

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

Claim Application No: OA (IIU) / MCC / 0030 / 2022

- 1) Mr. Sanjay Bhagwansing Pardeshi,
Aged 55 years,
(Father of the deceased)
- 2) Mrs. Smita Sanjay Pardeshi
Aged 42 years,
(Mother of the deceased)
R/at-D-7/10, Radha Nagar, Flat no. 24,
5th Floor, Near Ayush Hospital,
Khadakpada, Kalyan (W),
Dist.-Thane-421301.

... APPLICANTS

Versus

Union Of India,
Through the General Manager,
Central Railway,
CSMT.

... RESPONDENT

Appearances:

Mr. P. D. Mane	: Advocate for Claimant
Mr. Niranjana Shimpri	: Advocate for Respondent

Date of Institution: 28-02-2022

Date of Judgement: 09.05.2024

**CORAM: Shri. K. K. Sonawane, Vice Chairman (J) &
Shri. Ved Prakash, Member (T)**

JUDGEMENT

1. This Claim Application is filed by the applicants 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 a Railway involving a death of deceased Anmol Sanjay Pardeshi.

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

2. It is stated that, the deceased Anmol Sanjay Pardeshi, resident of Kalyan was a student. The Applicant No. 1 is the father of unmarried deceased. The Applicant No. 2 is his mother. On 09-11-2021 the deceased was travelling from Kalyan to Thane Railway Station by an unknown local train. At about 10.05 hrs when the said train reached on PF no.6 of Thane Railway Station, due to heavy rush and push by the co-passengers the deceased accidentally fell down from the train and died on 10-11-2021. The Applicants produced a valid Railway return ticket bearing No. AFD 35759361 Ex. Kalyan to Kanjurmarg Railway Station. It has been contented that the deceased was the bona-fide passenger and died in an untoward incident occurred on 09-11-2021.

3. In response to notice, Respondent - Railway Authority appeared and opposed the claim application. The respondent filed Written statement and also produced on record the DRM reports, and papers of investigation conducted by IPF/RPF/Thane. It has been contented that on 09-11-2021 at about 10.05 hrs, DY. SS/Thane received information from SCOR and RPF/Thane that one person found in injured condition, at K.M. no. 32/15, in between UP & DN

Through Line. On receiving the information DY. SS/Thane issued a memo to the GRP/Thane. Thereafter, the victim was escorted to Chhatrapati Shivaji Maharaj Hospital Kalwa for medical treatment and for better treatment he was shifted to Jupiter Hospital. But on 10.11.2021, the victim succumbed to injuries. The GRP/Thane registered the case under ADR No.149/2021 dated 10-11-2021 u/s 174 of Cr.P.C. The GRP/Thane in inquest panchnama mentioned about recovery of a ticket bearing no. AFD 35759361 from the possession of the deceased. The GRP/Thane also mentioned that the information was received from passengers that a victim has fallen down while alighting from passing Train no 12110. It has been alleged that the deceased was not a bonafide passenger of the train. Since the said train did not have halt at Thane station the deceased tried to alight from running train and consequently the incident took place due to his own negligence.

4. In view of pleading of both parties, and relevant documents produced on record, this Tribunal framed the following issues on 18-01-2023 for just and proper adjudication of Claim Application on merit within ambit of law.

Issues		Answers
1.	Whether the Applicants are the dependents of the deceased within the meaning under Section 123(b) of Railways Act, 1989?	Yes
2.	Whether the deceased was a bona-fide passenger of the train on the relevant day, with valid journey ticket?	Yes
3.	Whether the death of the deceased was occurred as a result of untoward incident within meaning of Section 124-A, r/w (C) (2) of Railways Act?	Yes
4.	To what Order/ Relief?	Application allowed

5. That, in order to establish the claim, the applicant Mr. Sanjay Bhagwansing Pardeshi stepped into the witness-box and filed his Affidavit in lieu of examination-in-chief on record. He produced the following documents:

Sr No.	Particulars	Exhibit
1.	S. M. Memo	A-1
2.	Police Report	A-2
3.	Inquest Panchnama	A-3
4.	Statement of Smita	A-4
5.	P.M. report	A-5
6.	Ticket	A-6
7.	Ration Card	A-7
8.	SSC Marksheet of deceased	A-8
9.	Aadhar Card of Sanjay	A-9
10.	PAN card of Sanjay	A-10

6. The Applicant No. 1 Mr. Sanjay Bhagwansing Pardeshi (AW/1) in his Affidavit dated 22-11-2023 (Exb. AW 1/1) deposed that, on 09-11-2021 the deceased was travelling from Kalyan to Thane Railway Station by an unknown local train. At about 10.05 hrs when the said train reached on PF no.6 of Thane Railway Station, due to heavy rush and push by the co-passengers the deceased accidentally fell down from the train and died on 10.11.2021.

