

RAILWAY CLAIMS TRIBUNAL

MUMBAI BENCH, MUMBAI

Shri. Alok Upasani, Member (Judicial)

CLAIM APPLICATION No: OA (II u)/MCC/215/2019

1. Supriya W/o Machindra Magare

Age 38 years, (Wife of deceased)

2. Master Jitesh S/o Machindra Magare,

Age 13 years, (Son of deceased)

3. Miss Archita D/o Machindra Magare,

Age 14 years, (Daughter of deceased)

4. Smt. Kamal W/o Tukaram Magare,

Age 63 years, (Mother of deceased)

(Applicant No. 2 & 3 being minor they apply through their natural guardian mother, Supriya Machindra Magare, Applicant No. 1)

All R/at: Saideep Arcade, Room No. G-1,
Plot No. 165, Ground Floor, Opp. Saibaba Mandir,
Sector 23, Jui Nagar, Navi Mumbai

APPLICANTS

V E R S U S

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

RESPONDENT

Appearances:

Mr. V. N. More

Ms. Jyoti Panwalkar

- Counsel for the Applicants

- Counsel for the Respondent

Date of Institution: 26.02.2019

Date of Judgment: 02.06.2025

J U D G M E N T

1. This Claim Application is filed by the Applicants under Section 16 of the Railway Claims Tribunal Act, 1987, read with Sec. 123 (c) (2) & Sec. 124 - A of the Railways Act, 1989, for compensation on account of death of Machindra S/o Tukaram Magare (hereinafter referred as deceased) in an alleged untoward incident occurred on 25.09.2018. The Applicants have claimed that they being the wife, children and mother, are the dependents of the deceased Machindra S/o Tukaram Magare.

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

2. It is stated that the deceased, Machindra Tukaram Magare, a resident of Jui Nagar, Navi Mumbai, was self-employed. It is alleged that on 25.09.2018, he was travelling in the second class compartment of local train from CBD Belapur to Juinagar railway station, on the strength of a valid second class railway ticket. When the said local train reached between Nerul and Juinagar railway station, near KM. No. 33/3-5, due to sudden jerk and push from crowded passengers, Machindra accidentally fell down from the running local train, sustained serious injuries and died on the spot. It is further alleged that the railway ticket on the strength of which the deceased was travelling, was lost in the incident. It is therefore contended that the deceased was a bonafide passenger and died in an untoward incident.

3. In response to notice, Respondent Railway appeared and opposed the Claim application. The Respondent has filed Written Statement and also produced on record the DRM report pertaining to investigation conducted by Inspector/RPF/Belapur, accompanied with other relevant documents. The DRM report reflects that on 25.09.2018 at about 21.15 hours, pursuant

to information received about an unusual incident, Dy. SS/Juinagar along with GRP/Vashi attended the site and found one person lying in injured condition between Nerul and Seawood railway station, near KM. No. 33/03, besides Up Line. Accordingly, the Dy. SS/Juinagar issued a memo to GRP/Vashi, who took the deceased to Municipal Hospital, Vashi, wherein he was declared dead. The GRP conducted the inquest panchnama and registered a case vide ADR No. 130/18 dated 26.09.2019. The GRP did not mention about the recovery of any railway travelling authority from the possession of the deceased. Further, the GRP has mentioned in the inquest panchnama that the deceased was knocked down by an unknown local train, sustained serious injuries and died. It is alleged that the deceased's presence in the railway premises was unauthorized and he was knocked down by an unknown local train while crossing/trespassing the railway track, which is an offence punishable under Sec. 147 of the Railways Act, 1989.

4. For just and proper adjudication of Claim Application on merit within ambit of law, this Tribunal framed the following issues on 28.05.2021:

- 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 Section 123 (b) of Railways Act, 1989?*
- 4) To what Order/Relief?*

5. In order to establish the Claim, the Applicant No. 1, Supriya W/o Machindra Magare, stepped into the witness-box as AW-1 and filed her

Affidavit dated 14.07.2023, marked AW-1/1 in lieu of her examination-in-chief on record. She has produced the following documents.

