

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 104 of 2021

Sukumar Mondal

VERSUS

Union of India, General Manager, South Eastern Railway

For the appellant:

Mr. Navin Mittal, Adv.

For the respondent:

Ms. Debjani Ghoshal, Adv.

Last Heard on: August 17, 2026

Judgment on: September 15, 2026

Biswaroop Chowdhury,J:

The appellant before this Court was an applicant in a case under Section 124A, and 125 of the Railway Act 1989 and is aggrieved by the Judgment and Award dated 9-02-2018 passed by Learned Railway Claims Tribunal Kolkata in OA/IIu/KoL/2016/0027.

The case of the applicant/appellant before the Learned Tribunal may be summed up thus:-

On 21-01-2012, the wife of the appellant Suparna Mondal since deceased was travelling EX-Jhargram to Howrah by express train having valid 2nd class railway ticket. During the course of working a railway his wife accidentally fell from the running train due to overcrowded pressure and sudden jerk in between Uluberia and Fuleshwar and was grievously injured. She was 1st admitted in Uluberia General Hospital. Same day she was referred to P.G. Hospital. Her condition was not nice. She was thereafter referred to Alampur Green View Hospital on 31-01-2012. On 16-02-2012 the victim was admitted in Howrah General Hospital but on 05-03-2012, she died in the said hospital.

Pursuant to filing of the case notice was issued to the respondent Railway Authority and the respondent contested the case by filing written statement. ISSUES were framed and evidence was adduced. Learned Tribunal upon considering the evidence and upon hearing the Learned Advocates was pleased to dismiss the claim case by observing and directing as follows:-

‘15. Since the above issues i.e. bona fide of passenger and the case being not an untoward incident are decided against the applicant. Applicant is held not entitled to any compensation. Thus ISSUES No. 4 and 5 are also decided against the applicant.

ORDERED

16. The claim application stands dismissed on contest and disposed of without any order as to costs.’

The appellant being aggrieved by the Judgment and Award passed by the Learned Tribunal has come up with the instant appeal.

Heard Learned Advocate for the appellant and Learned Advocate for the respondent. Perused the materials on record.

Learned Advocate for the Appellant submits that the applicant along with his wife the deceased and his two children were all travelling Ex-Jhargram to Howrah on 21/01/2012 by Jhargram Express with their valid 2nd Class Railway Ticket. During the course of working a railway due to red signal the train stopped near Uluberia station and appellant/applicant and his two children de-boarded the train. But when the deceased was trying to de-board the train she fell down from the train as the train had started and she was grievously injured. She was 1st admitted in Uluberia General Hospital and on the said day she was referred to P.G. Hospital. As her condition was not nice she was then referred to Alampur Green View Hospital on 31/01/2012. On 16/02/2012 she was admitted in Howrah General Hospital but on 5/3/2012 she died. On her death Howrah P.S. U/D case 102/12 dated 6/3/2012 was registered.

Learned Advocate further submits that evidence of A.W.-1 will go to show that the A.W.-1 was a co-passenger and witnessed the incident.

Learned Advocate also submits that it is clearly stated in the inquest report that on 31/01/2012 the deceased and her husband was travelling from Jhargram station by express train. To alight at Bagnan when the train was

between Uluberia and Phuleswar there was no signal so the train stopped. At that time deceased was alighting from the train and was badly injured and later on died. So it is admitted that the deceased has fallen down from the train at the time of de-boarding from the train.

It is submitted by the Learned Advocate that in the DRM report it is admitted that deceased was attempting to get down from the running train in between Uluberia and Fuleshwar Station while the train stopped due to red signal and fell down due to her own negligence. So it is admitted in the DRM report that the person has fallen down from the running train which is untoward incident under Section 124A of Railway Act 1989.

Learned Advocate relies upon the following Judicial Decisions:-

Union of India VS Rina Devi

Civil Appeal No. 4945 of 2018

(Supreme Court of India).

Anima Sarkar VS Union of India.

FMA-1169 of 2021.

(High Court at Calcutta).

Bandan Minj and Anr. VS Union of India

FMA-462 of 2023.

(High Court at Jharkhand)

Union of India VS Prabhakaran Vijaya Kumar and ors.

