

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1313 of 2025

Sudama Mahato @ Sudhama Mahato & Anr.

VERSUS

Union of India

For the appellants:

Mr. Sujay Sinha, Adv.

For the respondent/Union of India:

Mr. Rajendra Kumar Gupta, Adv.

Last Heard on: September 29, 2026

Judgment on: October 13, 2026

Biswaroop Chowdhury, J:

The appellants before this Court were applicants in a case under Section 124A of the Railways Act 1989 and are aggrieved by the Judgment and Award dated 19-08-2024 passed by Railway Claims Tribunal Kolkata Bench in Claim Application No. OA(IIu)/Kol/196/2022.

The case of the appellants before the Learned Trial Court may be summed up thus:

The accident took place on 16/07/2022 at afternoon hours, the victim on 16/07/2022 morning came to Budge Budge station which was the nearest and convenient rail head from his house and boarded on up-Budge Budge local and came to Kolkata; he was on his way to Kalighat to visit the Kali Temple and to offer Puja, he was also accompanied by some of his friends. After a brief visit to the Kali Temple at Kalighat he was supposed to return to Budge Budge again and for that he along with his friends came to Brace Bridge station by bus from Kalighat and after purchasing ticket upto Budge Budge boarded Down Budge Budge local from Brace bridge station; one Munna Kumar Mahato and the victim boarded in the same train compartment and other friend boarded adjacent compartment: during the course of the journey when the said train arrived in between Akra and Nangi station at km post no. 19/22-19/24 the victim who at that point of time stood near the door of the compartment due to overcrowding suddenly lost his balance and fell down from the running train and sustained severe head injuries. Immediately after the accident some local people rescued him and took him to nearby ESI Hospital Nangi in critically injured condition on 16/07/2022 afternoon, considering the gravity of injury on the same evening i.e. on 16/07/2022 at about 7 p.m. he was taken to and admitted at SSKM Hospital Kolkata, where after being treated finally he expired on 18/07/2022 at 10.15 p.m. Subsequently on being officially informed by the Hospital authority investigating officer of Bhowanipur Local Police Station reached the hospital and prepared Inquest report in the presence of available

witness and family members. Subsequently the dead body was sent with a dead body Challan for Post Mortem.

The respondent Railway Authority 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 for the parties was pleased to dispose of the claim case by observing as follows:-

‘7.2 The applicant could not succeed to prove by adducing cogent evidence that the deceased was travelling in train on the date of incident and his death was caused by injury due to a fall from a running train.

7.3 Considering the factual elements coming out from the discussion we hold that these issues are held against the applicant by holding that there was no untoward incident as defined under Section 123(c)(2) of the Railways Act 1989 involving the victim and the victim was not a bona fide passenger.

8. In view of the foregoing those issues do not require further consideration

ORDER.

The case is dismissed with no order as to costs.’

The appellants/applicants being aggrieved by the Judgment and Award passed by Learned Tribunal have come up with the instant appeal.

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

Learned Advocate for the appellants submits that after death of the victim SSKM. Hospital Authority informed Bhawanipore local P.S. and Police persons from the said P.S. arrived at hospital and prepared inquest as the SSKM. Hospital falls under jurisdiction of Bhawanipore local Police Station. However as the incident occurred in railway premises of Ballygunge GRPS. Preliminary enquiry was done by Ballygunge GRPS on request of Bhawanipore P.S.

Learned Advocate further submits that GDE No-731 of Ballygunge GRPS and GDE no-740 of Ballygunge GRPS support the case of the claimant/appellant, and from GDE no. 740 it is clear that such incident was witnessed by three neutral and independent persons of locality namely SK. Jakir Hossain Makabul Mondal, and Adhir Das. These persons told the police about fall from running train to ground in between Akra and Nangi station, then local people rescued the injured victim and took him to nearby hospital. Learned Advocate also submits that the enquiry is done by railway Police itself from where it is established that victim fell down from train which comes under untoward incident as defined in Railways Act.

It is submitted by Learned Advocate that Respondent submitted Report before the Tribunal where after enquiry the Railway Authority came to the finding that the victim fell from train. It is further submitted that the post

Mortem Report also states that the deceased was admitted to SSKM. Hospital on 16/07/2022 with history of fall from moving train. It is also submitted that the evidence of Munna Mahato AW-2 will go to show that Munna Mahato saw the victim going to the ticket counter for purchasing ticket and travelling in the same compartment at the time of incident.

