

**BEFORE THE RAILWAY CLAIMS TRIBUNAL,
MUMBAI BENCH, MUMBAI
Claim Application No: OA (II U) /MCC/392/2020**

1) Smt. Sindhu @ Sindhubai Balu Ughade

Age: 60 years,

(Mother of the deceased)

R/at- At Post- Mugaspande,

Tal- Pathardi, Dist- Ahemadnagar,

State of Maharashtra- 414113.

.... APPLICANTS

Versus

Union of India,

Through the General Manager,

Central Railway, CSMT,

Mumbai.

.... RESPONDENT

Appearances:

Mr. P. D. Mane

: Advocate for Claimant

Ms. Jyoti Panwalkar

: Advocate for Respondent

Date of Institution: 26.11.2020

Date of Judgement: 02.05.2025

CORAM: Shri. K. K. Sonawane, Vice Chairman (J)

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 Jitendra B Ughade.

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

2. It has been contended that, Jitendra B Ughade (hereafter referred as deceased), aged about 25 years, was the resident of Ahemadnagar. He was doing service. The Applicant No.1 is the mother of unmarried deceased Jitendra. It has been contended that on 01.12.2019, the deceased was travelling from

Neral to Karjat Railway station. When the train departed from Neral Railway station due to jerk and jostling from the co-passenger the deceased accidentally fell down from the train. He sustained serious injuries. The Applicant produced one valid Railway season ticket bearing No. UFF 33315375 Ex. Lonavala-Mulund via Kalyan Railway Station valid from 18.11.2019 to 17.12.2019. The copy of the same is produced on record by the Applicants. It has been contented that the deceased was the bona-fide passenger and died in an untoward incident occurred on 01.12.2019.

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, documents of investigation, conducted by IPF/RPF/Karjat accompanied with other relevant police papers marked as “R-1”. It has been contented that on 01.12.2019 at about 22.50 hrs the GRP/Neral noticed one person lying in injured condition on DN track Km No. 86/12 near platform no. 2 of Neral Railway station. The GRP informed the Dy.SS/Neral about the injured person. The Dy.SS/Neral issued a memo to the GRP. In response to memo the GRP/Neral escorted the victim to Karjat Sub District hospital for medical treatment. But he was declared dead by the concerned doctor. The GRP, registered the case vide ADR No. 54/2019, u/s 174 of Cr. PC. During the search, the GRP/Neral recovered a railway season ticket no. UFF 33315375 Ex. Lonavala-Mulund via Kalyan Railway Station valid from 18.11.2019 to 17.12.2019 from the deceased. It has been alleged that the deceased got down from platform no. 02 and attempted to cross the railway track to board an unknown local train in the opposite direction for going to Karjat. The deceased boarded a moving train which arrived on

platform no. 01, but his hand slipped and he came under the wheels of the train. Both hands and legs were amputated in the incident. The alleged incident occurred due to the own negligence of the deceased. The monetary liability cannot be fastened on the respondent/railway.

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

Issues		Answer
I.	Whether the Applicants prove that they are the dependents of the deceased under Section 123 (b) of Railways Act, 1989?	Yes
II.	Whether the applicants prove that deceased was a bona-fide passenger of the train, on the relevant time?	Yes
III.	Whether the Applicants prove that the death of the deceased occurred as a result of untoward incident as alleged in the Claims Application?	Yes
IV.	To what Order/ Relief?	Application Allowed

5. That, in order to establish the claim, Applicant No. 1 Smt. Sindhu @ Sindhubai Balu Ughade stepped into the witness-box and filed the Affidavit marked Exb AW-1/1 in lieu of her examination-in-chief on record. She produced the following documents.

Sr No.	Particulars	Exhibit
1.	SM memo	A-1
2.	Police Report	A-2
3.	Inquest Panchnama	A-3
4.	PM report	A-4

5.	Copy of Railway ticket	A-5
6.	Aadhar Card of Sindhubai	A-6
7.	PAN card of Sindhubai	A-7
8.	Ration Card	A-8

6. The Applicant No.1 Smt. Sindhu @ Sindhubai Balu Ughade (AW/1) in her Affidavit (Exb. AW 1/1) deposed that, on 01.12.2019, the deceased was travelling from Neral to Karjat Railway station. When the train departed from Neral Railway station due to jerk and jostling by the co-passenger the deceased accidentally fell down from the train. He sustained serious injuries. The Applicant produced one valid Railway season ticket bearing No. UFF 33315375 Ex. Lonavala-Mulund via Kalyan Railway Station valid from 18.11.2019 to 17.12.2019. The copy of the same is produced on record by the Applicants.

