

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

Claim Application No: OA (II U) /MCC/678/2019

1. Dhaval Mahesh Pandya
Age: 33 Years,
(Son of the deceased)
2. Ami Mahesh Pandya
Age: 29 Years,
(Daughter of the deceased)
3. Meena Mahesh Pandya
Age: 61 Years,
(Widow of the deceased)
All R/at: Room No.16, Building-1/C,
Plot No.4, Indrayani Society,
Gen Arunkumar Vaidya Marg, Santosh Nagar,
Goregaon (E), Mumbai-400065 ... APPLICANTS

Versus

Union of India,
Through the General Manager,
Western Railway, CCG,
Mumbai. ... RESPONDENT

Appearances:

Mr. N R Shukla : Advocate for Claimant
Ms. Vaishali Agane : Advocate for Respondent

Date of Institution: 31-10-2019

Date of Judgement: 04-07-2025

CORAM: Shri. Mohit Sinha, Member (T), RCT/Mumbai

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 of Railways involving a death of deceased Mahesh Vithalji Pandya.

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

2. It is stated that, Mahesh Vithalji Pandya, (hereafter referred as deceased), aged 67 years, resident of Goregaon was Self-employed. The Applicant no. 1 is the son of deceased Mahesh Vithalji Pandya, Applicant no. 2 is his daughter and Applicant No. 3 is his widow. It has been contented on 17-05-2019 the deceased Mahesh Vithalji Pandya was travelling from Mahuva Jn. to Borivali Railway station by Train No. 22990 MHV BDTs Express. When the train was near Borivali Railway Station, on 18-05-2019 the deceased accidentally fell down from the running train due to heavy rush and push by the co-passengers. He was escorted to Dr. Babasaheb Ambedkar Hospital, Kandivali, Mumbai wherein he was declared dead. The Applicants stated that the deceased was in possession of a Reservation ticket PNR No.8437988827 from Mahuva Jn. to Bandra Terminus Railway station. The said ticket is produced on record. It has been contented that the deceased was the bona-fide passenger and died in untoward incident occurred on 18-05-2019.

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 reports accompanied with other relevant police papers marked as "R-1". It has been contented that from the observation of the documents received, no information has been registered in the SM/DIC and SM/BVI office regarding this incident. The GRP/BVI recorded the statement of the son of the deceased who was travelling with the entire family in train no. 22990, in which he has stated that while travelling in the said train no. 22990 Mahuva Express to unload the luggage with them at Borivali station, while standing at the door of the said train, his father lost his balance and fell on the track between Dahisar and Borivali railway station and he has not

informed any railway servant about the incident. Hence, the incident has occurred due to the negligence and carelessness of the deceased, for which railway administration is not responsible. During the search of the deceased by GRP/BVI, the son of the deceased who was present there at that time had the railway e-ticket PNR no. 8437988827 of the entire family with him.

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	
1.	Whether the Applicants prove that they are the dependents of the deceased within the meaning under section 123(b) of Railway Act, 1989?
2.	Whether the Applicants prove that the deceased was a bonafide passenger of the train, on the relevant time?
3.	Whether the applicants prove that the death of the deceased had occurred as a result of an untoward accident incident as alleged in the Claims Application
4.	To what Order/ Relief?

5. That, in order to establish the claim, the Applicant No.1 Dhaval Mahesh Pandya, stepped into the witness-box and filed his Affidavit in lieu of examination-in-chief on record. He deposed that, on 17-05-2019 the deceased Mahesh Vithalji Pandya was travelling from Mahuva Jn. to Borivali Railway station. When the train was near Borivali Railway Station, on 18-05-2019 the deceased accidentally fell down from the running train due to heavy rush and push by the co-passengers. He was escorted to Dr. Babasaheb Ambedkar Hospital, Kandivali, Mumbai wherein he was declared dead. The Applicants stated that the deceased was in possession of a Reservation ticket PNR No.8437988827 from Mahuva Jn. to Bandra Terminus Railway station. The said ticket is produced on record. It

has been contented that the deceased was the bona-fide passenger and died in untoward incident occurred on 18-05-2019.

6. 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.

7. 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 injury received to him in a 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

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

8. The Applicant No. 1 son of the deceased, categorically deposed in his Affidavit by way of examination-in-chief that all the applicants are the dependant of victim Mahesh Vithalji Pandya. The Applicants produced their Aadhar cards and Ration Card to establish array of dependents of the deceased. It is not in dispute that Applicant no. 1 is the son of the deceased, Applicant No. 2 is the daughter of the deceased and Applicant No. 3 is the wife of the deceased. The father of the deceased pre deceased the deceased on 14-10-2018 and mother of the deceased died on 23-09-2022, pending the present application. The Applicants have produced the death

certificate of parents of the deceased on record. The Respondent did not put all these factual aspects in controversy. Therefore, there is no impediment to hold that all the Applicants are dependents of victim Mahesh Vithalji Pandya as contemplated under sec. 123 (b) (i) (ii) of Railways Act, 1989.