Learned Advocate submits that the Learned Tribunal has selectively relied upon partitions of respondent's evidence while ignoring material evidence favourable to the appellants and the appreciation of evidence is wholly perverse.

Learned Advocate further submits that even assuming that the Railway disputed the case of the appellants, it was incumbent upon the Railway Administration to adduce cogent evidence establishing that the case fell within one of the exceptions contained in the proviso to Section 124A. No such convincing evidence was produced. Consequently the Railway failed to discharge the burden cast upon it by law and the claim ought to have been allowed.

Learned Advocate also submits that, when the oral testimony documentary evidence, Police records Post-mortem report, and suocounding circumstances are considered cumulatively, the only reasonable conclusion is that the deceased was a bona fide passenger who died in an untoward incident while travelling by train.

Learned Advocate relies upon the following Judicial decisions:-

LATA VS Union of India

Special Leave Petition (Civil) No. 30726/2025.

Union of India VS Rina Devi.

Civil Appeal No. 4945 of 2018.

(Supreme Court of India).

Omvir Singh VS Union of India.

FAO-275/2019.

High Court at Delhi.

Dhondu Sakharam Tambe VS Union of India.

First Appeal No-1668 of 2016.

(High Court at Bombay).

Union of India VS Kailashbai

First Appeal No-3841 of 2023.

(High Court at Gujrat).

Manju Agarwal and ors. VS Union of India.

FMA-1133 of 2024

(High Court at Calcutta)

Sukhabhai Nanjibhai Makwana VS Union of India.

Civil Appeal No. 12951 of 2026.

(Supreme Court of India)

Learned Advocate for the respondent submits that the learned Tribunal upon considering the oral and documentary evidence rightly found that the appellants failed to establish the alleged accidental fall of the deceased from Train No-34148 DN.

Learned Advocate further submits that Railway Enquiry also records that no diary entry was made at RPF/Post/Budge Budge on 16-07-2022 or 17-07-2022 in this connection and no journey ticket was recovered from the deceased. The enquiry concluded that despite examination of the available material no concrete evidence was found in support of the claim that the deceased had fallen down from the running train.

Learned Advocate also submits that mere GDE-740 dated 19-07-2022 is not a contemporaneous record of the alleged fall.

It is submitted by the Learned Advocate that the persons relied upon in GDE No. 740 namely Sk. Jakir Hossain, Makabil Mondal, and Adhir Das are not persons who witnessed the deceased falling from the train. The subsequent Railway Enquiry records that these persons stated only that they had found an injured person lying near the railway track and had taken him to hospital. It is further submitted that the Railway Enquiry undertaken upon receipt of the

claim examined the relevant railway officials and available material. The enquiry found that there was no railway memo regarding the alleged falling down of any passenger from Train No-341480 no report from the Driver, no information to the station Master, no RPF diary entry in connection with the alleged occurrence and no journey ticket as authority recovered from the deceased.

It is also submitted that the evidence of AW-2 Munna Kumar Mahato is replete with material discrepancies touching the very occurrence alleged by the Applicants.

In the instant case it is an admitted position that body of the victim was not found at the Railway Track, and the case of the claimants is that the victim fell down from the train got injured admitted to hospital and died there. In order to prove the case the claimants examined 2 witnesses and relied upon police Report submitted under Section 174 CrPC, Post Mortem Report, and DRM Report. Now with regard to evidence of AW-2 Munna Kumar Mahato who claimed himself to be the co-passenger it appears that A.W.-2 stated about himself and victim purchasing return ticket. He has specifically stated the places he went with the victim on the said day and both of them boarded Down Budge Budge local. He further stated that the train was overcrowded and his friend fell down between Akra and Nangi station. He on obtaining information walked through the Railway Track, towards the place of incident and took his injured friend to ESI Hospital.

In the cross-examination nothing could be shaken with regard to AW-2 being with the victim on the date of incident and he going to the accident spot and taking his injured friend to hospital. The oral evidence of AW-2 is corroborated by post mortem Report, Report Submitted by Police Authority under Section 174 CRPC to the Magistrate, and the statement made by AW-2 before RPF Authority.

As Railway Claim Legislation is a beneficial legislation where claimants are not required to prove accident beyond reasonable doubt but on the touchstone of preponderance of probability the claimants on the basis of oral and documentary evidence have been able to establish death of the victim due to fall from train.

Now with regard to the issue as to whether the victim was a bona-fide passenger with valid ticket it is an admitted position that no journey ticket was recovered.

