

**BEFORE THE RAILWAY CLAIMS TRIBUNAL,
MUMBAI BENCH, MUMBAI
Claim Application No: OA (II U) / MCC / 434/2016**

1. Shivaji Keru Sarak
Aged-50 years
(Father of the deceased)
2. Kantabai Shivaji Sarak
Aged-33 Years
(Step Mother of the deceased)
R/o Lavhe, Taluka Karamala,
Solapur, Maharashtra-413202. ...APPLICANTS

Versus

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

Appearances:

Mr. N R Shukla,	Advocate for Claimant
Mrs. D Fernandes,	Advocate for Respondent:
	Date of Institution: 29-07-2015
	Date of Judgement: 10-09-2024

COARM: 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 Dhananjay Shivaji Sarak.

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

2. It is stated that, Dhananjay Shivaji Sarak, (hereafter referred to as deceased), aged 18 years, was the resident of Karamala, Solapur and Self-employed person. The Applicant No. 1 is the father and Applicant No. 2 is the step mother of the deceased Dhananjay Shivaji Sarak. On 25-11-2013, the deceased Dhananjay Shivaji Sarak, was traveling from Bhigvan to Loni Railway Station at about 17:25 hrs. As soon as the deceased boarded the train at Bhigvan Railway Station, there was sudden jerk and jostling by other passengers. The deceased lost his balance and fallen down from the train accidentally. The deceased was taken to the Khaute Hospital, Daund and later on he was taken to the Sasoon Hospital, Pune for better medical treatment. But he succumbed to injuries while undergoing medical treatment. The Applicants stated that the deceased was travelling on the strength of a IInd class Railway ticket No.39582994 from Bhigvan to Loni Railway Station and the said railway ticket is filed along with the claim application.

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 reports pertains to investigation conducted by Inspector/Thane, accompanied with other relevant police papers. It has been contented that on 25-11-2013, ASM/DD issued a memo to on duty GRP and informed that "one unknown person got injured due to falling down from passenger train No. 51456. He provided first-aid

treatment and sent the victim to Daund by the same train. The message conveyed to Dy. SS/DD & Sr. DMO." For further process. After receipt of information, the head Constable M.L. Pawar of GRP/DD escorted the victim to Sassoon Hospital, Pune for further treatment, where he died while undergoing medical treatment. The GRP/DD prepared Inquest Panchanama and registered the case vide CR No. 53/2013 U/s 174 Cr.P.C. The Railway ticket No. T 39582994 Ex.-BGVN to Loni was recovered from the possession of deceased person. The investigation papers of GRP/DD demonstrate the facts that on 25-11-2013, the victim Dhanajay Shivaji Sarak fell down from the moving train and sustained grievous injuries at BGVN Railway Station while boarding the moving train and died at Sassoon Hospital while undergoing medical treatment. The incident occurred due to his own negligence and carelessness. He was travelling vide ticket No. T 39582994, Ex. BGVN to Loni. The incident occurred due to own negligence of the victim, therefore, there is no responsibility on the Railway to pay compensation.

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
1.	Whether the deceased was a bonafide passenger of the train in question at the time of accident ?	Yes
2.	Whether the deceased suffered injuries and died in an untoward incident while travelling in the train in question?	Yes
3.	Whether the Respondent is protected under the exceptional clause of Sec.124 Act (A) of the Railway Act and not liable to pay any compensation?	No
4.	Whether the applicants are the dependents of the deceased?	Yes
5.	Relief?	Application Allowed

5. That, in order to establish the claim, Applicant No.1 Shivaji Keru Sarak, 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.	Inquest Panchanama	A-1
2.	Cause of Death Certificate	A-2
3.	Certificate copy of Railway Ticket	A-3
4.	Aadhar Card of Shivaji	A-4
5.	Aadhar Card of Kantabai	A-5
6.	Ration Card	A-6
7.	Death Certificate of Dhananjay	A-7

6. The Applicant No. 1 Shivaji Keru Sarak (AW/1) in his Affidavit deposed that, on 25-11-2013, the deceased Dhananjay

Shivaji Sarak, was traveling from Bhigvan to Loni Railway Station at about 17:25 hrs. As soon as the deceased boarded the train at Bhigvan Railway Station, there was sudden jerk and jostling by other passengers. The deceased fell down from the train accidentally. The deceased was taken to the Khaute Hospital Daund and later on he was taken to the Sasoon Hospital, Pune for better medical treatment wherein he was declared dead. It is also contended that the deceased was travelling along with the second class return railway ticket bearing No. 39582994 for traveling between Bhigvan to Loni Railway Station and same is produced on record Exb. A-3.