7. The Ld. Counsel for Applicant submitted that Applicant No.1 Mr. Sanjay Bhagawansing Pardeshi, as AW-1 has

adduced the evidence by filling his affidavit that the deceased was travelling with a valid Railway ticket and the same has been produced along with the affidavit. In the cross-examination of Applicant No.1, it was suggested on behalf of Respondent-Railway, that the deceased had fallen down from running train due to his own negligence and the deceased was not a bonafide passenger. But, the AW-1, turned-down these allegations put forth on behalf of Respondent.

8. The Ld. Counsel for Respondent adduced the evidence by filing affidavit of Vikash Kumar (RW-1) by way of examination in chief wherein he deposed that on 09-11-2021 he was deputed for monitoring PF no. 5-8 of Thane Station. At about 10 hrs he heard commotion of passengers at PF no. 6. He rushed to the spot and found that a person had fallen down while alighting the UP through train no. 12110 Panchavati Express. He disclosed that the train no. 12110 had no halt at Thane station.

9. The Ld. Counsel for Respondent submitted that the scrutiny of DRM report and other relevant documents reflects that the SS did not mention cause of the incident. The GRP disclosed that the deceased had fallen down from an unknown train and died on 10-11-2021. The GRP has mentioned about recovery of a railway return ticket bearing no. AFD 35759361 Ex. Kalyan to Kanjurmarg Railway Station from the possession of the deceased. The deceased himself was responsible for the incident. According to respondent the Railway administration has no concern at all with the said incident.

10. We have heard the Ld. Counsels appearing for the Applicants and Respondent. We have also gone through the entire documents produced on record. It is not put into controversy that the victim succumbed to injury received to him in railway accident. Now, before embarking into the merits of the matter, it would be profitable to set-forth the relevant provisions of the Railway Act 1989 as below:

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

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

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

"(c) "untoward incident" means-

xxxxx

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

Sec. 124 - A of the Railways Act is also useful to quote as under:

124-A. Compensation on account of untoward incidents. -

"When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident :

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to -

- a) suicide or attempted suicide by him;*
- b) self-inflicted injury;*
- c) his own criminal act;*
- d) any act committed by him in a state of intoxication or insanity;*
- e) any natural cause or disease or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.*

Explanation - For the purposes of this section, "passenger" includes-

- i) a railway servant on duty; and*

- ii) *a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.*

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

11. The Applicant No. 1 categorically deposed in his Affidavit by way of examination-in-chief that both the applicants are dependants of victim Anmol Sanjay Pardeshi. The Applicants produced Ration card, Aadhar card, PAN Card and Death Certificate of the deceased marked as Exhibit A7 to A10 to establish the array of dependents of the deceased. It is not in dispute that the Applicant No. 1 is the father of the victim and Applicant No.2 is his mother. The Respondent did not put this factual aspect in controversy. Therefore, there is no impediment to hold that the applicants are dependents of victim Anmol Sanjay Pardeshi as contemplated under sec. 123 (b) of Railways Act, 1989.

ISSUE NO. 2

12. 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. As long as there is a valid ticket for the journey that would be sufficient to draw, the inference being, a bonafide passenger of the train. The Applicant No. 1 has stated in his affidavit that the deceased was travelling on strength of a Railway Return Ticket bearing No. AFD 35759361 Ex Kalyan to Kanjurmarg Railway Station. According to Applicant, the Railway ticket was handed over to him by the Police. The document of Inquest Panchanama corroborates the version of the Applicant. The Applicant has produced the copy of Railway ticket along with the Claim Application. In fact, it is for the respondent to demonstrate that the Railway Return ticket was not valid or that the passenger was not a bona-fide passenger or that the ticket was not purchased by him. But the respondent did not succeed to discharge the burden. There is no contrary evidence or material to falsify the theory of possession of Railway ticket put-forth by the 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, we answer the issue no. 2 in affirmative.

ISSUE NO. 3

13. This issue is as to whether the incident of causing the death of victim Anmol Sanjay Pardeshi after his falling down from the moving train, would be an untoward incident as envisaged under section 123 (c) (2) of Railway Act 1989. We have carefully perused the DY. SS/Thane's memo issued to the GRP/Thane, wherein, it is stated that one unknown person found in injured

condition, at K.M. no. 32/15, in between UP & DN Through Line. The Inquest Panchnama has also demonstrated that the deceased died due to falling down from an unknown train and sustained serious injuries and died on 10-11-2021. The DRM report filed by Respondent reflects that the RPF/Thane Shri. Vikas Kumar received the information from passengers that a person had fallen down while alighting from passing Train no 12110. The GRP mentioned about recovery of a railway return ticket from the possession of the deceased.

