

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 3285 of 2024****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE J. C. DOSHI**

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Approved for Reporting	Yes	No
	Yes	

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NAJMAKHATOON MODHAIDAR SHAIKH

Versus

UNION OF INDIA

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Appearance:

MR KUNAL M SHAH(5588) for the Appellant(s) No. 1

MR RATHIN P RAVAL(5013) for the Appellant(s) No. 1

MR SHUSHIL R SHUKLA(5603) for the Defendant(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI****Date : 31/07/2026****JUDGMENT**

1. By this this appeal under section 23 of the Railway Claims Tribunal Act, 1987, the appellant – Najmakhatoon Mohd.Haidar Shaikh challenges judgment and order dated 13.06.2024 passed by learned Railway Claims Tribunal, Ahmedabad in Case No.OA(Ilu)/ ADI/2021/0038 by which learned Railway Claims Tribunal, Ahmedabad has been pleased to dismiss the claim petition.

2. Brief facts of the case are that appellant is mother of deceased Razaulla alias Altmas s/o. Mohd. Haider Shaikh.

According to claim petition and also declared on affidavit, deceased was travelling from Ajmer to Bandra Terminus in Train No.19708 (Shri Gangapur – Bandra Terminus Amrapur Aravalli Express) with valid ticket on 30.08.2021. There was rush in the train due to Covid time period and deceased had no option except to stand near entrance gate of general compartment of the train. During the course of journey, when the train was running near Karjoda station, at that time, due to sudden jerk and due to heavy rush and push of passengers, deceased lost his balance and fell from running train at Km No.647/7-8. Deceased was dragged with the train and sustained multiple grievance injury, resulting into death on the way of Civil Hospital, Palanpur. Further it is pleaded and declared on oath that travelling ticket of the deceased was lost in the accident. Deceased was unmarried. Father of the deceased is already died. On this pleadings, the claimant claimed that deceased was bona fide passenger and claimed compensation of Rs.8 lakhs with interest from the date of accident till realization.

3. The Railways in its usual reply denied its liability and also denied contention of deceased being bona fide passenger. It is further contended that deceased was traveling in train no.19708, whereas the incident took place in train No.09709, which implies that deceased was not bona fide passenger. It is further contended that deceased was travelling from Ajmer to Mumbai, in return journey, alleged incident occurred, whereby co-passenger Hasan Mohammad gave statement that deceased fell down due to dizziness at door between Abu Road and Palanpur. Concerned Police took deceased to Civil Hospital, where deceased was declared dead. It was contended that it is case of

self inflicted injury. It is further contended that deceased and his friends were travelling without ticket. Therefore, the incident does not fall within purview of section 124A and section 123(c)(2) of the Railway Act and therefore, the claim may be rejected.

4. Learned Railway Claims Tribunal in all fixed four issues for consideration and ultimately believed that deceased was travelling without railway ticket. The claimant took different stand on different occasion. The claimant did not come to the Court with clean hands and just to get benefit of welfare legislation filed claim petition on the ground that her son was travelling in train, however, without ticket fell to death.

5. Being aggrieved by the judgment passed by learned Railway Claims Tribunal, the claimant / appellant has preferred this appeal.

6. Heard learned advocate Mr. Rathin Raval for the appellant and learned advocate Mr. Shukla for respondent Railway Administration.

7. Learned advocate Mr. Raval to allow this appeal mainly argued that impugned judgment is in defiance of the law settled by Hon'ble Apex Court in catena of decisions, whereby, it is held that once claimant declares on oath that deceased was travelling in train with ticket, burden shifts upon railway administration to disprove the said fact. It is submitted that RTI application was preferred before Railway Administration to give data of ticket issued for general compartment, however, Railway replied that those date are not available with railway administration as they

are destroyed after 45 days. It is submitted that even as per contention of railway administration, deceased was traveling in train, may be of different number but fact remains that deceased while traveling in train met with accident and died. It is further submitted that no evidence has been led to prove self inflicted injury or attempt to suicide or suicide committed by deceased.