7. In the cross-examination of Applicant No.1 Shivaji Keru Sarak, it was suggested on behalf of Respondent- Railway, that the victim Dhananjay Shivaji Sarak fell down from moving train and the accident occurred due to his own negligence. He was not a bonafide passenger on the relevant day. But, the AW-1 Shivaji Keru Sarak, turned-down all these allegations put forth on behalf Respondent.

8. The Ld. Counsel for the Respondent submitted that the alleged incident occurred due to own negligence on the part of victim and therefore it cannot be considered as an untoward incident and as such it does not fall within the purview of sec 123(c) of Railway Act read with section 124-A of the Railways Act 1989.

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 multiple injuries received to him after falling down from a moving train. 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."

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.*

10. 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

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. 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 the strength of a IInd class Railway ticket No.39582994 from Bhigvan to Loni Railway Station. Therefore, he would be considered as bonafide passenger. The copy of the said railway ticket is filed along with the claim application. The document of Inquest Panchanama corroborates the version of the Applicant. In fact, it is for the respondent to demonstrate that the Railway 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 available on record to falsify the theory of possession of Railway 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, we answer the issue no. 1 in affirmative.

ISSUE NO. 2 & 3

12. Both these issues being interconnected with each other, are taken up together for better appreciation of evidence on record.

I have carefully perused the memo of ASM/DD issued to on duty GRP It was informed that "one unknown person got injured due to falling down from passenger train No. 51456. The first-aid treatment was provided to victim and thereafter he was sent to Daund by the same train. The message was conveyed to Dy. SS/DD & Sr. DMO for further process" After receipt of information the head Constable M.L. Pawar of GRP/DD escorted the victim to 'Sassoon Hospital, Pune for further treatment, where he died while undergoing medical treatment. It has been alleged that in view of documents of GRP/DD and report of Inspector Duand, the deceased had fallen down from the local train due to his own negligence while boarding and died due to the injuries sustained to him.

The DRM Report filed by the Respondent demonstrate that deceased sustained injuries after falling from the moving train and sustained grievous injuries at BGVN Railway Station while boarding the moving train. He died at Sassoon Hospital while undergoing medical treatment. This incident occurred due to his own negligence and carelessness.

13. The Ld.Counsel for Applicant relied upon the case of Union of India vs Prabhakaran Vijaya Kumar & Ors on 5, May 2008, wherein the Hon'ble Supreme Court has observed that *"no doubt, it is possible that two interpretations can be given to the expression 'accidental falling of a passenger from a train carrying passengers', the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board or alight the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence in our opinion the latter of the above mentioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred"*.

14. In the case of Jameela & Ors vs. Union of India reported 2020 (12) SCC 3705 , the Hon'ble Apex Court delineated 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. 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."

15. 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 from the liability to pay the compensation only when the alleged incident comes within the exception clauses (a) to (e) of the proviso to Section 124-A of the Railways Act, 1989.

16. In this case Ld. Counsel for the Respondent did not lead any evidence to show that the act of the deceased, leading to his death was as a result of any exception clauses as contemplated under Section 124-A of Railway Act, 1989.

- 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.

17. In the above premises, there is no impediment to arrive at the conclusion that the victim during the course of travelling accidentally fallen down from the train and sustained serious injury. He succumbed to the injuries received in train accident. 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.

18. In view of facts and circumstances of this case and preponderance of evidence produced on record, I have no hesitation to conclude that the deceased Dhananjay Shivaji Sarak, on 25-11-2013, while travelling as a bonafide Railway passenger from Bhigvan to Loni Railway station had accidentally fallen down from local train, sustained serious injuries and died subsequently. Accordingly, the incident is covered under Section 123 (c) (2) read with Section 124 -A of the Railways Act, 1989.

ISSUE NO. 4

19. Applicant no. 1 categorically deposed in his Affidavit by way of examination-in-chief that the applicants are the dependants of victim Dhananjay Shivaji Sarak. The Applicants have produced Aadhar Cards of the Applicants and Ration Card. It is not in dispute that the Applicant no. 1 is the father of the deceased. The Applicant No.2 Kantabai Shivaji Sarak is the step mother of the deceased, but his

biological mother was no more and passed away long back. Thereafter the Applicant no.1 performed marriage with Applicant No.2. therefore being step mother she is now one of the dependent of the deceased, hence, she is entitled for the compensation. Therefore, there is no impediment to hold that the Applicant No.1 and 2 are the dependents of victim Dhananjay Shivaji Sarak as contemplated under sec. 123 (b) of Railways Act, 1989.

