

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

CORAM: Ms. Niva Singh, Member (T) RCT, Mumbai

Claim Application No: OA (II U) /MCC/462/2019

1. Ajmal Shah s/o Mohd. Hanif Shah

Age: 35 years,
(Father of the deceased)

2. Anvari w/o Ajmal Alam

Age: 32 years,
(Mother of the deceased)

R/at: Village Rampur, Post- Daspura,
Dist. Banda, Uttar Pradesh-210126.

... APPLICANT(s)

Versus

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

... RESPONDENT

Appearances:

Mr. N. R. Shukla for Mr. Kuldeep Singh : Advocate for Claimant

Ms. D. Fernandes : Advocate for Respondent

Date of Institution : 11.07.2019

Date of Judgment : 27.01.2026

JUDGEMENT

1. This Claim Application is filed by the applicant 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 Railway involving a death of deceased Faizan Ajmal Shah.

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

2. It is stated that, Faizan Ajmal Shah, (hereafter referred as deceased), aged 15 years was a resident of Uttar Pradesh. The Applicant No. 1 is the Father deceased, Applicant No. 2 is mother of the deceased. It has been alleged that on 14.09.2018 the deceased was travelling from CSMT to Ghatkopar Railway station. When the train was near Sewri Railway Station due to rush and push by the co passengers he accidentally fell down from train. He was taken to Sion Hospital, wherein he was declared dead on 18.09.2018 while undergoing medical treatment. The Applicant stated that the deceased was in possession of a second class Railway ticket from CSMT to Ghatkopar Railway Station via Kurla. But it was lost in the untoward incident. It has been contended that the deceased was a bona-fide passenger and died in untoward incident occurred on 14.09.2018.

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, accompanied with other relevant police papers marked as "R-1". It has been alleged that on 14.09.2018, GRP Vadala Road WPC 1209 Varsha Sadashiv Khandekar was posted at Sewri station. At around 13:00 hrs., some passengers informed her that a boy had fallen down from a local train on platform no. 1. Upon receiving the information, the GRP went to the spot and found that a boy had fallen from the down Panvel local train. In this regard, CNC/Sewri issued memo no. 020201 for further treatment of the injured. After receiving the memo, WPC 1209 Varsha Sadashiv Khandekar immediately took the injured to Sion Hospital with the help of ambulance. After receiving the memo, the injured person was treated by the on-duty doctor and admitted to ward no. 4 and the injured boy's

father Ajmal Khan was present with him and he told that he is his son Faizan Ajmal Khan and he lives in Ghatkopar Chirag Nagar Gaiban Shah Dargah. In the above incident, the injured boy had a cut on his head and a scratch on his leg. On personal search apart from the clothes worn by the injured person, a 10 rupee note was found in his pocket, apart from this no other valuable document was found. In this regard, a case was registered in GRP Vadala Road on 14.09.2018 at 18.55 hrs as per INJ/No 204/2018. On 14.09.2018, the statement of the father of the injured was taken by WPC 1209 Varsha Sadashiv Khandekar of GRP Vadala Road, in which he told that on 14.09.2018 at 01.20 hrs he received information on his mobile phone that his son was injured after falling from a local train at Sewri station. On receiving the said information, he immediately came to the spot and came to know that his son has been taken to Sion Hospital for treatment. On getting the above information, he immediately went to Sion Hospital and met GRP Khandekar there and on showing the boy to him, he told that this is his son Faisal Ajmal Khan, age 15 years, studying in 8th class and he is studying in CST and he was coming home from school. And told that his son is being treated by the on duty doctor and he was admitted in the emergency ward for further treatment and he said that he has no suspicion or doubt on anyone in the above incident and he had taken the responsibility of his son's treatment. Later, the said injured boy died during treatment at Sion Hospital on 18.09.2018 at 17.45 hrs. In this regard, on 18.09.2018, PSI Shri S.S. of GRP Vadala Road Khot went to Sion Hospital and prepared a Inquest Panchnama, stating that the cause of death as fall down from a local train and subsequent death at Sion Hospital. As per the documents obtained in the above accident case, it was found that, in the CNC/Sewri memo regarding the incident, an unknown boy, aged about 15 years, was injured near Sewri Railway Station PF/No. 1 on

14.09.2018 at approximately 13:00 hrs. The memo stated that he was injured while boarding or alighting from a local train. The report of WPC 1209 Varsha Sadashiv Khandekar of GRP Vadala Road and the Inquest Panchnama prepared by PSI Shri S.S. Khot regarding the deceased person indicate that he died after falling from a local train and sustaining injuries. This clearly indicates that the deceased boy fell from the local train while traveling on the door step of the local train and died during treatment after sustaining serious injuries, which proves that the deceased boy violated Section 156 of the Railway Act. The deceased boy, however, fell from the local train while traveling without a valid ticket or pass, and died after suffering injuries. He is responsible for this injury. The railway administration is not at fault. Therefore, the applicant is not entitled to a claim. Eyewitnesses or fellow passengers are mentioned in relation to the incident. A copy of the charge book is not included in the case documents.