7.1. In view of above, learned advocate Mr.Raval would submit that claim petition dismissed by learned Tribunal is erroneous, unjust and against settled principle of law.

7.2. Upon above submissions, it is submitted to allow the appeal and quash and set aside impugned judgment and order and to grant compensation as prayed for by the claimant.

8. Per contra, learned advocate Mr. Shukla for respondent Railway Administration in support of impugned judgment and order submits that learned Tribunal in comprehensive judgment covered all the issues and held that claimant has conveniently pleaded facts at different point time. Moreover, co-passenger statement being matched with DRM report unequivocally prove that deceased due to dizziness fell from the tain and was taken to hospital and declared dead in the hospital. Therefore, in this circumstances, learned Tribunal has committed no error. Learned advocate Mr.Shukla relied upon deposition of Mr. Mohd. Danish s/o. Safiullah Shaikh recorded as AW-2 and submitted that deposition of Mr. Mohd. Danish supports police statement, except few details about ticket. However, statement of Danish Shaikh about ticket made during inquiry was contrary to the statement made in the Court. Therefore, since learned Tribunal

has taken sufficient pain to find out that deceased was ticket less passenger and in view of judgment of Hon'ble Apex Court in the case of **Union of India v/s. Rina Devi [2018 ACJ 1441]**, no compensation can be granted to the person who died travelling train ticket-less. Therefore, it is submitted to dismiss the appeal.

9. Having heard learned advocates for both sides, and considering Record and Proceedings, at the outset, I may record that claimant has examined two witness AW-1 and AW-2 and also produced documents on record; respondent did not led any oral evidence but relied upon DRM report and statement of co-passenger recorded during inquiry and statement of police in the investigation. For consideration of claim, learned Railway Tribunal recorded following issues :-

“(1) Whether the deceased was travelling on a valid railway journey ticket and was a bona fide passenger of the train in question at the relevant time ?

(2) Whether the deceased met with an untoward incident due to fall from passenger train and suffered injuries and died as a result thereof and the present case is covered under the definition of section 123(c)(2) of the Railway Act, 1989 ?

(3) Whether the applicants are the sole dependents of the deceased and are entitled to compensation as claimed in the claim application ?

(4) Relief ?”

10. Before I discuss merits of the case, I may refer few judgments on the term of bona fide passenger.



11. Hon'ble Apex Court in the case of **Dolly Rani Saha v/s. Union of India [2024 (9) SCC 656]**, in para 15 held as under :-

“15.From the recapitulation of the various judicial pronouncements leading to the present appeal, it can be seen that the primary issue is whether the deceased was travelling on the train in question. In Rina Devi (supra), a two-Judge Bench of this Court considered the question of the party on which the burden of proof will lie in cases where the body of the deceased is found on railway premises. This Court held that the initial burden would be on the claimant, which could be discharged by filing an affidavit of the relevant facts. Once the claimant did so, the burden would then shift to the Railways. Significantly, it also held that the mere absence of a ticket would not negate the claim that the deceased was a bona fide passenger. The relevant extract from the ruling of the Court is reproduced below:

“29. We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide 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 bona fide 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.” (emphasis supplied)”

12. Recently, Hon'ble Apex Court in the case of **Rajni v/s. Union of India [2025 Live Law (SC) 986]** while eschewing approach in teeth of object of Railway Act observed that mere absence of ticket with the deceased does not negate the claim of being a bona fide passenger. It is further held by Hon'ble Apex Court that proceedings under section 124(A) are governed by the



principles of preponderance and probabilities. Hon'ble Apex Court caution not to take hyper technical approach that frustrate object of providing relief to victim. The absence of inability of the police to preserve physical evidence, cannot by itself defeat a legitimate claim when the totality of circumstances supports the claimant's version. Relevant para 11 to 13 reads as under :-

"11. This Court in the case of Doli Rani Saha vs. Union of India, has held that the burden of proof would shift to the Railways once, the Claimant-Appellant filed an affidavit stating the facts and adverting to the report arising from the investigation conducted by the railway authorities. It has been further held: -