Appeal (civil) 6898 of 2002.

(Supreme Court of India).

Shrikumar Gupta and Anr. VS Union of India.

SLP (c) No. 7188/2024.

(Supreme Court of India).

Learned Advocate for the respondent submits that the appellant in the application for claim stated that his wife during course of working a railway accidentally fell from the running train due to overcrowded pressure and sudden jerk in between Uluberia and Fuleshwar and was grievously injured.” But Howrah final report under Section 174 CrPC states that 31.1.12 deceased person with her husband and 2 children coming from Jhargram through train but the said train is express and has no stoppage at Jhoragata station but it stood at signal, Uluberia station. Her husband left the train with 2 children but when deceased person tried to board down from the train suddenly the train started and she fell down and received injury on her head and was taken to Uluberia Hospital.

Learned Advocate further submits that suppression of fact by appellant is ground to reject claim case.

Learned Advocate also submits that the claimant/appellant failed to prove the case before the Tribunal by showing the journey ticket.

Before proceeding to decide the material in issue it is necessary to consider the provisions contained in Section 124A of the Railways Act 1989.

Section 124-A of Railways Act 1989 provides as follows:-

Section 124-A compensation on account of untoward incident-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 medical or surgical treatment 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 in any date or a valid platform ticket and becomes a victim of an untoward incident.

In the instant case upon perusal of the Enquiry Report submitted by Police Authority under Section 174 of the Code of Criminal Procedure it will appear that in the said report it is observed that on 31-01-2012, the deceased person with her husband and 2 children was coming from Jhargram through train but the said train did not have stoppage at Jhoragate Station but it stood in the signal near Uluberia station her husband left the train with two children but when she tried to get down the train started, and she fell down from the train and received injury on her head and taken to hospital.

Similarly in the note and order sheet of Senior Divisional Security Commissioner/RPF/KGP which was approved by DRM it was observed as follows:-

'During enquiry claimant Sri Sukumar Mondal stated that on 21-01-2012 he along with his wife and two children were coming from Jhargram by Gallopin local to BLN. He did not know the said train had no stoppage at BLN. During

travelling by the train when the train stopped in between ULB-FLR due to red signal he got down from the train along with 2 sons but his wife could not get down from the train. While she tried to get down from train suddenly train got signal and started. She fell down and got injury on her head. He along with local people brought her to ULB Hospital by Maruti Car. After treatment for few days at ULB Hospital she was shifted to P.G. Hospital Kolkata on 31-01-2012. But on the way she was admitted on 16.02.2012 but during her treatment she expired on 05-03-2012, at HWH Hospital. (marked as page No-13)

From the above evidence based on the fact and circumstances collected by the E.O. it is evident that the deceased was attempting to get down from running train in between ULB-FLR station while the train stopped due to red signal and fell down due to her own negligence and recklessness act.

Hence Railway administration is not responsible for such incident and claim compensation is not justified.'

Thus upon perusal of report of both Police Authority and Railway Authority fall of the victim from the train is established. As the Railway Authority has attributed negligence of the deceased resulting in such fall it is necessary to consider a judicial decision in this regard.

In the case of Union of India VS Rina Devi reported in (2019) 3 SCC 572 it was observed as follows:-

‘17.1 Conflict of decisions has been pointed out on the subject. As noticed from the statutory provision, compensation is payable for death or injury of a ‘passenger’. In Raj Kumari (supra) referring to the scheme of Railways Act, 1890, it was observed that since travelling without ticket was punishable, the burden was on the railway administration to prove that passenger was not a bona fide passenger. The Railway Administration has special knowledge whether ticket was issued or not. 1989 Act also has similar provisions being Sections 55 and 137. This view has led to an inference that any person dead or injured found on the railway premises has to be presumed to be a bona fide passenger so as to maintain a claim for compensation.’