4. In view of pleading of both the parties, and relevant documents produced on record, this Tribunal framed the following issues on 12.10.2020 for just and proper adjudication of the Claim Application on merit within ambit of law.

Issues	
1.	Whether the applicants prove that he/she is the dependent of the deceased within the meaning of Section 123(b) of the Railways Act?
2.	Whether the applicants prove that deceased was a bonafide passenger of the train, in question, on the relevant day?
3.	Whether the applicants prove that the death of the deceased had occurred a result of an untoward incident as alleged in the claim application?
4.	To what order/relief ?

5. That, in order to establish the claim, the Applicant No. 1 Ajmal Shah s/o Mohd. Hanif Shah, stepped into the witness-box and

filed the Affidavit on 27.12.2023 in lieu of his examination-in-chief on record. He produced the relevant documents comprising:

Sr No.	Particulars	Exhibit
1.	Police Report	A-1
2.	Inquest Panchanama	A-2
3.	Statement of Ajmal Shah	A-3
4.	SM Memo	A-4
5.	Cause of Death Certificate	A-5
6.	Copy of Ration Card	A-6
7.	Copy of Death Certificate	A-7
8.	Copy of Aadhar Card of Ajmal Shah	A-8
9.	Copy of Aadhar Card of Anvari	A-9

6. The Applicant No.1 Ajmal Shah s/o Mohd. Hanif Shah, has averred in his affidavit dated 27.12.2023 that on 14.09.2018 the deceased was travelling from CSMT to Ghatkopar Railway station. When the train was near Sewri Railway Station due to rush and push by the co passengers he accidentally fell down from train. He was taken to Sion Hospital, wherein he was declared dead on 18.09.2018 while undergoing medical treatment. The Applicant stated that the deceased was in possession of a second class Railway ticket from CSMT to Ghatkopar Railway Station via Kurla. But it was lost in the untoward incident.

7. In the cross-examination dated 17.12.2024 of Applicant No. 1 Ajmal Shah s/o Mohd. Hanif Shah, he has stated as under:

"The deceased Faizan Ajmal Shah was my son. He was a student of ninth standard at Anjuman Islam School at CSMT and unmarried. He used to leave home at 07.00-07.30 am and used to return home at 01.30-2.30 pm. At the time of incident, we were residing at Kurla. Now, the witness volunteered that currently he is residing at Ghatkopar. My deceased son was not having any student's free concession pass. The witness volunteered that the deceased used

to purchase ticket for travelling. Nothing was recovered from the possession of my deceased son. It is true to suggest that we are staying at Narayan Nagar, Gaiban Shah Dargah, Ghatkopar. The witness volunteered that it is midpoint between Kurla and Ghatkopar. The Kurla Station is near to my residence. I may be permitted to submit documents relating to school of Faizan on the next date of hearing."

During cross-examination, it was suggested on behalf of Respondent - Railway, that the untoward incident happened due to the mischief played by the deceased and sustained self-inflicted injuries, the deceased was not a bonafide passenger and not having a valid ticket. But, the AW-1 Ajmal Shah s/o Mohd. Hanif Shah turned-down all these suggestions put forth on behalf of the Respondent.

8. The Applicant's Evidence was closed on 27.12.2023.

Respondent did not adduce any oral evidence in the matter and closed its evidence on 26.02.2024.

9. During the arguments, the Ld. Counsel for Applicants submitted that the AW-1 Ajmal Shah s/o Mohd. Hanif Shah, has filed his affidavit to prove that the deceased was travelling as a bonafide passenger, on the strength of a second class ticket, however, the said ticket was lost in the incident. It is argued that the deceased had fallen down from a local train and no evidence in contrary has been produced by the Respondent. Hence, he was involved in an untoward incident leading to her death.