"15. From the recapitulation of the various judicial pronouncements leading to the present appeal, it can be seen that the primary issue is whether the deceased was travelling on the train in question. In Rina Devi [Union of India v. Rina Devi, (2019) 3 SCC 572 : (2019) 2 SCC (Civ) 198] , a two-Judge Bench of this Court considered the question of the party on which the burden of proof will lie in cases where the body of the deceased is found on railway premises. This Court held that the initial burden would be on the claimant, which could be discharged by filing an affidavit of the relevant facts. Once the claimant did so, the burden would then shift to the Railways. Significantly, it also held that the mere absence of a ticket would not negate the claim that the deceased was a bona fide passenger. The relevant extract from the ruling of the Court is reproduced below: (SCC p. 588, para 29) "29. We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide 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 bona fide 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.”

(emphasis supplied)

16. In the present case, the appellant had duly filed an affidavit stating the facts and adverting to the report arising from the investigation conducted by the respondent, which showed that the deceased was travelling on the train and that his death was caused by a fall during the course of his travel. The burden of proof then shifted to the Railways, which has not discharged its burden. Therefore, the presumption that the deceased was a bona fide passenger on the train in question was not rebutted.

17. Further, the report of the IO indicates the details mentioned in the post-mortem report. It states that the cause of death was due to an injury sustained on the head and that all injuries were antemortem and caused by “blunt force impact”. It also states that forty-eight to seventy-two hours had passed since the time of death.”

12. Though Ms. Rukhmini Bobde, learned Standing Counsel appearing for the Railways has made a fervent plea to contend that the finding recorded by the Tribunal with regard to the suspicious circumstances of the railway tickets relied upon is sufficient to discard the claim, we are not impressed by the said submission for reasons more than one. Firstly, the initial burden which is cast on the claimants to prove that the deceased had travelled in the train has been discharged by the sworn statement made by first claimant (wife of deceased). Secondly, the High Court by relying upon the report of DRM report (R/ 1) has arrived at a conclusion that death of 1st claimants husband would fall within the purview of expression ‘untoward incident’ as defined under Section 124 (A) of the Act; Thirdly, the railway ticket which formed part of the police report stood unrebutted; Fourthly, the very same report also disclosed



the Chief Booking Supervisor, Indore had verified the ticket produced alongwith the report of the police and certified that ticket had been issued from Indore Station. This would clearly satisfy the requirement of the expression ‘passenger’ as contemplated under Clause (ii) to Explanation to Section 124 (A) of the Act and deceased being declared as a ‘passenger’ travelling in the train. This view also gets fortified by the judgment of the coordinate bench in the case of Kamukayi and Other vs. Union of India and Others⁴, whereunder it has been held: -

“9. By the explanation of the said section clarifying about “passenger”, it would include 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. This Court in Rina Devi [Union of India v. Rina Devi, (2019) 3 SCC 572 : (2019) 2 SCC (Civ) 198] has explained the burden of proof when body of a passenger is found on railway premises. While analysing the said issue, this Court has considered the judgment of the Madhya Pradesh High Court in Raj Kumari v. Union of India [Raj Kumari v. Union of India, 1992 SCC OnLine MP 96] and the judgments of the Delhi High Court in Gurcharan Singh v. Union of India [Gurcharan Singh v. Union of India, 2014 SCC OnLine Del 101] , the Andhra Pradesh High Court in Jetty Naga Lakshmi Parvathi v. Union of India [Jetty Naga Lakshmi Parvathi v. Union of India, 2011 SCC OnLine AP 828] and also considered the judgment of this Court in Kamrunnissa v. Union of India [Kamrunnissa v. Union of India, (2019) 12 SCC 391 : (2018) 5 SCC (Civ) 613] and in para 29 concluded as thus : (Rina Devi case [Union of India v. Rina Devi, (2019) 3 SCC 572 : (2019) 2 SCC (Civ) 198] , SCC p. 588) “29. We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide 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 bona fide 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.””