7. In the cross-examination of Applicant No.1 Smt. Sindhu @ Sindhubai Balu Ughade, it was suggested on behalf of respondent- Railway, that the victim was not a bonafide passenger and the incident occurred due to his own negligence. But, the AW-1 Smt. Sindhu @ Sindhubai Balu Ughade turned-down all these suggestions put forth on behalf of Respondent.

8. The Ld. Counsel for Respondent submitted that, during the search, the GRP/Neral recovered one railway season ticket no. UFF 33315375 Ex. Lonavala-Mulund via Kalyan Railway Station valid from 18.11.2019 to 17.12.2019 from the deceased. The deceased got down from platform no. 02 and attempted to cross the line to board an unknown local train in the opposite direction for going to Karjat. The deceased boarded a moving train which arrived on platform no. 01, but his hand slipped and he came

under the wheels of the train. Both hands and legs were cut. The incident occurred due to the own negligence of the deceased.

9. I have heard the Ld. Counsels appearing for the Applicants and Respondent. I have also gone through the entire documents produced on record. It is not put into controversy that the Victim succumbed to injuries received to him in railway accident. 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, I proceed to scrutinize the evidence produce on record. It is also imperative to bear in mind that the provisions of Evidence Act as well as Procedural law are not strictly applicable to the proceeding before this Tribunal.

ISSUE NO.1

10. The Applicant No. 1 categorically deposed in her evidence that she is the sole dependant of victim Jitendra B Ughade. The Applicant produced Aadhar card, Pan Card and Ration Card to establish the array of dependent of the deceased marked as Exb A-6 to A-8. It is not in dispute that Applicant No. 1 is the mother of unmarried deceased. The father of deceased is no more. The Applicant produced the death certificate of the father of the deceased. The Respondent did not put all these factual aspect in controversy. Therefore, there is no impediment to hold that the applicant is the sole dependent of victim Jitendra B Ughade as contemplated under sec. 123 (b) of Railways Act, 1989.

ISSUE NO. 2

11. The sec. 2 (29) in general refers to a person travelling with a valid pass or ticket to be a passenger. The Explanation to Section 124-A provides that a passenger includes a person who has purchased a valid ticket for travelling, by a train carrying passengers on any date and becomes a victim of an untoward incident. In case there is a valid ticket for the journey that is sufficient to hold that she was bonafide passenger. The Applicant No.1 Smt. Sindhu @ Sindhubai Balu Ughade categorically deposed

in her affidavit that one railway season ticket no. UFF 33315375 Ex. Lonavala-Mulund via Kalyan Railway Station valid from 18.11.2019 to 17.12.2019 was recovered from the possession of deceased. The copy of the same is produced on record Exb A-5. The documents of DRM report corroborate the version of Applicant. It is for the respondent to demonstrate that the season ticket was not valid or that the passenger was not a bona-fide passenger or that the season ticket was not purchased by the deceased. However, the respondent did not succeed to discharge the burden. There is no contrary evidence or material available on record to falsify the theory of purchasing season ticket put-forth on behalf of Applicant. In such circumstances, there is no impediment to conclude that the deceased was a bona-fide passenger, as defined in sec. 2(29) of the Railways Act as well as Explanation (ii) to sec.124-A of the Railways Act.

Hence, I answer the issue no. 2 in affirmative.

ISSUE NO.3

12. This issue is as to whether the incident of causing the death of victim after his falling 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 memo of Dy SS/Neral, issued to GRP on the information that the GRP/Neral noticed one person lying in injured condition on DN track Km No. 86/12 near platform no. 2 of Neral Railway station. But the cause of the incident is not mentioned in the memo. The Inquest Panchnama disclosed that the deceased fell down from the train and died due to the injuries sustained to him. The DRM report filed by Respondent reflects that the deceased got down from platform no. 02 and attempted to cross the line to board an unknown local train in the opposite direction for going to Karjat. The deceased boarded

a moving train which arrived on platform no. 01, but his hand slipped and he came under the wheels of the train. Both hands and legs were cut. The incident occurred due to the own negligence of the deceased.