Sr. No.	Particulars	Exhibit
1.	Certified copy of SM Memo	A-1
2.	Certified copy of Inquest Panchnama	A-2
3	Certified copy of Post Mortem Report	A-3
4.	True copy of Aadhar Card of Applicant No. 1	A-4
5.	True copy of Aadhar Card of Applicant No. 2	A-5
6.	True copy of Aadhar Card of Applicant No. 3	A-6
7.	True copy of School Leaving Certificate of Applicant No. 2	A-7
8.	True copy of SSC Examination-Statement of Marks of Applicant No. 3	A-8

6. Applicant No. 1, Supriya W/o Machindra Magare (AW/1) in her affidavit dated 14.07.2023, stated that on 25.09.2018, her husband Machindra Tukaram Magare informed her that he was going to CBD Belapur for his personal work. He left home in the morning at 10.00 hours and took Rs. 50/- for rickshaw and train ticket fare from her. After finishing his work, he reached CBD Belapur railway station, purchased second class railway ticket for travelling from Belapur to Juinagar railway station and boarded in second class compartment of local train going towards Juinagar. When the said local train reached between Nerul and Juinagar railway station, near KM. No. 33/3-5, due to sudden jerk and push from crowded passengers, he accidentally fell down from the running local train, sustained serious injuries and died on the spot. She further submitted that the deceased was travelling as a bonafide passenger, on the strength of a valid second class railway ticket but said ticket was lost in the incident.

In her cross-examination, the AW-1, Supriya Machindra Magare, has stated as under:

“.....I have not produced the ration card to establish the array of dependents. My deceased husband was unemployed. He was in search of some employment. I was not at home, when my husband left the residence. I came to know about the incident at about 06.30 PM. I was at my work at about 18.30 hours. I got call from my mother in law, who informed me about the accident of my husband. After receiving call from my mother in law, I returned home and thereafter I went out to search him. While we were searching for my husband, one unknown person informed us that one person in white shirt has met with an accident. I did not visit the place of incident. I did not visit the hospital. My distant relative visited the place of incident as same was in an interior area. Only rudraksh mala worn in hand was recovered from the possession of my deceased husband. The incident spot is away from my residence but was close to the Railway Colony”.

During the cross-examination of AW-1, Supriya Machindra Magare, it was suggested on behalf of Respondent that the deceased met with the accident while trespassing the railway track and not while travelling in train, he was not in possession of any railway ticket at the time of incident. But the AW-1, turned down these suggestions put forth by Ld. Counsel for Respondent.

7. Applicants closed their evidence 21.12.2023.
8. Respondent did not adduce any oral evidence in the matter and closed its evidence vide pursis dated 03.05.2024.
9. During the course of arguments, Ld. Counsel for Applicants submitted that the Applicant No. 1, Supriya Machindra Magare (AW-1) has filed her affidavit to confirm that the deceased, on the relevant day, was travelling as a bonafide passenger of local train on the strength of a valid second class railway ticket, which was lost during the incident and the deceased was involved in an untoward incident.

10. Referring DRM's report, Ld. Counsel for the Respondent submitted that the Dy. SS/Juinagar has not mentioned the cause of incident in his memo. The GRP/Vashi has not mentioned about the recovery of any railway ticket from the possession of the deceased, in their related documents. Further, as per GRP/Vashi's inquest panchnama the deceased was knocked down by an unknown local train, sustained serious injuries and died. It is alleged that the deceased's presence in the railway premises was unauthorized and he was knocked down by an unknown local train while crossing/trespassing the railway track, which is an offence punishable under Sec. 147 of the Railways Act, 1989.

11. I have heard the Ld. Counsels appearing for the Applicants and Respondent. 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.*

12. In the backdrop of aforesaid legal provisions, I proceed to scrutinize the evidence produced on record.

Issue No. (1) & (2):

13. These two issues being interconnected are taken up together for the sake of brevity and better appreciation. I have carefully perused the documents on record. The Dy. SS/Juinagar's Memo states that one unknown male person aged about 40 years, lying near track with head injury at Up line, KM. No. 33/3, between Nerul and Juinagar railway station. It is alleged in DRM report that the Inquest Panchnama reflects that the GRP did not recover any railway travelling authority from the possession of the deceased, the deceased's presence in the railway premises was unauthorized and he was knocked down by an unknown local train, while crossing/trespassing the

railway line, which is an offence punishable under Sec. 147 of Railways Act, 1989.

