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IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1152 of 2025

Anamika Halder (Pal) & Ors.

VERSUS

Union of India

For the appellants/claimants:	Mr. Saswata Bhattacharyya, Adv. Mr. R. N. Basu, Adv. Ms. Rituparna Modak, Adv.
For the respondent:	Mr. Tushar Kanti Har, Adv. Mr. Sukanta Ghosh, Adv.

Last Heard on: August 03, 2026

Judgment on: August 19, 2026

Biswaroop Chowdhury, J:

The appellants before this Court were applicants in a case under Section 124A of the Railway Act 1989 read with Section 16 of the Railway Claim Tribunal Act and is aggrieved by the Judgment and Award dated 11-04-2025 passed by Learned Railway Claim Tribunal Kolkata Bench in OA(IIu)/Kol/92/2019.

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The case of the appellants before the Learned Tribunal may be summed up thus:-

On 9.4.2019 Bappa Pal along with his brother Pintu Pal and his friend Samaresh Pal was travelling from Dasnagar to Andul by train. It was about 20.10 hours he fell down from the said running train due to over crowded pressure and sudden jerk in between KM no. 9/13 and 9/15 (up line) at outside the track. As a result he died on the spot. He was a bona fide passenger on the said running train. It was a stormy day and the train was running late. UD case no. 24/2019 dated 9.4.2019 had been registered with Sonarpur GRPS in the matter of accidental death of Bappu Pal.

The Railway Authority respondent herein contested the case by filing written statement. Issues were framed and evidence was adduced. Learned Tribunal upon considering the evidence adduced and upon hearing the Learned Advocates was pleased to dismissed the claim case by observing as follows:-

'*7.12 Considering the factual elements coming out from the discussion, these issues are held against the applicant by holding that it is amply proved that the applicants could not establish that he was a bona fide passenger and the applicant could not also prove that the death of the deceased was caused due to a fall from the train. Hence, it cannot be stated as an untoward incident as defined under Section 123(c)(2) of the Railways Act 1989 involving the victim.*

Issue No. 3 :

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8. In view of the foregoing, this issue is not required for further consideration.

Issue No. 4:

9. The applicants have failed to prove Issue Nos. 1 & 2. Hence, they are not entitled to any relief as prayed for

ORDER

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

The appellants being aggrieved by the judgment and award passed by the Learned Railway Tribunal have come up with the instant appeal. Heard Learned Advocate for the appellant and Learned Advocate for the respondent Union of India perused the evidence adduced and the materials on record.

Learned Advocate for the appellant submits that due to heavy gathering the victim fell down and died. Learned Advocate further submits that the ticket shows that it was purchased on 9.4.2019 at 17.47 hours. Learned Advocate also submits that from the evidence of eye witness being A.W. 2 it will clearly go to show that the victim fell down between Santragachi and Mourigram station. It is submitted that A.W. 2 has stated that he was present at the time of seizure thus from the evidence the case of the claimants that victim was a bona fide passenger is established.

Learned Advocate on behalf of the Railway Authority submits that Pintu Pal stated that he was in friend's house at 7.30 p.m. there is no document by

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Pintu Pal Learned Advocate also submits that the time stated by the witness is in-consistent for which the case of the appellant becomes doubtful. Learned Advocate submits that the claim case should be dismissed.

Before proceeding to decide on the material in issue it is to be remembered that in case of untoward incident it is always not possible for the victims family to arrange for witness who has seen the victim falling from the train. Thus the family of victims will have to rely on report of Police Authority or Railway Authority. In the instant case although there is no direct evidence of the victim falling from the train but there is evidence of victim seen in the train in which A.W. 2 Pintu Pal boarded. From the statement of Pintu Pal A.W. 2 it will appear that the victim Baptu Pal on 09-04-2019 at evening went to visit the house of Saurik Mondal at Dasnagar, as the said friend was suffering from illness.

He further stated that Baptu Pal left his house a bit earlier to Dasnagar Railway Station. He also stated that Baptu Pal purchased his ticket at about 17.47 hours. After a few minutes he along with Samaresh Pal left Souvik's house and reached at Dasnagar Railway station to Andul Railway Station separately at about 18.00 hrs. He further stated that he along with his brother Baptu Pal boarded the same compartment. Although A.W. 2 was questioned by the Court but nothing has come out that victim Baptu Pal was not in the said compartment. With regard to purchase of ticket by Baptu Pal there was no cross-examination from the respondent's side nor was any question put by the

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Court as to whether the said witness has seen Baptu Pal purchasing ticket. In such a situation it cannot be disputed that the victim purchased ticket. In this regard it may be relevant to quote a judicial decision. In the case of Dasari Laxmi VS Union of India reported in AIR-2003 A.P. the Hon'ble Court observed as follows:-

'7. *Though it was disputed even as to the factum of accident, but the Tribunal on consideration of the material on record gave a finding that there is no controversy as to the untoward incident (accident) that had occurred on 9-10-1996 in which the deceased had received injuries and subsequently died in the hospital on 10-10-1996. Therefore, it is to be considered whether the deceased was a passenger as referred to in Clause (2) to the explanation under Section 124-A, which reads as under:-*

"Section 124-A. Compensation on account of untoward incident: .....