Issue No. 5

20. The alleged incident leading to death of the deceased in an “untoward incident” as defined under sec. 123 (c) of the Railway Act 1989, was occurred on 25-11-2013, 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. 4,00,000/- (Rupees Four Lakh only) from Respondent - Railway on the day of incident. However, in view of Para 15.4 of the Hon’ble Supreme Court Judgment, delivered in the case of Rina Devi Vs. Union of India, in Appeal No. 4945 of 2018, dated 09.05.2018, the aforesaid dependents of the deceased, under Part-I of the Schedule of the Railway Accidents & Untoward Incidents (Compensation) Rules, 1990, as amended in 2016, are entitled to Rs. 4,00,000/- (Rupees Four Lakh only) plus interest @ 6% PA from the date of accident to the date of payment OR Rs. 8,00,000/- (Rupees Eight Lakh only) whichever is higher. In this case, as Rs.

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8,00,000/- (Rupees Eight Lakh only) is on higher side,
therefore the same is awarded as compensation to the
applicant(s) on account of death of Dhananjay Shivaji Sarak,
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.
- 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 Shivaji Keru Sarak and Applicant No. 2 Kantabai Shivaji Sarak shall be permitted to withdraw an amount of Rs. 40,000/- (Rupees Forty Thousand only) each respectively 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 Shivaji Keru Sarak and Applicant No.2 Kantabai Shivaji Sarak in FDR accounts in any Nationalized 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
Shivaji Keru Sarak (Father)	Rs 40,000/- (Rupees Forty Thousand only)	Rs. 3,60,000/- (Rupees Three Lakh Sixty Thousand only) plus accrued interest if any, shall be kept in the form of 36 Fixed Deposits of Rupees 10,000/- (Rupees Ten Thousand only) each, with FD maturity period of 1 to 36 months. Every month the matured FD along with interest shall be credited in the Savings Account of the Awardee.

Kantabai Shivaji Sarak	Rs 40,000/- (Rupees Forty Thousand only)	Rs. 3,60,000/- (Rupees Three Lakh Sixty Thousand only) plus accrued interest if any, shall be kept in the form of FDR for the period of three years.
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After maturity the entire amount including interest shall be credited in the Individual Savings Account of the Awardee.

iii) The Claimants (Applicants) are directed to open, their individual Savings Bank Accounts in any Nationalized Bank located nearer to the place of their permanent residence. This Savings Account will be linked with Fixed Deposit Account of Claimant.

iv) The Bank is hereby directed not to permit any joint name(s) to be added in the Savings Bank Account or Fixed Deposit Account of the Applicant i.e. the Savings Bank Account of the Applicant shall be an individual Savings Bank Account and not a Joint Account. The concerned Bank is further directed not to issue any Cheque Book and/or Debit Card in the name of Applicant for the above referred S.B. Account. If the same is issued, the concerned Bank authority is requested to take step to cancel/revoke the same before making any payment of awarded amount to the Applicant. Moreover, the concerned Bank shall take care for not issuing any Debit Card relating to above referred S.B. Account of the Applicant by any other branch of the Bank. The Bank shall put an endorsement on the Passbook issued in favour of Applicant to the effect that no

Cheque Book and/or Debit Card shall be issued to the Applicant without the permission of this Tribunal.

v) The concerned Bank of the Applicant is directed to permit the Applicant to withdraw money from her Savings Bank Account by means of a withdrawal form only. The Applicant is directed to produce the copy of this order before the concerned Bank for requisite endorsement in the Passbook.

vi) The Original Fixed Deposit Receipt shall be retained by the Bank in safe custody. However, the statement containing FDR number, FDR amount, date of maturity and maturity amount shall be furnished by Bank to the Applicant. The maturity amount of the FDR be credited by ECS in the Savings Bank Account of the Applicant operated in the Nationalised Bank located nearer to the place of permanent residence of Applicant.

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 Claimant/Awardee are directed to produce the original Bank Passbook with the necessary endorsement as well Aadhaar Card and PAN Card before the Additional Registrar, RCT, Mumbai. The ADR of this bench shall take the following documents on record from the Claimants/Awardee before releasing the awarded amount for disbursement as mentioned above.

- (a) Details of the Bank Account of the Claimant near to the place of her permanent residence with necessary endorsement.
- (b) Aadhaar Card and PAN Card or any other appropriate ID card;and
- (c) Two sets of photographs and specimen signatures of the Claimant.

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

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