

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 1519 OF 2013

Shri.Durgesh Nagina Chauhan ... Appellant.

Versus.

Union of India
Through The General Manager,
Western Railway, Churchgate,
Mumbai 400 020. ... Respondent.

.....
Mr.M.R.Lad, Advocate for Appellant.
Mr.Kiran J. Kandpile, for Respondent.
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**CORAM :MRS.MRIDULA BHATKAR, J.
DATE:24th DECEMBER 2013**

PC. :

The applicant-Shri.Durgesh Nagina Chauhan is an injured person, who filed an applicant for compensation for the injuries sustained to him in the railway accident. On 01/01/2005, he was traveling from local railway from Meera Road to Mumbai Central. As train reached at the platform at Mumbai Central, the passengers in the boggy, who wanted to get down pushed him and he fell down from the train and slipped between train an platform. He sustained injuries on head. His left limb below elbow was amputated. His right hand was crushed. Thus, he suffer a permanent disablement which is mentioned at Sr.No.4 of Part.3 schedule

of the R.C.T.Act. The injury sustained to his right hand and head were not scheduled injuries. The applicant was holding a valid ticket and so a bona fide passenger and he sustained injury due to fall from the train and so his case was covered under the defences of 'untoward incident' under section 123(c)92) of the Railways Act. The applicant examined himself as a witness and produced the police papers and medical papers to establish his claim of accident and the injuries. The Vice-Chairman of the Railway Claims Tribunal, Mumbai Bench, Mumbai after considering oral as well as documentary evidence partly allowed the claim and granted compensation to the tune of Rs.2,90,000/- and also interest @ 6 percent per annum from the date of application till the date of award and thereafter @ 9 percent per annum from the date of default till the date of actual payment, if the compensation is not paid within 60 days. Being aggrieved by the said order, the original claimant filed this appeal. The only challenge in this appeal is the rate of interest awarded by the Tribunal. Learned counsel submitted that applicant fell down from the local and was caught between the train and platform. He submitted that that the rate of interest awarded by Tribunal is very less. In support of his submission, he relied on the judgment of the Supreme Court in *Rathi Mmenon V/s. Union of India*. reported in **2001 AIR (SC) 0-1333**. He submitted that in the said case,

the Supreme Court has awarded interest @ 15 percent and therefore the same may be granted. He also relied on the judgment of the single bench of this Court in **Shri.Narshima Annaji Purohit and Anr., V/s. The Union of India in First Appeal No.942 of 2001** wherein the rate of interest is granted @ 9 percent per annum from the date of the application.

2. The learned counsel for the respondent-Railway opposes the appeal and submits that it is a responsibility of the train passenger to take necessary precaution and railway is not at fault in the accident. Perused the judgment passed by the Vice-Chairman of Railway Tribunal. It is found that while alighting from the train, Durgesh slipped and fell down on the road and his hand was crushed between the platform and the local train and he also sustained head injuries.

3. He was holding valid ticket and a bona fide passenger. Under section 124/A, a direct liability is casted on the railway in case of railway accident. As the issue of interest is only involved, the interest was granted in two parts i.e. from the date of application till date of award 6 percent is allowed and thereafter, if the amount is not paid within 60 days on account of default 9 percent interest is imposed.

4. In the case of Rathi Menon (supra), the injured lady was commerce graduate and 22 years old, who was thrown off from the running train due to the sudden jerk of the train at night. Her spinal cord was ruptured and she became paraplegic and when she fell down the wheels of the train ran over her right arm. She remain lying as it is as she could not move. Her right leg was happened to be on the rail-track and after some time another train came and ran away on her right leg and thus her leg was amputated. The said case was a series of misfortune and Supreme Court therefore awarded interest @ 15 percent. This is not the case in the present matter. The appellant fell down from the train when its train reached on the platform. So, the case of the Rathi Menon (supra) is distinguishable from the present case. However, the leg of the injured was amputated and he also suffered non-scheduled injuries. So, it will be just and fair to increase the rate of interest @ 7.5 percent from the date of the application till the date of award and the remaining order in respect of 9 percent from the date of default is kept intact.

(MRS. MRIDULA BHATKAR, J.)