(emphasis supplied)

13. In the light of the above, we are of the considered view that the High Court had faulted in affirming the finding of the Railways Claims Tribunal whereunder the claimants petition had been rejected for nonproduction of a seizure memo of the ticket and for non- examination of the investigating officer, which is and was the main thrust of argument canvassed by the learned Counsel appearing for the Railways. This reasoning ignores the consistent judicial line that the absence of formal seizure or witness examination does not, by itself, negate bonafide travel when other material evidence substantiate the claim. Mere technical irregularities or lapses in procedure should not defeat a legitimate claim under a welfare statute, like the Railways Act, 1989. Particularly Chapter XIII which deals with liability of railway administration for death and injury to passenger due to accident. A Hyper technical approach which would frustrate the object of providing relief to victims of railway accidents should be eschewed. The insistence on a formal seizure memo would amount to importing standard of proof which normally is sought for in a criminal trial.

13. One more judgment deserves to be pressed into service is in case of **Union of India v/s. Prabhakaran Vijaya Kumar and others [2008 (9) SCC 527]**, whereby Hon’ble Apex Court held that provision of compensation in Railway Act is beneficial piece of legislation and it should receive a liberal and wider interpretation and not a narrow and technical one. Hon’ble Apex Court explained principle of strict liability to railway accident.

14. This Court in the case of **Gudidevi w/o. Sanjaysingh v/s. Union of India through General Manager, Western Railway**

[First appeal No.2643 of 2025] having referred to catena of decisions, in para 4.1 and 5 held as under :-

“4.1 Apt to note that the issue raised in this appeal is covered by the judgment and order passed by this Court in First Appeal No.2620 of 2024, whereby this Court, after referring to the authoritative pronouncement in para nos.7, 8, 9 and 10 held as under:

*...“7. This Court in the case of **Union of India Through General Manager vs. Nikeshkumar Ramjibhai Patel passed in First Appeal No.1383 OF 2023** in paragraph 4 held as under:*

...“4. It is a case where Railway Authority could not deny that the claimant had two valid railway platform tickets and pursuant to which he had entered in the Railway Station. The 'untoward incident' took place when he was alighting from the train after setting the luggage of his relatives. The case clear as crystal where the claimant can be treated as 'bona fide passenger' under Section 124A of the Railway Act more particularly reading the Explanation whereby in inclusive definition 'passenger' is defined and in (ii) thereof it is said that a person holding a valid platform ticket and becomes victim of an 'untoward incident', is held to be a bona fide passenger. It is nobody's case that claimant did not receive any injury while he was on the platform and even cannot deny un-controverted 'untoward incident'.”...

*8. Further, this Court in the case of **Union of India vs. Gopalbhai Ramjibhai Jambukiya and Anr.** (supra), in paragraphs 6 to 11 held as under:*

6. At the outset, let me refer that it is undisputed fact that the deceased was travelling in Okha Gorakhpur Express Train bearing No.15046. It is again admitted position that she boarded from



Okha railway station and was to alight at Wakaner railway station. It is also admitted fact that the accident took place at Wakaner railway station when she was alighting from the train and sustained crush injuries and later on, died. The point of difference between the disputing parties, according to claimant that, when deceased was alighting from the train, it was about to stop and deceased was waiting for the train to stop. She was waiting at the door of the train for alighting. However, due to jerk or push received from the back, she fell and received the injuries, whereas according to defendant, when the train was just started, she jumped from the train along with one male and a minor child.

7. The Railway Tribunal assessed the evidence firstly on the ground that the deposition of the claimant has not been challenged by way of cross-examination, and therefore, the contention raised by the claimant goes unchallenged. Similar situation remains for the affidavit filed by the guard for and on behalf of the Railway. The deposition made on the affidavit has not been challenged by way of cross-examination, but a stark difference, which could be noticed from the two affidavits filed by the disputing parties that while entering into the defence, the guard - Mr. Jagdish Ambaram Parmar did not specify that deceased jumped and fell, but he used the words "Unknown lady". The fallacy of the statement could be noticed also on the ground that, at earlier point of time, the guard - Mr. Jagdish Ambaram Parmar has not made any such statement either before the Police or such statement is not produced on record and secondly, if an unknown lady along with a person and a child jumped and fell on the Wakaner Railway station, then apart from the unknown lady, the two other persons must have received the injury, but the railway did not lead any evidence to that extent.



