the instant case of trespassing or crossing tracks, as also the case of the applicants, cannot be covered under the definition of 'untoward incident' and thus I hold that the incident in question is certainly not falls within the purview of 'untoward incident' as defined under Section 123(c)(2) of Railways Act, 1989.

20. In this case, except the recovered ticket and for the affidavit of Applicant No. 1 Kiranbharti W/o Sangram Singh (A.W.-1), who is not a witness to the incident and her affidavit is based on presumptions only, nothing has been produced by the Applicants in support of their claim about

the journey of the deceased and subsequent fall from the train. In consideration of grievous head injuries and other serious injuries on the body of the victim and no evidence from the Applicants side even for the alleged journey of the victim, I have no hesitation in concluding that this is not a case of accidental fall but is a case of hit/knock down by a train. However, since in this case it is established that the alleged incident is not a case of accidental fall from train but was due trespassing in an unauthorized manner, in Railway operational area. Therefore, the deceased was not a bonafide passenger of the local train "In Question" as he was not travelling by the local train involved in the incident.

21. Thus, keeping in view the facts and circumstances of the case and preponderance of evidence on record, it is held that the Applicants have failed to prove that the deceased had accidentally fallen down from the running local train while travelling as a bonafide passenger from Vashi to Mansarovar railway station and was involved in the alleged untoward incident on 14.02.2019, as defined within the meaning of section 123 (c) of the Railways Act, 1989.

Accordingly Issue No. (1) & (2) are decided against the Applicants.

Issues No. (3):

22. Applicant No. 1, Kiranbharti W/o Sangram Singh (AW-1) in her affidavit dated 11.05.2023, categorically deposed that she is the widow of the deceased, Applicant No. 2, Rohit S/o Sangram Singh, Applicant No. 3, Mohit S/o Sangram Singh and Applicant No. 4, Rahulkumar S/o Sangram Singh, are the minor sons of the deceased and Applicant No. 5, Babuchand Singh, is the father of the deceased. The Applicants have produced their Aadhar Cards and Ration Card, to establish their identities and relationship with the

deceased. The Respondent also did not put this factual aspect in controversy. Therefore, there is no impediment to hold that the Applicants, being the wife, children and father, are the dependents of deceased Sangram S/o Babuchand Singh, as contemplated under sec. 123 (b) of Railways Act, 1989.

Issue No. (3) is decided accordingly.

Issue No. (4):

23. In view of my findings on issue (1) & (2) above, Applicants are not entitled to any compensation or relief.

Issue No. (4) is decided accordingly against the Applicants.

ORDER

The OA 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.

File be consigned to Record Room after due compliance.

Judgement pronounced on 25th February, 2025.

(Alok Upasani)
Member (Judicial)