In the case of Union of India VS Rina Devi (supra) the Hon'ble Supreme Court observed as follows:-

'We thus hold that mere presence of a body on the Railway Premises will not be conclusive proof 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. Thus will have to be dealt with from case to case on the basis of facts found.'

In the case of Manju Agarwal and ors. VS Union of India FMA-1133 (High Court at Calcutta) it was observed as follows:-

'The primary reasoning upon which the tribunals decision rest is the non-recovery of travel ticket was plausibly explained by the admitted fact that the wallet was not recovered as confirmed by the RTI's response from the GRP. The Hon'ble Supreme Court in the decision cited in Union of India VS Rina Devi (2019) 5 SCC.572 observed 'Mere absence of ticket with the deceased will not negate the claim.....'

12. The burden shifts to the railways to prove the contrary is set up by the claimant. Furthermore, in Kamukayi and others VS Union of India 2023 SCC Online 642, the Apex Court reiterated that the mere non-recovery of the ticket is not fatal to the claim and plausible explanation hearing such as non-recovery of the wallet justified the legal presumption of bona-fide travel.'

In the case of Anamika Halder VS Union of India.

(FMA 1152 of 2025) it was observed as follows:-

'In many cases of Railway untoward incident where ticket could not be recovered from victim reliance can be placed on oral evidence. Normally a person

does not dare to travel without ticket for the fear of being caught and punished. Moreover when a passenger has to face Travelling Ticket Examiner or ticket collector he is bound to produce the ticket but when the person is dead he should not be charged with the allegation that he was travelling without ticket as he will not be in a position to defend himself. A person usually keeps his ticket either in money purse or shirt pocket or pant pocket or inside shirt pocket. Merely because ticket is not found a dead person cannot be said to be a ticketless traveller. In the event there is a reasonable doubt the benefit of doubt should go in favour of the victims family.'

Now upon perusal of statement of AW-2 Munna Mahato it will appear that in his examination in chief that Sharawan Kumar the victim herein purchased a return ticket from Budge Budge to Sealdah from an automatic ticket vending machine.

In cross-examination also he stated that first of all Sharawan Kumar purchased his onward journey ticket and he saw it. Nothing could be shaken with regard to Sharwan kumar the victim purchasing ticket. Although he stated that at the time of return journey he did not see the victim purchasing ticket for return journey but the statement made in examination in chief that Sharwan Kumar purchased return ticket from Budge Budge to Sealdah which is not shaken in cross examination, is a ground of not purchasing ticket at the time of return journey. As per rule when return journey ticket is purchased at the time of commencing the journey from a particular station the passenger

who has purchased return ticket is not required to purchase ticket at the time of return journey. As per evidence of AW-2 when victim has already purchased return journey ticket it is quite natural that he will not be seen to purchase again return journey ticket. Moreover AW-2 in his cross examination has stated that purse and the ticket of the victim were not found. Thus there is every ground to presume that purse and ticket were misplaced after the accident. In absence of recovery of ticket and money purse the statement AW-2 is sufficient to hold that the victim was a bona-fide passenger with a valid journey ticket. As Railway claim legislation as a beneficial legislation where cases are not required to be proved beyond reasonable doubt but on the touchstone of preponderance of probability the benefit of doubt if any should go in favour of the claimants.

In the case of Union of India VS Prabhakaran Vijaya Kumar (2008) 9 SCC-527 the Hon'ble Supreme Court observed as follows:-

'The Railways Act being a Social welfare legislation cannot be construed in a narrow and pedantic manner.....

Once it is established that the deceased was a bona-fide passenger and the death occurred due to untoward incident the railways cannot escape law.'

In the facts and circumstances the Appellants are able to prove that death of the victim is an untoward incident. Thus the claimants are entitle to compensation under Section 124A of the Railways Act 1989.

Hence this Appeal FMA-1313 of 2025 stands allowed. Judgment and Award dated 19th August 2024 passed by Learned Railway Claims Tribunal Kolkata Bench in OA/IIu/Kol/196/2022 is set aside. The appellants are entitled to compensation of Rs. 800,000/- from the respondent Railway Authority. The respondent shall deposit before Registrar General High Court Calcutta Rs. 800,000/- alongwith interest @6% p.a. from date of filing claim case till today. Such deposit to be made within 8 weeks from the date of communication of this order. The Appellants will be entitled to withdraw the 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.)