8. As against the aforesaid evidence, the claimant came out with the clear case that the lady was waiting at the door of the train of Okha Gorakhpur Express to alight on Wakaner Railway station, whereby due to the jerk and jolt received as train was just about to stop along with push from behind, she fell on the Wakaner Railway station and her legs were amputated and later on, she died.

9. The evidence led by the claimant having gone unchallenged is found worth the trust and it has won the confidence of the learned Tribunal.

10. Apposite to refer the scrutiny of evidence made by the learned Tribunal. The relevant observation and finding of the learned Tribunal reads as under:-

“8. ...From the detailed scrutiny of the above documents make it evidently clear that the accidental fall took place, but Respondent attributes negligence to the deceased, though no cogent evidence has been filed in support of the above mentioned contention of the Respondent. At this stage, in response to the alleged negligence of the deceased, it is worthwhile to quote the judgment of the Hon'ble Supreme Court in *Jameela v. Union of India*, in Civil Appeal No. 1184 of 2003 decided on 27.8.2010 has observed in Para No. 9 as under:-

‘The manner in which the accident is sought to be reconstructed by the Railway, the deceased was standing at the open door of the train compartment from where he fell down, is called by the Railway itself as negligence. Now negligence of this kind which is not very uncommon on Indian trains is not the same thing as mentioned in Clause to the proviso of section 124-A. A criminal act envisaged under Clause © must have an element of malicious intent or mensrea. Standing at the open doors of the



compartment of a running train may be a negligent act, even as a rash act, but without anything else, it is certainly not a criminal act. Thus the case of the Railway must fail even after assuming everything in its favour’.

xxx xxx xxx

11 Once it is established that the deceased died on account of an accidental fall from the train, the incident squarely falls within the definition of ‘untoward incident’ u/s 123 (c) (2) of the Railways Act. Moreover, it is now well settled that Sec. 124-A lays down strict liability or no fault liability in case of railway accidents and hence, if a case comes within the purview of Section 124-A, it is wholly irrelevant, as to who was at fault. In the instant case, the material placed on record reveals that the accident in which the deceased had died is clearly not covered by the proviso to Section 124A and that the incident does not occur because of any of the reasons mentioned in the clauses (a) to (e) of the proviso to Section 124-A.”

11. Section 123(c) of the ‘the Act of 1989’ defines the ‘Untoward accident’ as under:-

“CHAPTER XIII - LIABILITY OF RAILWAY ADMINISTRATION FOR DEATH AND INJURY TO PASSENGERS DUE TO ACCIDENTS

123. Definitions.—In this Chapter, unless the context otherwise requires,—

xxx

(c) “untoward incident” means—

(1)(i) the commission of a terrorist act within the meaning of sub-section (1) of section (3) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the



commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers.”

9. The Hon’ble Supreme Court in case of **Shrikumar Gupta & Anr. vs. Union of India, 2025 Live Law SC 1115**, believed that no person would attempt to de-board or alight from running express train and absence of evidence prove that the deceased has committed the ‘self-inflicted injury’, he cannot be denied to be a ‘bona fide passenger’. Relevant paragraphs 9 and 10 reads as under:

...“9. Having heard the learned counsel appearing for the parties and on perusal of the records, it would reveal that there was no dispute to the fact that the deceased having purchased a valid ticket to travel from Satna to Maihar. On the relevant date i.e. on 29.05.2013 another express train has also entered the platform in which the deceased was standing and by mistake obviously having seen the train having arrived at the same platform he has boarded the train to travel to Maihar. In fact said express train also passed through Maihar. However, the deceased not being well conversant with these details obviously under mistaken notion has boarded the express train. The DMR Report would also indicate that the deceased had in fact purchased a railway ticket and had expired due to the injuries sustained in the railway accident. It was for this precise reason that both the members of the tribunal held in favour of the claimants, by arriving at a



conclusion that deceased was a bona fide passenger. Merely because the deceased had boarded a wrong train, it cannot be construed that he was not a bona fide passenger so as to absolve the railway authorities from contending that deceased not being a bona fide passenger.