Hence, issue no. 1 is decided in favour of applicants.

ISSUE NO. 2

9. 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 the deceased being, a bonafide passenger of the train. The Applicant No. 1 has deposed in his affidavit that the deceased was travelling on the strength of a railway Reservation ticket PNR No.8437988827 from Mahuva Jn. to Bandra Terminus Railway station and the same is filed along with the claim application. Therefore, the deceased was the bonafide passenger at the time of alleged incident. In fact, it is for the respondent to demonstrate that the Railway reservation 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, I answer the issue no. 2 in affirmative.

ISSUE NO. 3

10. This issue is as to whether the incident of causing the death of victim Mahesh Vithalji Pandya after his falling down 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 EPR report wherein it is stated that the deceased has sustained serious injuries after falling down from Mahuva Exp. Train No.22990 who was travelling with a ticket PNR No.8437988827. The Inquest Panchanama demonstrated that the deceased had fallen down while alighting at Borivali Railway Station from Mahuva Exp. Train No.22990 from a running train.

In the case of Union of India vs. Prabhakaran Vijaya Kumar (2008) 9 SCC 527, the Hon'ble Supreme court has held 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 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 Sec 123(c) of the Railways Act, 1989. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence the interpretation i.e. the one which advances the object of the statute and serves its purpose should be preferred."

11. The DRM report filed by Respondent also reflects that the deceased had fallen down travelling near the door of the train. Hence, the incident has occurred due to the negligence and carelessness of the deceased

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.

12. 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 alleged incident 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.

- 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.

13. 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. Even if it is considered that deceased fell down from the moving train, while travelling by standing at the door of the train, in view of Supreme Court's judgment in Jameela & Ors vs. Union of India it does not mean that he had an intention to inflict injuries to himself. Therefore, in absence of ill intention or mensrea, the act of victim cannot be considered as self-inflicting injury.

14. In this case Ld. Counsel for the Respondent did not lead dependable and credible 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.

15. In the above premises, I have no doubt that the victim during the course of travelling accidentally fallen down from the train and sustained serious injuries. He succumbed to the injuries received in train accident. It is a clear case of 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.

16. In the backdrop of facts and circumstances of this case and preponderance of evidence on record, I have no hesitation to come to the conclusion that the deceased Mahesh Vithalji Pandya, on 17-05-2019, while travelling as a bonafide Railway passenger from Mahuva Jn. to Borivali Railway station had accidentally fallen down from train No. 22990 Mahuva Express, on 18-05-2019, 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, I answer the issue No. 3 is in affirmative.

ISSUE NO. 4

17. 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 applicant is entitled for compensation from Respondent - Railway. The date of incident i.e.18-05-2019, 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 dependent/applicant of the deceased is 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 incident i.e. 18-05-2019 till the date of this award as a compensation to the Applicant on account of death of Mahesh Vithalji Pandya, 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.
- 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/- (Rupees Eight Lakhs only) plus accrued interest shall be disbursed in the following manner:

i. Applicant No. 1 Dhaval Mahesh Pandya and Applicant No. 2 Ami Mahesh Pandya shall be permitted to withdraw an amount of Rs.20,000/- (Rupees Twenty Thousand only) each and Applicant No.3 Meena Mahesh Pandya shall be permitted to withdraw an amount of Rs.40,000/- (Rupees Forty Thousand only) 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 all Applicants in Annuity Deposit scheme/FDR account 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 Deposit scheme/FDR account in Nationalized Bank
Dhaval Mahesh Pandya (Son) (Applicant No. 1)	Rs.20,000/- (Rupees Twenty Thousand only)	Rs.1,30,000/- (Rs. One Lakh Thirty Thousand only) plus accrued pro rata interest. This amount will be kept in the form of Fixed Deposit for a period of three year. After maturity the entire amount including interest shall be credited in the Individual Savings Account of the applicant.
Ami Mahesh Pandya (Daughter) (Applicant No. 2)	Rs.20,000/- (Rupees Twenty Thousand only)	Rs.1,30,000/- (Rs. One Lakh Thirty Thousand only) plus accrued pro rata interest. This amount will be kept in the form of Fixed Deposit for a period of three year. After maturity the entire amount including interest shall be credited in the Individual Savings Account of the applicant.
Meena Mahesh Pandya (widow) (Applicant No. 3)	Rs.40,000/- (Rupees Forty Thousand only)	Rs. 4,60,000/- (Rs. Four 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.

iii. The Claimants are directed to open an individual Savings Bank Accounts in any Nationalized Bank located nearer to the

place of their 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 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 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 are directed to permit the Claimants 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.

vi. The FDR/MACAD, the Original Fixed Deposits receipts 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's 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 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 Claimant before releasing the awarded amount for disbursement as mentioned above.

- (a) Details of the Bank Account of the Claimant 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 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 off in above terms.

(Mohit Sinha)
Member (Technical)

RM