

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 524 OF 2006

Vasant Namdev s/o. Bagre .. Appellant
Age. 44 years, Occ. Nil,
R/o.Chopdechwadi Post Rampuri,
Tq. Georai, Dist. Beed.

Versus

Union of India .. Respondent
Through General Manager,
South Western Railway,
Hubli.

Mr. P.S. Agrawal, Advocate for the appellant.
Mr. M.N. Navandar, Advocate for sole respondent.

**CORAM : A.M. BADAR, J.
DATED : 30.11.2015**

ORAL JUDGMENT :-

1. This is an appeal under Section 23 of the Railway Claims Tribunal Act, 1987 challenging judgment and award passed by the learned Railway Claims Tribunal, Nagpur on 16.02.2006 in Claim Application No.178/OA-II/RCT/NGP/2003 between the parties thereby rejecting claim petition filed by present appellant under Section 16 of the Railway Claims Tribunal Act, 1987 on account of

injuries suffered by him due to accidental fall.

2. Brief facts leading to institution of present proceeding can be summarized thus :-

. Present appellant/original applicant filed a claim petition under section 16 of the Railway Claims Tribunal Act, 1987 claiming compensation of Rs.4 lakhs on account of injuries suffered by him in untoward incident. According to the applicant because of untoward incident due to accidental fall from passenger train at Raybag railway station on 11.01.2000, his both lower limbs were amputated. It is case of the applicant that he is labourer by occupation and was going to Raybag for harvesting sugarcane. The applicant pleaded that he was travelling in Miraj-Hubli express along with co-labourer Babu Ashruba Mane, after purchasing two general class tickets bearing Nos.04504 and 04505 on 11.01.2000. They boarded train at Miraj at about 23.50 hours. According to the applicant, while they were standing at the door of compartment when the train reached Raybag railway station

at about 00.50 hours in night, due to sudden jerk he suffered accidental fall from said passenger train. In this untoward incident both his legs were crushed under the wheels of the train. His friend Babu Mane took him from Raybag to Ganga Surgical and Fracture Clinic, Gokak, where he was medically treated for his amputated legs by Dr.M.G. Umarani. With these averments, the applicant prayed for awarding compensation of Rs.4 lakhs on account of amputation of his both legs in accidental fall from the passenger train at Raybag railway station while alighting from the train.

3. Non-applicant-Union of India opposed the claim by filing two written statements. According to non-applicant/respondent, there is no cause of action in favour of applicant and his claim does not fall within ambit of section 123 (c) (2) or section 124-A of the Indian Railways Act, 1989. According to non-applicant/respondent, enquiries reveal that no untoward incident or accidental fall of a passenger was reported

or recorded at Raybag railway station in the night intervening 11.01.2000 and 12.01.2000. There was no alarm of chain pulling at Raybag railway station at the time of accident. Non-applicant/respondent further contended that the applicant cannot be treated as bonafide passenger. Averments made by him go to show that he was very careless about his own safety and he himself was responsible for the alleged injuries suffered by him. Non-applicant/respondent denied averments that because of sudden jerk from the passenger train, applicant suffered accidental fall resulting in amputation of his both legs.

4. On the basis of rival pleadings, the learned Tribunal framed issues and parties went for trial. In support of his claim, applicant examined himself at AW-1 and has also tendered evidence of Dr.M.G.Umarani as AW-2. In rebuttal, non-applicant adduced evidence of Mr.B. Ravi, Asstt. Station Master, Raybag railway station as RW-1 and Jaiprakash G. Ratan, Guard of the passenger

train as RW-2. Reliance was placed on documentary evidence by both the parties.

5. After hearing parties, by impugned judgment and award, learned Tribunal concluded that applicant failed to prove that he sustained injuries in an untoward incident in the night intervening 11.01.2000 and 12.01.2000 while traveling in train No.7302-Miraj-Hubli express. The learned Tribunal noted that there is no evidence on record to show that any untoward incident occurred at Raybag railway station on the alleged date and time. It is further observed that it is not possible that when a passenger fell down from a train in which his legs got cut off, there would be no witness or record at the railway station. It was further observed that since the applicant failed to produce any witness in support of his claim, evidence adduced by the respondent is taken as credible evidence. At this juncture, it is apposite to note that the learned Tribunal answered issue No.2 in affirmative and held that the applicant was a bonafide

passenger in Miraj-Hubli express on 11.01.2000. The claim petition was rejected for want of proof of untoward incident as alleged by the applicant.

6. Heard Mr. Agrawal, the learned Counsel for appellant. He argued that in para 7 of its written statement, the respondent has admitted happening of untoward incident and as such the respondent is estopped from contending that no untoward incident has happened. The learned Counsel Mr. Agrawal argued that evidence of Dr. M.G. Umarani does show that the applicant was taken to said hospital immediately after accident. He further argued that medical record shows that both legs of the applicant were amputated because of accidental fall from railway train. In submission of Mr. Agrawal, the learned Counsel for appellant, if accidental fall from railway resulting in injury is proved coupled with proof of the applicant being bonafide passenger in passenger train, the Tribunal ought not to have rejected his claim. Only requirement of law is bonafide passenger travelling in

passenger train suffering injuries in an untoward incident. He further argued that evidence of Mr. B.Ravi and Mr. Jaiprakash Ratan is of no consequence as it is only based on the fact that they had not heard about any untoward incident at Raybag railway station. By gaining support from evidence of Jaiprakash Ratan-Passenger Guard, Mr. Agrawal argued that timing of arrival of Miraj-Hubli express is coming on record in cross-examination perfectly matches with the pleading of the applicant in respect of suffering accidental fall, resulting into injuries and as such it strengthens evidence of the applicant.