14. In this case, AW-1, Supriya Machindra Magare, is not a witness of the incident, she was at her work place when the incident occurred. She has no personal knowledge of the incident, nor any unknown person was accompanying the deceased on the date of incident. She further stated that except for a rudraksh mala nothing was recovered from the possession of the deceased and handed over to her by Police. The AW-1 in her affidavit dated 14.07.2023, has stated that, on the relevant day, her husband left home at 10.00 AM, informing her that he is going to Belapur for his personal work and he took Rs. 50/- from her for rickshaw and train ticket fare. However, in her deposition before the Tribunal on 14.07.2023, she has stated that she was not at home when her husband left their residence. She further stated that she came to know about the incident at 06.30 PM, however, the Dy. SS/Juinagar's Memo shows that he received information about the incident at 20.55 hours. A conjoint reading of statement dated 26.09.2018 recorded by Police and annexed along with DRM Report, with contradiction in her affidavit and deposition it is clear that AW-1 was not aware about the whereabouts of the deceased, hence the case of the AW-1, that deceased was travelling from CBD Belapur to Juinagar is an afterthought. Moreover, the statement dated 26.09.2018 of AW-1 recorded by Police, is silent about any travel of deceased to CBD Belapur as alleged in the affidavit submitted by AW-1. The entire incident of fallen down from train is based on assumptions only. Therefore, cognizance cannot be given to the affidavit of AW-1, Supriya Machindra Magare and her evidence cannot be relied upon. Moreover, the incident occurred within the vicinity of the deceased i.e. Juinagar.

15. In absence of any cogent evidence, by relying only upon the version of Applicants in Claim Application and Affidavit, it could not be held that the deceased, on the relevant day was travelling by an unknown local train from Belapur to Juinagar railway station and met with an untoward 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 in a train carrying passengers as a passenger 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 witness/document to substantiate the purchase of ticket, boarding of train and fall from the train of the deceased.

16. 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 has observed as under (SCC Online 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 this case, the Applicants have no knowledge of the whereabouts of the deceased on the day of incident and are not witness to the incident. Except for the Affidavit of Applicant No. 1, Supriya Machindra Magare (AW/1), which cannot be relied for the reasons mentioned above nothing has been produced by the applicants to prove the travel of the deceased on the day of incident. Thus, I have no hesitation in concluding that the Applicants have failed to establish that on 25.09.2018, the deceased had accidentally fallen down from a local train between Nerul and Juinagar railway station, while travelling from CBD Belapur to Juinagar railway station.

I have also perused the Post Mortem Report. The grievous head injuries and other serious injuries recorded in the Post Mortem Report, especially those of:

- a) skull burst open at left parietal region 15 x 15 cm, cavity deep, brain substance missing.
- b) Haemorrhage all over the scalp.
- c) Multiple depressed comminuted fractures of skull bones involving base.
- d) Multiple fractures of 2nd to 9th ribs, left side.
- e) Pleura and left lung lacerated etc.

These grievous injuries, inflicted on the deceased further strengthen the contention of the Respondent that the deceased was knocked down by train.

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 'untoward incident'. The relevant Para of the Judgement is produced as under:

"12. Coming to the nature of injuries sustained by the deceased which are reflected in the inquest panchanama 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 panchanama and in the postmortem 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 polytrauma".

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, the deceased had sustained grievous head injuries including skull burst open at parietal region with brain matter missing, Haemorrhage all over the scalp, Multiple depressed communitated fractures of skull bones involving base and other serious injuries. Nothing has been produced on record from Applicants side on the alleged journey of the deceased and no ticket was produced or recovered from the deceased. Further, as per record the deceased at the time of incident was a resident of Juinagar, the place of incident is local to residence of the deceased giving a reason for trespassing by the deceased. In a similar situation where Applicants failed to substantiate the alleged travel of a deceased by a train and the residence of the victim

being close to the place of incident, Hon'ble Delhi High Court in case of Gurcharan Singh & other Vs UNI, FAO No.507/2011 has considered the location of the residence of the victim vis. a. vis. Accident spot, also a factor in concluding the cause of the incident.