10. Insofar as the contention or the plea put forward by the railways that deceased had sustained injuries on account of his own act, though, at first blush looks attractive, we are not inclined to accept the same for the simple reason that no sane person could have attempted to deboard or alight from a running train that too an express train. The railway authorities have taken a plea in the written statement in paragraph 3 that the deceased had jumped off the train, namely, had alighted at the station where he intended to alight, is a plea without proof. Having raised such a plea, it was incumbent upon the railway authorities to prove the same. However, the DRM Report is also silent on this aspect. For these reasons we are unable to accept the contention of learned ASG. The two members of the tribunal have rightly held that the railway authorities are required to pay the compensation.”...

10. Moreover, if we go through the different dates on record, the DRM report, which has been revealed later by the learned trial Court, is filed subsequent to filing of the claim petition, which is beyond prescribed time limit.”...

5. Yet in another judgment passed by this Court in First Appeal No.507 of 2024, this Court in para nos.9 and 10 held as under:

...“9. In Union of India vs. Rina Devi, reported in 2019 (3) SCC 572, the judgment of Pushpa wd/o. Gautam Kamble and others (supra) was discussed. In case of Pushpa wd/o. Gautam Kamble (supra), a hawker died in course of boarding a train. The



*Bombay High Court applied the concept of self-inflicting injury to deny the compensation. The Hon'ble Supreme Court in the case of **Union of India vs. Rina Devi** (supra), disproved the theory of applying concept of self-inflicting injury in para nos.23, 24, 25, 26, 27, 28 and 29 of the judgment, which reads as under:*

...“23. In Pushpa v. Union of India, 2017 SCC Online Bom 8117, a hawker died in the course of boarding a train. It was held that he was not entitled to compensation as it was a case of "self-inflicted injury". The relevant observations are: (SCC OnLine Bom para 14)

"14. Such an attempt by a hawker has been viewed by the trial court as something amounting to criminal negligence on his part and also an effort to inflict injuries to himself. The trial court reasoned that if the deceased had to sell his goods by boarding a train, he should have ensured to do so only when it was quite safe for him to get on to the train or otherwise he could have avoided catching the train and waited for another train to come. It also hinted that there was absolutely no compulsion or hurry for the deceased in the present case to make an attempt to somehow or the other board the train while it was gathering speed."

24. In Shyam Narayan v. Union of India, 2017 SCC Online Del 8734, same view was taken which is as follows:

(SCC Online Del para 7)

7. I cannot agree with the arguments urged on behalf of the appellant applicants in the facts of the present case because there is a difference between an 'untoward incident' and an act of criminal negligence. Whereas negligence will not disentitle grant of compensation under the Railways Act, however, once the negligence



becomes a criminal negligence and 'self-inflicted injury' then compensation cannot be granted. This is specifically provided in the first proviso to Section 124-A of the Railways Act which provides that compensation will not be payable in case the death takes place on account of suicide or attempted suicide, 'self-inflicted injury', bona fide passenger's own criminal act or an act committed by the deceased in the state of intoxication or insanity."

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 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.

Re: (iii) Burden of proof when body found on railway premises - Definition of passenger

26. 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, referring to the scheme of the 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. The 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. However, the Delhi High Court in Gurcharan Singh²⁵ held that initial onus to prove death or injury to a bona fide passenger is always on the claimant. However, such onus can shift on the Railways if an affidavit of relevant facts is filed by the claimant. A negative onus cannot be placed on the Railways. Onus to prove that the deceased or injured was a bona fide passenger can be discharged even in absence of a ticket if relevant facts are shown that ticket was purchased but it was lost. The Delhi High Court observed as follows: (Gurcharan Singh case, SCC OnLine Del para 4)