In the case of Jameela VS Union of India reported in 2010(12) SCC 443 the Hon’ble Supreme Court observed as follows:-

‘25. We are unable to uphold the above view as the concept of “self-inflicted injury” would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on “no fault theory”. We may in this connection refer to the judgment of this Court in United India Insurance Co. Ltd. v. Sunil Kumar [United India Insurance Co. Ltd. v. Sunil Kumar, (2019) 12 SCC 398 : 2017 SCC OnLine SC 1443 : (2017) 13 Scale laying down that plea of negligence of the victim cannot be allowed in claim based on “no fault theory” under Section 163-A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of

boarding or de-boarding a train will be an “untoward incident” entitling a victim to the compensation and will not fall under the Proviso to Section 124-A merely on the plea of negligence of the victim as a contributing factor.’

Thus from the Judicial decisions as well as from the provisions of Section 124A of the Railways Act it will be clear that mere negligence of the passenger while travelling in a train is no ground to deny the compensation.

It is true that the victim did not get down at the schedule station for which she along with her husband boarded the train neither she got down at the platform of any station but she got down prior to the station platform of Uluberia. Now the question comes as to whether she was supposed to get down from the train other than the platform. In normal case the answer is in the negative, but under compelling circumstances a person may be required to do. For safety purpose a person should not attempt to board train while it is moving or try to get down from the train if it has started or get down in any place other than Railway Platform. In the case of Union of India VS Prabhakaran Vijiya Kumar (supra) the Hon’ble Supreme court observed as follows:-

‘8. However, the evidence of DW-1, D. Sajjan, who was the Station Master at the railway station corroborates the evidence of PW-2. DW-1 had deposed that he saw one girl running towards the train and trying to enter the train and she fell down. He has further stated that the deceased Abja had attempted to board the train and fell down from the running train. For this reason, the Tribunal held

that this was not an 'untoward incident' within the meaning of the expression in Section 123(c) of the Railways Act, 1989 as it was not an accidental falling of a passenger from a train carrying passengers.

9. In appeal, the Kerala High Court was of the view that the deceased sustained injuries, even according to the respondents, in her anxiety to get into the train which was moving. Hence, the High Court held that the deceased came within the expression 'accidental falling of a passenger from a train carrying passengers' which is an 'untoward incident', as defined in Section 123(c) of the Railways Act, 1989.

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. 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 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 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.'

In the instant case the victim attempted to get down from the train when the train was standing and her husband already got down from the train thus in such circumstances she cannot be faulted for attempting to get down from the train although the train did not reach the platform.

Now with regard to non-recovery of ticket from the victim it is necessary to consider some judicial pronouncements.

In the case of Anima Sarkar (Dolui) VS Union of India FMA-1169 of 2021 it was observed as follows:-

'10. The respondent authorities could not have expected the complainant to prove the nature and circumstances leading to the death of the victim. Both the parties are to rely on the final report furnished by the investigating authority. The complainant was not present either on the train nor at the spot of accident, to have vividly narrated the cause of accident, the presence or absence of the valid ticket. The police report categorically mentioned 'no foul play' to have been detected to obliterate the possibility of a self-inflicted injury. The investigating

report, the post mortem report and the final police report in unequivocal terms endorsed the accident to have occurred while the victim had been the passenger of the train. The absence of ticket under otherwise proven case will not deter the complainant from legitimate claim in view of the judgments cited above.'

In the instant case the victim was travelling with her husband thus non-recovery of railway ticket will not prove that she was not a bona fide passenger with valid ticket as the ticket could have been with her husband. Moreover when a passenger completes the journey there is no ground to preserve a general railway ticket.

In the facts and circumstances this Court is of the view that the appellant has been able to establish that death of his wife from accident dated 21-01-2012 is an untoward incident under Section 123(2) of Railway Act 1989. Thus the appellant is entitled to compensation under Section 124A of the Act. Thus the appellant is entitled to the relief as prayed for:-

Hence this Appeal FMA-104 of 2021 stands allowed. The Judgment and Award dated 09-02-2018 passed by Learned Railway Claim Tribunal Kolkata Bench in OA/IIu/KOL/2016/0027 is set aside. Claimant to be paid compensation Rs. 400000/- @9% per annum from date of filing claim case till today or Rs. 800000/- whichever is higher. The Respondent shall deposit compensation amount before Registrar General High Court at Calcutta within 8 weeks from the date of communication of this order.

The appellant will be entitled to withdraw compensation upon compliance of necessary formalities.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)