

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

Present:

**The Hon'ble Justice Biswaroop Chowdhury**

**F.M.A. 2786 of 2016**

**With**

**IA NO: CAN/4/2017 (Old No: CAN/37/2017)**

***General Manager, Eastern Railway***

**VERSUS**

***Ajmira Mirja***

For Appellant:

Mr. Suman Chattopadhyay, Adv.

For Respondent/Claimant:

Mr. Sudeep Sanyal, Adv.

Mr. Snehasis Jana, Adv.

Ms. Anulekha Bera Maiti, Adv.

Ms. Tutun Das, Adv.

**Last Heard on: November 18, 2025**

**Judgment on: February 04, 2026**

**Biswaroop Chowdhury,J:**

The appellant before this Court was the opposite party in an application under Employees Compensation Act 1923 and is aggrieved by the Judgment and Order dated 26-12-2014 passed by the Learned Commissioner Employees' Compensation (1<sup>st</sup> Court) West Bengal.

The case of the respondent no-1/claimant in the case before the Court of the Learned Commissioner may be summed up thus:

1. Allarkha Mirja a workman employed by (a contractor with) the opposite party received personal injury by accident on the 23<sup>rd</sup> Day of December 2006 arising out of and in the course of his employment resulting in his death on the 23<sup>rd</sup> day of December 2006. The cause of the injury was that Allarekha Mirja Son of Amin Mirja was performing his duties under the opposite party at K.M. Post No. 14/1, to 14/2 upline point No. 9E near Noadbradhhal Railways Station, working on Railway Track along with other employees, at the time of working on the Railway Track he was suddenly dashed by 2509 up Bangalore-Guwahati Express from his back side and Allarekha Mirja along with other employees sustained serious employment injuries and Allarekha Mirja died on the spot.

GRPS UD Case No-166/06 and post mortem done at Burdwan Medical College Hospital P.M. No. 1806 dated 23-12-2006.

2. The applicant/respondent is a dependant of the deceased workman being his wife.
3. The monthly wages of the deceased workman was Rs. 4,000/- and the deceased was aged 42 years.

The Appellant/opposite party appeared and contested the case by filing written statement.

By Judgment and Order dated 26-12-2014 the Learned Commissioner Employees' Compensation (1<sup>st</sup> Court) West Bengal was pleased to dispose the claim case No-131 of 2008 filed by the Respondent by observing and directing as follows:

'Hence it is Ordered that the claim case is allowed on contest with cost.

The applicant and other dependants if any of the deceased do get a sum of Rs. 3,56,980/- (Rupees three lakh fifty six thousand nine hundred eighty only) along with interest at the rate of 12% per annum from one month from the date of accident till deposit.

OP is directed to deposit the said amount along with interest in Court within 60 days from the date of this order failing which the applicant is at liberty to recover the same in accordance with Law."

The appellant/opposite party being aggrieved by the Judgment and Award dated 26-12-2014 passed by the Learned Court of the Commissioner Employees' Compensation (1<sup>st</sup> Court) West Bengal has come up with the instant appeal.

It is the contention of the appellant that the Learned Commissioner erred in deciding the claim case in favour of the respondent applicant when admittedly the present appellant was not the employer of the deceased. It is further contended that the Learned Commissioner erred in deciding that the monthly salary of the deceased was Rs. 4,000/- without any supporting

document. It is also contended that the Learned Commissioner erred in not considering that immediately after the accident no notice was served to the Railway Authority by any person and as such the determination of date of knowledge cannot be fixed on presumption.

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

Mr. Chattopadhyay Learned Advocate for the appellant submits that the Learned Commissioner erred in awarding compensation when the respondent failed to prove that the victim was working on the Railway Tracks. Learned Advocate further submits that the Learned Commissioner erred in awarding compensation when the name of the employer was not mentioned.

Learned Advocate also submits that the Learned Commissioner erred in considering the age of the victim as 42 years without documents. It is submitted that there was no notice upon the Railway Authority regarding the accident thus the Learned Commissioner erred in proceeding inspite of such fact on the presumption that Railway Authority had notice about the incident/accident. It is submitted that the award passed should be set aside.

Mr. Sanyal Learned Counsel for the respondent submits that the Learned Commissioner upon considering the evidence adduced both oral and documentary came to the conclusion about the accident and the entitlement of the claimants for compensation and awarded the compensation. Learned Counsel further submits that in cross examination no question was put to the

witness regarding employer thus the evidence of the respondent stood un rebutted. Learned Counsel also submits that the age on the basis of which Learned Commissioner awarded compensation is stated in the post mortem report is 42.

Upon perusal of the record it appears that the appellant Railway Authority did not adduce any evidence before the Learned Commissioner.

With regard to the first submission of the Learned Advocate for the appellant that Railway Authority did not receive any notice about accident it appears that in Final Report submitted by the Police Authority under Section 174 of the Code of Criminal Procedure there is mention that on 22-12-06, the on duty officer of Burdwan GRPS received a Rly memo from on duty JE/1/P-Way/BWJ. Shri D.P. Das to the effect that "one Railway Contractor man working under Railway Contractor Shri Arnab Samanta name Allah Rekha Mirja aged about 42 years while working at K.M.-97/13-15 in between station Shaktigarh and Gangpur over up/ML, was run over by train No-3105 up Balia Express and died. Thus the plea that the Railway Authority did not have notice about accident cannot be sustained. Secondly the Enquiry Report of Police Authority submitted to the Magistrate mentions the name of the victim of accident as Allah Rekha Mirja and he is stated to be contractor's man working under Shri Arnab Samanta Railway contractor. Hence the name of the contractor under whom the victim was working is also stated in the report. Such evidence is further strengthened from the identity card of the victim

which shows that victim was member of the Eastern Railway Contractors Workers Union. Hence the plea of the Learned Advocate for the appellant that the respondent could not furnish proof of the employer of the victim cannot be sustained. Now with regard to the age of victim as the post mortem report mentions age of the victim to be 42 years Learned Commissioner rightly proceeded on the basis that age of victim was 42 years. Although the respondent/claimant could not furnish any document to prove income of the victim but considering the nature of work it is not unusual that victim used to earn Rs. 4,000/- per month. Thus the Learned Commissioner rightly proceeded on the basis of notional income.

As Court of Commissioner is not a Civil Court but a Tribunal thus strict Rules of evidence are not applicable. As Employees Compensation Act is beneficial legislation it is to be seen that the welfare object of the statute is fulfilled. As the family members of a worker who died in accident may not be able to submit all documents for the purpose of claim, the Commissioner upon considering oral evidence, enquiry report of Police Authority may award compensation.

The Court of Commissioner being a Tribunal is to follow principle of natural justice. It is held in different Judicial Pronouncements that tribunals are not required to adhere rigidly to the doctrine of stare decisis so that they can consider the claim more sympathetically. The contribution of the Tribunals should be to ensure that the benefits reach the helpless person.

In the facts and circumstances this Appeal being FMA 1588 of 2025 fails and the same is dismissed. The Order passed by the Learned Trial Judge is affirmed.

Trial Court Records be sent back.

The Awarded Amount along with interest as directed by Learned Trial Court be deposited by Appellant within 8 weeks from the date of communication of the Order. In the event any sum is already deposited the balance amount be deposited. The Respondent Ajmira Mirja is permitted to withdraw the awarded sum deposited including accrued interest if any on compliance of the required 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.)**