In its defence Ld. Counsel for the Respondent submitted that Applicants witness, (AW-1) is not an eye-witness to the incident, he has no personal knowledge of the incident. Further, the deceased sustained self-inflicted injuries. Ld. Counsel to Respondent further submitted, that the GRP's documents do not mention about the recovery of any railway ticket/pass, from the possession of the deceased. Moreover, his body was

found on Harbour Line near Sewri but, the lost ticket claimed in OA is of Main line Central Railway route. Therefore, the deceased cannot be said to be a bonafide passenger.

10. I have heard the Ld. Counsels appearing for the parties. I have gone through the entire evidence and documents produced on record. Now, before embarking into the merits of the matter, it would be profitable to set-forth the relevant provisions of the 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

11. The Applicant No. 1 categorically deposed in his Affidavit by way of examination-in-chief that both the applicants are dependents of victim Faizan Ajmal Shah. The Applicant produced Ration Card, and Aadhar Card of Applicants to establish array of dependent of the deceased. It is not in dispute that the Applicant No. 1 & 2 are parents of unmarried deceased son. The Respondent also did not put this factual aspect in controversy. Therefore, there is no impediment to hold that the Applicants being parents are the dependents of victim Faizan Ajmal Shah as contemplated under sec. 123 (b) of Railways Act, 1989.

ISSUE NO. 2 & 3

12. As these issues are inter-connected and inter-dependent, for the sake of brevity and better appreciation, the same are being dealt together.

13. On careful perusal of CNC/Sewri's memo, wherein it is stated that the deceased was found injured at Sewri railway Station and has attributed at 'Fallen Down while boarding or alighting local train'. The Police and Panchas in Police Report and Inquest Panchnama have opined that the deceased had fallen down from train sustained head

injury and died subsequently. The DRM's Report filed by Respondent states that the deceased fell down from train while travelling near the door of the train. Except negligence of deceased, nothing else has been averred by the Respondent in their pleadings or brought on record.

14. The Respondent failed to discharge its burden to falsify the pleadings of claimant. Moreover, the DRM was not certain to determine the exact cause of incident. But circumstances indicate that the victim was fallen down from train. Therefore, it can be inferred that the deceased fell down from the train while travelling.

15. The Tribunal has placed reliance on the judgment of the Hon'ble High Court of Judicature at Bombay Nagpur Bench, Nagpur in FAO No. 1270/2010 wherein it is observed that, "Railway trains are used as convenient and affordable means of conveyance by any commoner in our Country. If a Passenger unguided by Railway security personnel, ticket checkers or in absence of the regular announcements mistakenly board a wrong train halting on the platform , may on realizing his mistake fell off the train due to panicky situation or otherwise accidentally. Railway administration cannot feign ignorance about the untoward incident in such case in order to shirk away from its strict liability to compensate monetarily for the untoward fatal accidents.

16. In the case of Union of India vs. Prabhakaran Vijaya Kumar (2008) 9 SCC 527, the Hon'ble Supreme court has settled the issue of incident while Boarding/De-boarding a train and untoward incident. The relevant para of the judgement is reproduced as under:

" 10. We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an 'accidental falling of a passenger from a train carrying passengers'.

Hence, it is an 'untoward incident' as defined in Section 123(c) of the Railways Act.

11.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 abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred vide *Kunal Singh vs. Union of India* (2003) 4 SCC 524(para 9), *B. D. Shetty vs. CEAT Ltd.* (2002) 1 SCC 193 (para 12), *Transport Corporation of India vs. ESI Corporation* (2000) 1 SCC 332 etc."

17. The plea of negligence is not accepted in view of this issue already settled by Hon'ble Apex court in the case of *Jameela & Ors vs. Union of India* 2010 ACJ 2453(SC), Hon'ble Supreme Court has concluded as under:

"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."

18. The deceased was a daily commuter and a student. He was found travelling during the academic period and school was over for the day. As per the deposition of the father of the deceased they use to reside at Kurla at the time of the incident and now shifted to Ghatkopar. The deceased was found on his way to his residence. The deceased was found travelling on harbour line and not main line which goes directly to Ghatkopar. On harbour line change of suburban train and another ticket would be required from Kurla but not pleaded in OA. However, it is possible being a young school child he could not distinguish between Central line and Harbour line both leaving from CST but different

platform. Since untoward is proved having fallen down at Sewri and ticket on affidavit and daily route and school leaving time matched.

19. In view of above discussion and considering the fact that the provision for compensation for Untoward Incident under Section 123(c) read with Section 124(A) of Railways Act is a beneficial piece of legislation, it is concluded that the deceased had fallen down from a train near Sewri Railway station while travelling from CSMT to Ghatkopar via Kurla Railway station.