Explanation: For the purpose of this section, "passenger" includes-

(i) .....

(ii) a person who has purchased a valid ticket (or travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident."

8. In order to decide the above, it is to be considered on whom the burden lies. Is it on the claimant or on the Respondent-authorities, who wants to deny

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the liability? In order to prove that the burden lies on the Railways, the appellant relied upon the judgment of the Madhya Pradesh High Court in the case of Raj Kumari v. Union of India, (supra). In that case, a Division Bench of the Madhya Pradesh High Court had an occasion to consider similar issue with reference to a claim under Section 82-A of the Old Act, which corresponds to Section 124. Of course. Section 124-A was inserted for the first time in the year 1994 under which the compensation payable on account of untoward incident was specifically incorporated. Similarly, under Section 123, the term untoward incident was also defined so as to include even the accidental falling of any passenger under a train carrying passengers. The Division Bench after considering the rival contentions and also referring to some of the relevant provisions of the Railways Act, which specifically prohibits travelling without pass or ticket, which would in fact result in imposition of punishment of imprisonment or fine and concluded that the burden is on the Railways to prove that the deceased was not a bona fide passenger. The relevant portion of the judgment reads as under:

"The main question that arises in thin case is on whom the onus of proof lies in such claim cases and whether any presumption under the Evidence Act can be raised. Normally under Sections 101 and 102 of the Evidence Act, the burden to prove such facts, on which the legal right or liability depends, is on such person who asserts existence of these facts. But the question before us is whether the burden of proof that the deceased held a valid ticket, pass or permission during his journey, in which he died in accident, can be placed on his dependants.

Obviously, such burden of proof is impossible to be discharged by the dependants, who can have no means of knowledge, whether the deceased, before boarding the train, had purchased a valid ticket, pass or permission from the railway authorities. It is likely that such a deceased passenger held a valid ticket, pass or permission, but the same is lost in the accident with the death of person and loss of his belongings, if any."

Thereafter, the Court referred to the provisions of Section 114 of the Evidence Act and held that when there is a prohibition to board the train and travel without a ticket or pass, it should be presumed that the passengers travelling in the train are the passengers with ticket. Holding so, the appeal was allowed granting compensation to which the claimants are entitled.

9. Similar view was taken by the Rajasthan High Court in the case of Soram Bai (supra). A learned single Judge of this Court had also an occasion to consider a similar issue in the case of Gullipalli Lakshmikanthamma (supra) where the claimant's appeal was allowed holding as under;'

"After considering the same, I am of the opinion, that, an inference can be drawn to the effect that the deceased is a bona fide passenger having regard to the realities and realistic and pragmatic approach of the question involved. It cannot invariably be conceived, or comprehended, that, always, ticket should be traced. One has to imagine the circumstances, that will prevail, at the relevant time and whether keeping of the ticket should be given that much of importance at the crucial time, when the deceased was suffering from fatal injuries died, the ticket

could have been missing. So, from the material, on record, it must be found, that, the deceased is a bona fide passenger."

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 travel;ling 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.

Moreover in the Report under Section 174 C.r.P.C. the Police Authority mentioned about seizure of ticket. When Police Authority has in due process of law submitted Report u/s-174 C.r.P.C., along with seizure list and relevant documents the said enquiry cannot be said to be perfunctory without examining the Investigatory Officer of the Police. In the instant case the Investigating Officer was not examined by the Respondent.

The report of Police Authority about recovery of ticket along with oral evidence of P.W. 2 with regard to purchasing of ticket by the victim establish the case that victim was a bona fide passenger.

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P.W. 2 Pintu Pal apart from deposing in Court has also appeared before RPF Authority and stated that on 09/04/19 he and his elder brother Baptu Pal with one friend Samaresh Pal went to Dasnagar from Santragachi at about 5.00 p.m. to meet their colleague. Thereafter at about 7.30 P.M. all of them left Dasnagar Railway Station to Andul by purchasing railway tickets and boarded local train. Due to heavy rush Pintu Pal and Samaresh Pal entered into the Coach of local train together and they saw Baptu Pal standing at the door in the same running train. Thus upon comparative reading of the statement of Pintu Pal before Court as well as before RPF authority there is no such inconsistency which will make his statement unbelievable.

Thus in the facts and circumstances this Court is of the view that the claimants are able to prove that the death of Baptu Pal was an untoward incident under Section 123(c) of the Railways Act 1989.

Thus the appellants/applicants are entitled to compensation under Section 124A of the Railways Act 1989.

Hence this Appeal FMA-1152/2025 stands allowed. Judgment and Order dated 11th April 2025 passed by Railway Claims Tribunal Kolkata Bench in Railway Claim Application No-OA(IIu)/Kol/0093/2019 is set aside. The appellants are entitled to compensation of Rs. 8 lakh from the respondent along with interest @6% p.a. from date of filing claim case till today. The respondent shall deposit Rs. 8 lakh along with interest @6% per annum before

Registrar General High Court Calcutta. Such deposit shall 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.)