18. In view of the above, I have no hesitation in concluding that the Applicants have failed to establish that the deceased, on 25.09.2018, while travelling by local train from Belapur to Juinagar railway station, had accidentally fallen down from said local train between Nerul and Juinagar railway station, sustained grievous head injuries and other serious injuries and died subsequently. This is a clear case of knock down.

19. In this case, no railway ticket was recovered from the possession of the deceased during Inquest Proceedings. The Applicants have also not filed any Railway Ticket on record. Here it will be relevant to refer the judgement of Union of India vs. Rina Devi 2018 SCC On Line SC 507 in which Hon'ble Supreme Court has laid down norms for the cases when ticket is not recovered from the injured or deceased involved in alleged untoward incident. Relevant Para of this Judgement is reproduced as under:

"Mere presence of a body on the Railway Premises need not be conclusive to hold the injured or deceased a bonafide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negate the claim that he was a bonafide passenger. Initial burden will be on the claimant which can be discharged by filing affidavit of the relevant facts and burden will then shift to the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.

Hon'ble Apex Court in the case of Union of India vs. Rina Devi (Supra) has clearly laid down that initial burden of claimants can be discharged by

filing affidavit with relevant facts and the issue can be decided on the facts shown or attending circumstances on case to case basis.

In this case, as discussed in Para 14, affidavit of the Applicant No. 1, Supriya Machindra Magare (AW-1) cannot be relied as the Applicants were not aware of the alleged travel of deceased from CBD Belapur to Juinagar and as alleged by the Applicant No. 1 in her affidavit, nothing has been recovered during inquest panchnama so also in spot panchnama as reflected in inquest panchnama.

In this context it will be pertinent to refer the observation made by Hon'ble High Court of Bombay, Nagpur Bench, in F. A. No. 106/2020, Sulochana K. Khobragade Vs. Union of India wherein the Hon'ble Bombay High Court held at Para 7 as under:

“Undisputedly, the journey ticket was found from the person of the deceased or from the spot of incident. The appellant has stated in her affidavit that the deceased had purchased a railway ticket at Wadala Railway Station and was travelling with the said ticket. The appellant was not an eye witness to the purchase of the ticket by the deceased. Similarly, the appellant had not seen the deceased boarding any train at Wadala Railway Station. At the time of the spot panchnama, one mobile phone of Samsung company and the amount of Rs. 10/- was found in the personal search of the deceased. The ticket was not found. The evidence of the appellant on affidavit is not sufficient to establish that the deceased had purchased the journey ticket and boarded the train for the journey. The evidence is not sufficient to discharge the burden cast on the appellant. The appellant has not proved that the deceased was a bonafide passenger travelling with a journey ticket in any train at the time of the incident. Ld. Member of the Tribunal has properly appreciated the material on record and has recorded a finding that the deceased was not a bonafide passenger”.

In view of the above it is difficult to rely upon the version of AW-1, that deceased was a bonafide railway passenger. Therefore, in absence of recovery of any valid travelling authority, it is concluded that the deceased was not in possession of any valid ticket.

20. Based on the facts, circumstances of this case and preponderance of evidence on record, I have come to conclusion that the Applicants have failed to prove that the deceased Machindra Tukaram Magare was a bonafide passenger on 25.09.2018 and met with an untoward incident as defined under Sec. 123 (c) (2) of the Railways Act, 1989.

Hence, Issue No. 1 & 2 are decided in the negative, against the Applicants.

Issue No. (3):

21. The Applicant No. 1, Supriya Machindra Magare (AW-1) categorically deposed in her Affidavit by way of examination-in-chief that she is the wife of the deceased, Applicant No. 2, Jitesh Machindra Magare is the son of the deceased, Applicant No. 3, Archita Machindra Magare is the daughter of the deceased and Applicant No. 4, Kamal Tukaram Magare is the mother of the deceased and they are the only dependents of the deceased. The applicants have also filed copies of their Aadhar Cards, School Leaving Certificate of Applicant No. 2, SSC Marksheet of Applicant No. 3 and Death Certificate of father of deceased, to establish their identities and array of dependents of 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 parents, are the only dependents of the deceased Machindra Tukaram Magare, as contemplated under sec. 123 (b) of Railways Act, 1989.

Issue No. (3) is decided accordingly.

Issue No. (4):

22. 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.

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

Judgement pronounced on 2nd June, 2025.

**Alok Upasani
Member (Judicial)**