20. 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 subject to certain exceptional circumstances, 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 Act. (Supra).

21. In this case, no ticket was recovered from the possession of deceased. However, Hon'ble Supreme Court in case of Union of India Vs Rina Devi in Civil Appeal No. 4945 of 2018 has dealt with the issue "Burden of proof when ticket was not recovered in an untoward incident". In the said judgment the burden cast upon the applicant was not so heavy in comparison with the Respondent to rebut the presumption. The relevant portion of the judgement in case of Union of India V/s Rina Devi (Supra), 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 negative the claim that he was a bonafide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending

circumstances. This will have to be dealt with from 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 claimant 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.

22. In this case the issue of falling down of the deceased from a train has been established and therefore, his travel from a train is undisputed. Applicant No. 1 Ajmal Shah s/o Mohd. Hanif Shah (father of the deceased) has filed his Affidavit to discharge light burden cast upon Applicants in regard to possession of a valid Railway Ticket by the deceased at the time of incident stating that the deceased was travelling with a valid ticket and no evidence to the contrary was produced from Respondent side for victim being unauthorised or without ticket. Therefore, considering possibility of loss of Railway Ticket during post incidence scenario, I conclude that the deceased was having possession of and travelling with a valid Railway Ticket as a bonafide passenger at the time of incidence.

23. Thus on the basis of facts and circumstances of this case and preponderance of evidence on record, I have come to conclusion that the deceased Faizan Ajmal Shah, on 14.09.2018, was a bonafide Railway passenger, had accidentally fallen down from train at Sewri Railway Station, sustained injuries and died. Accordingly, the incident is covered under Section 123 (c) (2) read with Section 124 -A of the Railways Act, 1989.

Hence, I answer the issue no. 2 & 3 in negative.

ISSUE NO. 4

24. Since the incident dated 14.09.2018 leading to death of the deceased is an “untoward incident” as defined under Section 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, (amended in 2016) the applicants are entitled for compensation of Rs. 8,00,000/- (Rupees Eight Lakhs only) plus interest @ 9% from the date of incidence till the date of award on account of death of deceased Faizan Ajmal Shah 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 Applicant as a compensation with interest @ 9% p.a. from the date of incident till date of this order/award.
- 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 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 Applicant and to protect the amount from being

frittered away, the amount of Rs. 8,00,000/- (Rupees Eight Lakhs only) plus interest, if any, shall be disbursed in the following manner:

- i. Applicant No.1 Ajmal Shah s/o Mohd. Hanif Shah and Applicant No.2 Anvari w/o Ajmal Alam 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 Applicants in Annuity scheme in any nationalised Bank located nearer to the permanent residential address of Applicant, 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 in Nationalized Bank
Ajmal Shah s/o Mohd. Hanif Shah (Father) (Applicant No. 1)	Rs. 40,000/- (Rupees Forty Thousand only)	Rs. 3,60,000/- (Rupees Three Lakh and Sixty Thousand only) in Annuity scheme on similar line as MACAD with monthly payment of Rs. 6,000/- (Rupees Six Thousand Only) in Savings Bank account of the awardee till whole deposit is exhausted.
Anvari w/o Ajmal Alam (Mother) (Applicant No.2)	Rs. 40,000/- (Rupees Forty Thousand only)	Rs. 3,60,000/- (Rupees Three Lakh and Sixty Thousand only) in Annuity scheme on similar line as MACAD with monthly payment of Rs.

		6,000/- (Rupees Six Thousand Only) in Savings Bank account of the awardee till whole deposit is exhausted.
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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 Applicants. This Savings Account will be linked with 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 Account or Annuity deposit scheme Accounts 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 as per the Annexure A (enclosed herewith) without the permission of this Tribunal.

v) The concerned Bank of the Applicant is directed to permit the Applicants to withdraw money from their 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. The Original Annuity deposit scheme shall be retained by the Bank in safe custody. However, the statement containing Annuity deposit scheme number, amount and date of maturity shall be furnished by Bank to the Applicant. The maturity amount of the Annuity deposit scheme 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.

vi) The Bank shall not grant any loan, advance, withdrawal or premature discharge on the Annuity Deposits without permission of this Railway Claims Tribunal.

vii) The Claimant is 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 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 Account of the Claimant near to the place of his 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.

viii) There shall be no order as to cost.

ix) The certified copy of this Judgement be given to Applicant free of cost.

x) Accordingly, the application stands disposed of in above terms.

(Niva Singh)
Member (Technical)