It is worth to mention that there is no direct evidence of motorman or guard of concerned train involved in the accident to bring on record that the victim was crossing the Railway track. The contentions referred in documents of DRM report reflects that all the allegations of crossing the track, made by the respondent all rest on hearsay basis. The allegations based on figment of imagination cannot take place of proof. It was the responsibility of respondent to prove the factual aspect of knock down of victim by adducing cogent and reliable evidence. As referred above all the allegation of knock down are based on surmises and conjecture. It is to be noted that there is dichotomy in the pleadings of Respondent. In one breath, the respondent alleged that the deceased fell down after boarding the moving train, whereas in another breath, the respondent cast allegations that while attempting to cross railway track to pick up the Karjat train from platform No.1 he was knocked down by an unknown train. But there are no positive circumstances available on record to support the contention propounded by the respondent. The Respondent failed to discharge its burden by adducing positive evidence to falsify the pleadings of claimant. Therefore, it can be inferred that the deceased had fallen down from the train while travelling.

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 provision of section 124-A is 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.

- 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 fortify the act of the deceased, leading to his death was as a result of any exception clauses under Section 124-A of Railway Act, 1989, which are reproduced as below. Even if it is considered that the incident occurred due to negligence of the victim, while attempting to board in moving train it does not mean that he had an intention to inflict injuries to himself. Therefore, in

view Jameela's case, it cannot be considered that the victim had an ill-intention to inflict self-injury.

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

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

18. In the above premises, I have no doubt that the victim during the course of travelling accidentally fallen from train and sustained fatal injury. He was immediately admitted in hospital but he succumbed to injuries received in untoward incident. It is an 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.

19. In view of facts and circumstances of this case and preponderance of evidence on record, I have no hesitation to conclude that the deceased Jitendra B Ughade on 01.12.2019, while

travelling as a bonafide Railway passenger from Neral to Karjat Railway station, had accidentally fallen down from running train and 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, I answer the issue No.3 in affirmative.

ISSUE NO.4

20. Since the 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 from Respondent - Railway. The date of incident i.e. 01.12.2019, therefore, in view of the norms laid down by Hon'ble Supreme court in the case of Union of India V/S Rina Devi 2018 ACJ 1441, the aforesaid dependents of the deceased are entitled for compensation of 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 Jitendra B Ughade, 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 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 Smt. Sindhu @ Sindhubai Balu Ughade shall be permitted to withdraw an amount of Rs. 80,000/- (Rupees Eighty Thousand only) from her 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 Smt. Sindhu @ Sindhubai Balu Ughade in Annuity Deposit scheme/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 Annuity Deposit scheme/FDR account in Nationalized Bank and annuity scheme
Smt. Sindhu @ Sindhubai Balu Ughade (Mother) (Applicant No. 1)	Rs 80,000/- (Rupees Eighty Thousand only)	Rs.7,20,000/- (Rupees Seven Lakh Twenty 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.

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 FDR/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 Accounts or Fixed Deposit Accounts of the Applicants i.e. the Savings Bank Accounts of the Applicants 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.

v. The concerned Bank of the Claimants is directed to permit the Claimants to withdraw money from their 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.

vi. The FDR/MACAD, the Original Fixed Deposits receipts shall be retained by the Bank in safe custody. However, the statement containing Annuity Deposit scheme/FDR number, FDR amount, date of maturity and maturity amount shall be furnished by Bank to the Applicants. The maturity amount of the Annuity Deposit scheme/FDR's be credited by ECS in the Savings Bank Accounts of the Applicant operated in the nationalised Bank located nearer to the place of permanent residence of Applicant No. 1.

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

viii. 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.

- ix. There shall be no order as to cost.
- x. The certified copy of this judgement be given to Applicants free of cost.
- xi. Accordingly, the application stands disposed off in above terms.

(Kishor. K. Sonawane)
Vice Chairman (Judicial)