"4.... (ii) In my opinion, the contention of the learned counsel for the appellant claimants is totally misconceived. The initial onus in my opinion always lies with the appellant claimants to show that there is a death due to 'untoward incident' of a bona fide passenger. Of course, by filing of the affidavit and depending on the facts of a particular case that initial onus can be a light onus which can shift on the Railways, however, it is not the law that even the initial onus of proof which has to be discharged is always on the Railways and not on the claimants. I cannot agree to this proposition of law that the Railways have the onus to prove that a deceased was not a bona fide passenger because no such negative onus is placed upon the Railways either under the Railways Act or the Railway Claims Tribunal Act and the Rules or as per any judgment of the Supreme Court. No doubt, in the facts of the particular case, onus can be easily discharged such as in a case where the deceased may have died at a place



where he could not have otherwise been unless he was travelling in the train and in such circumstances depending on the facts of a particular case it may not be necessary to prove the factum of the deceased having a ticket because ticket as per the type of incident of death can easily be lost in an accident. I at this stage take note of a judgment of a learned Single Judge of this Court in Pyar Singh v. Union of India which holds that it is the claimant upon whom the initial onus lies to prove his case. I agree to this view and I am bound by this judgment and not by the ratio of the case of Leelamma."

27. In Jetty Naga Lakshmi Parvathi v. Union of India, 2011 SCC Online AP 828, the same view was taken by a Single Judge of Andhra Pradesh after referring to the provisions of the Evidence Act as follows: (SCC OnLine AP para 24)

"24. So, from Section 101 of the Evidence Act, 1872, it is clear that the applicants, having come to the court asserting some facts, must prove that the death of the deceased had taken place in an 'untoward incident' and that the death occurred while the deceased was travelling in a train carrying passengers as a passenger with valid ticket. Therefore, having asserted that the deceased died in an 'untoward incident' and he was having a valid ticket at the time of his death, the initial burden lies on the applicants to establish the same. The initial burden of the applicants never shifts unless the respondent admits the assertions made by the applicants. Such evidence is lacking in this case. Except the oral assertion of AW 1, no evidence is forthcoming on behalf of the applicants. The court may presume that the evidence which could be, and is not produced, would, if produced, be unfavourable to the person who withholds it. The best evidence rule, which governs the production of evidence in courts,



requires that the best evidence of which the case in its nature is susceptible should always be produced. Section 114(g) of the Evidence Act, 1872 enables the court to draw an adverse presumption against a person who can make available to the court, but obstructs the availability of such an evidence. The Claims Tribunal, upon considering the material on record, rightly dismissed the claim of the applicants and there are no grounds in this appeal to interfere with the order of the Tribunal."

28. In Kamrunnissa v. Union of India, (2019) 12 SCC 391, from the circumstances appearing in that case it was held that there was no evidence that the deceased had purchased the ticket. In the given fact situation of that case, this Court inferred that it was not a case of "untoward incident" but a case of run over. It was observed:

"7. The aforestated report also reveals, that the body of the deceased had been cut into two pieces, and was lying next to the railway track. The report further indicates, that the intestine of the deceased had come out of the body. The above factual position reveals that the body was cut into two pieces from the stomach. This can be inferred from the facts expressed in the inquest report, that the intestines of the deceased had come out of the body. It is not possible for us to accept that such an accident could have taken place while boarding a train.

8. In addition to the factual position emerging out of a perusal of Paras VII and VIII extracted hereinabove, the report also reveals that besides a pocket diary having been found from the person of the deceased a few telephone numbers were also found, but importantly, the deceased was not in possession of any other article. This further clears the position adopted by the railway authorities, namely, that the deceased



Gafoor Sab, was not in possession of a ticket, for boarding the train at the Devangere Railway Station."

29. We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide 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 bona fide 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."...

10. In the context of 'no fault' liability, the concept of 'self-inflicted injury' generally does not apply. It is hard to believe that deceased has deliberately caused injury to cause harm. In the case on hand, Railway administration failed to prove that deceased has attempted suicide or attempted no cause injury despite knowing damage. In a nutshell, the principle of 'no fault' liability fundamentally displaces traditional causation requirements, establishing that compensation is available irrespective of fault attribution. Thus, most jurisdiction sensibly exclude intentional self injury from coverage, reserving no-fault prosecution for involuntary incidents."...