The Ld Counsel for Respondent also adduced the evidence of Vikas Kumar (RW-1) by filing affidavit way of examination in chief wherein he deposed that on 09-11-2021 he was deputed for monitoring PF no. 5-8 of Thane Station. At about 10 hrs he heard the commotion of passengers at PF no. 6 and rushed to the spot of incident. He found that a person lying in injured condition on the PF-6 tracks at the PF of CSMT end. He also mentioned that the train no. 12110 was passing from PF No. 6 had no halt at Thane station. Be that as it may the entire evidence adduced on behalf of Respondent demonstrate that the deceased had fallen down from running train. There was no direct evidence of motorman or guard to bring on record that the victim was alighting a non-halting train. The Respondent failed to discharge its burden to falsify the pleadings of claimant. Therefore, it can be inferred that the deceased had fallen down from some unknown local train while travelling.

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 said injury 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.

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 exceptional clauses as contemplated under Section 124-A of Railway Act, 1989.

- 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.

16. In the above premises, we 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 and 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 the backdrop of facts and circumstances of this case and preponderance of evidence on record, we have no hesitation to

come to the conclusion that the deceased Anmol Sanjay Pardeshi, on 09-11-2021, while travelling as a bonafide Railway passenger from Kalyan to Thane Railway station, had accidentally fallen down from a running train, sustained serious 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, we answer the issue No. 3 in affirmative.

ISSUE NO. 4

18. 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 applicants are entitled for compensation of Rs. 8,00,000/- (Rupees eight lacks only) from Respondent - Railway on the day of incident. However, the date of incident is 09-11-2021, 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 dependents of the deceased are entitled for Rs. 8,00,000/- (Rupees Eight Lakh only) (revised compensation effective from 1st January 2017), plus interest @ 9% from the date of incidence till the date of award as a compensation to the Applicants on account of death of Anmol Sanjay Pardeshi, in an Untoward Incident.

Hence, we 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 Applicants as a compensation with interest @ 9% p.a. from the date of incident till date of this order.
- 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 further 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 Applicants and to protect the amount from being frittered away, the amount of Rs. 8,00,000/- (Eight Lakhs only) plus accrued interest shall be disbursed in the following manner:
 - i) Applicant No. 1 Mr. Sanjay Bhagwansing Pardeshi as well as Applicant No. 2 Mrs. Smita Sanjay Pardeshi 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 Applicant no. 1 Mr. Sanjay Bhagwansing Pardeshi and Applicant No. 2 Mrs. Smita Sanjay Pardeshi in FDR account in any nationalised Bank located nearer to the permanent residential address of Applicant no.1, 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 FDR account in Nationalized Bank and annuity scheme
Mr. Sanjay Bhagwansing Pardeshi (Father) (Applicant No. 1)	Rs 40,000/- (Rupees Forty Thousand only)	Rs.3,60,000/- (Rs. Three Lakh Sixty 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. Smita Sanjay Pardeshi (Mother) (Applicant No. 2)	Rs 40,000/- (Rupees Forty Thousand only)	Rs.3,60,000/- (Rs. Three Lakh Sixty Thousand only) plus accrued pro rata interest. This amount will be kept in the form of Fixed Deposit for a period of 3 years.

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 Applicant no. 1. This Savings Accounts will be linked with Annuity (term) Deposit Account on similar line as of MACAD (Motor Accident Claim Annuity (Term) Deposit Account).

iii. The Bank is hereby directed not to permit any joint name(s) to be added in the Savings Bank Accounts or Fixed Deposit Accounts of the Applicants i.e. the Savings Bank Accounts 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 are issued, the concerned Bank authority is directed 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 Claimants without the permission of this Tribunal.

iv. The concerned Bank of the Claimants are directed to permit the Claimant to withdraw money from his Savings Bank Accounts by means of a withdrawal form only. The Claimants are directed to produce the copy of this order before the concerned Bank for requisite endorsement in the Passbooks.

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

vi. The Claimants are directed to produce the original Bank Passbook with the necessary endorsement as well as 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 Accounts of the Claimants near to the place of their 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 Claimants.

vii. There shall be no order as to cost.

viii. The certified copy of this judgement be given to Applicants free of cost.

ix. Accordingly, the application stands disposed off in above terms.

(Ved Prakash)
Member (Technical)

(Kishor K. Sonawane)
Vice Chairman (Judicial)

SA/HPM