15. After considering the aforesaid dictum, let me, at the outset, observe that the claimant has filed an affidavit which has come on record, indicating her claim that the deceased was traveling on the train with a valid ticket. It is settled law that once claimant on affidavit deposed about holding valid ticket, burden

would be shifted upon the Railway Administration to disprove this aspect. In case on hand, Railway Administration did not bother to lead any evidence to discharge burden. Thus, learned Tribunal has committed gross error. Although the learned Tribunal, having referred to certain police statements and the Divisional Railway Manager (DRM) report, noted inconsistencies in the claim viz. discrepancy regarding the train number but the fact remains that the deceased was traveling from Ajmer to Bhadra and fell from the train before it reached Palanpur Railway Station. The Railway Administration did not lead any oral evidence, and no one appeared to prove the DRM report. If we believe that the incident falls within the statutory time period, the Post-Mortem (PM) report on record (at page 20 of the paper book) reveals multiple fresh head injuries on the deceased, comprising both internal and external injuries. The doctor who conducted the post-mortem recorded the following cause of death:

“As per history, police inquest and post mortem examination according to my opinion the cause of death is due to right parieto temporal region of hemorrhage fescica due to head injury due to fall from running train”.

16. In view of the aforesaid expert evidence, the theory of a self-inflicted injury is ruled out. The learned Tribunal erred in taking the assistance of a police statement to disbelieve the claimant's case. The police statement of Mr. Hasan Mohd. serves no purpose other than confirming the statement of the victim. Mr. Hasan Mohd. was not examined by the railway authority, and his statement was not put to him for the purpose of confirming the incident. It is noteworthy that the Investigating Officer who



recorded the statement of Mr. Hasan Mohd. was also not examined. In these circumstances, placing reliance on the statement of Mr. Hasan Mohd. by the learned Tribunal is erroneous

17. So far as the deposition of the witness, Mr. Danish Shaikh, is concerned, he was examined by the claimant as AW-2 and filed an affidavit in lieu of examination-in-chief. In his affidavit, he supported the case of the claimant. During cross-examination, he agreed to the suggestion put forth by the learned counsel for the Railway Administration that they were traveling from Ajmer to Bandra on the day of the accident, that they were a group of 4 to 5 passengers, and that the deceased had purchased tickets by handing over money at the ticket window and subsequently returned with the change. It was also admitted by the deponent that they had purchased second-class general tickets. He further admitted that his friends had pulled the alarm chain when the incident occurred, that the train came to a halt approximately 1 to 2 kilometers thereafter, and that upon the stopping of the train, they proceeded to the spot of the accident where no railway personnel were present. The suggestion that the injured person was taken to the hospital by a private car was likewise accepted.

18. Noticeably, there is serious flaw on the part of Railway Claim Tribunal in interpreting evidence on record as well as even understanding provision of Evidence Act. Some statements from here and there is picked up consistently along with police statement to negate claim. The Police statement is considered as evidence and given weight against oral evidence recorded before



the Tribunal. Moreover, even learned Tribunal failed to understand the object of Railway Act. Thus negative approach of learned Tribunal deserves to be upturned. Hence, in the opinion of this Court, the learned Tribunal committed a serious error in rejecting the claim on a hyper-technical approach, thereby defeating the very object of a beneficial piece of legislation. What is all the more noticeable is that the incident occurred during the COVID-19 pandemic period, during which period railway authorities generally did not conduct ticket-checking for passengers boarding trains.

19. For the foregoing reasons, the appeal is allowed. Impugned judgment and order is quashed and set aside. Consequently, the claim petition is allowed. The Railway Authority is directed to pay compensation of Rs.8,00,000/- with 9% interest from the date of the incident till realization to the claimants. Accordingly, the Railway Authority/Administration shall deposit decretal amount within eight weeks from the date of this order before Railway Claim Tribunal, Ahmedabad as urged by learned advocate Mr.Shukla. In turn, Railway Claim Tribunal shall disburse the amount to the claimants after due verification. Record and proceeding to be sent back to the learned Tribunal concerned forthwith.

(J. C. DOSHI,J)

SATISH