7. Mr. Agrawal, the learned Counsel for applicant relied on rulings in Union of India Vs. Prabhakaran Vijaya Kumar & Ors., AIR 2009 S.C. (Supp.) 383, Ramavatu Decamma & Ors. Vs. Union of India, 2011 STPL (Comp) 746 AP and Union of India Vs. K. Parvathamma & Ors., AIR 2005 AP 106 and submitted that remedy under section 124-A of the Railways Act is remedy in welfare legislation and as

such proceedings under section 124-A deals with strict liability or no fault liability. As such when it is proved on record that the applicant was bonafide passenger in passenger train and he suffered fall from that train causing injuries to him, then the learned Tribunal ought to have awarded statutory compensation to him. He further argued that applicant is also entitled for interest on amount of compensation claimed by him.

8. As against this Mr. Navandar, the learned Counsel appearing for respondent supported impugned judgment and award of the learned Tribunal and contended that a finding of fact is arrived at by the Tribunal on the basis of evidence on record and as such same cannot be disturbed. He further argued that written statement does not disclose that untoward incident in respect of the applicant was admitted by the non-applicant/respondent. In the context of non-reporting untoward incident, averments in para 7 of the written statement were made. Mr. Navandar, learned Counsel argued

that section 123 and 124-A are not applicable as, there was no accident. He pointed out that circumstances emerged on record such as non finding of imputed parts of lower limb at the railway station as well as finding of minute particles of stones on amputated legs of the claimant disproves his theory of accidental fall from railway. Mr. Navandar further argued that fresh injuries noted by Dr. Umarani falsifies contention of the applicant that he had lost his both limbs because of accidental fall about 12 hours back.

9. With the assistance of the learned Counsels appearing for both the parties, I have carefully gone through oral evidence adduced on record as well as documentary evidence relied by parties. The learned Tribunal on assessment of evidence on record, came to the conclusion that no untoward incident could be proved by the applicant and as such, despite recording finding that he was bonafide passenger of Miraj-Hubli express, rejected his claim for compensation. Prior to adverting

to the merits of the appeal, let us put on record some relevant provisions of the Railways Act, 1989. Section 2 (29) of the said Act defines "passenger" to mean a person travelling with a valid pass or ticket. Section 123 (c) defines the term "untoward incident". For the sake of determining the issue involved in the instant case, it needs to be noted that untoward incident is defined to include the accidental fall of any passenger from a train carrying passengers. Section 124-A of the Railways Act deals with compensation on account of untoward incidents and prescribes that when in the course of working a railway, an untoward incident occurs, then irrespective of the fact that as to whether it was account of wrongful act, neglect or default on the part of railway administration, bonafide passenger is entitled for compensation as prescribed. Proviso clause of section 124-A carves out exception and provides that if a passenger dies or suffers injuries due to suicide or attempted suicide, on account of self-inflicted injury or by his own criminal conduct or due to any act committed

by him in a state of intoxication or because of insanity or any natural cause or disease etc., dependent legal heirs of such passenger or such injured passenger shall not be entitled for compensation.

10. Undisputedly, section 124-A of the Railways Act, 1989 provides for compensation to the victims of untoward incident and it is a piece of social welfare legislation. Mr. Agrawal, learned Counsel for appellant rightly placed reliance on judgment of the Supreme Court in **Prabhakaran (Supra)** for contending that approach of the learned Tribunal in such cases should be to liberally interpret the provisions of welfare legislation. Bare perusal of scheme of section 124-A of the Railways Act, 1989 makes it clear that injured bonafide passenger or his legal representative, in the event of his death are entitled for compensation from railways irrespective of the fact as to whether there exists any negligence or default on the part of railways. Thus, section 124-A provides for strict liability or no fault liability in the event of

injury or death of bonafide passengers. A person resorting to the scheme of this welfare legislation is entitled for compensation even if he has contributed to any happening of untoward incident of accidental falling from the train. Injury caused to himself because of his own negligence is not covered by the proviso to section 124-A of the Railways Act, 1989, so as to dis-entitle him from claiming compensation. In other words, if bonafide passenger suffers from injury or dies in the course of his travel, presumption can be drawn that he suffered injury in an untoward incident.

11. Keeping in mind these principles, let us now examine evidence on record. At the outset it needs to be put on record at the cost of repetition of the learned Tribunal while answering issue No.2 has arrived at a conclusion that applicant – Vasant Bagre was bonafide passenger in Miraj-Hubli express on 11.01.2000. This finding has attained finality as same is not subjected to challenge by the respondent. Now let us examine whether

the applicant met with an untoward incident in the night intervening 11.01.2000 and 12.01.2000; when he was bona fide passenger of the Miraj-Hubli express in that night.

12. It is a specific case of applicant that he boarded Miraj-Hubli express at about 11.30 p.m. and met with an accident sustaining injuries at about 00.50 hours of 12.01.2000.

13. Evidence of claimant-applicant Vasant is perfectly in tune with his pleadings. In his evidence, he has categorically stated that he boarded Miraj-Hubli express at 23.50 hours of 11.01.2000 with his co-worker Babu Mane and subsequently at about 00.50 hours of 12.01.2000 due to sudden jerk he fell down from the running train and his both legs were cut-off being run-over by wheels of that running passenger train. This eye-witness was disbelieved by the Tribunal by holding that there is cogent evidence coming on record from the mouth of Mr. B. Ravi, Asstt. Station Master and Mr.

Jaiprakash Ratan-Passenger Guard about non-happening of an untoward incident. Lack of corroboration to the evidence of the applicant appears to have weighed mind of the learned Tribunal in rejecting the claim. Now let us examine whether evidence of the non-applicant can outweigh evidence on record tendered by the injured applicant.

14. Let us now peruse cross-examination of applicant-Vasant Bagre in order to see whether his evidence about an untoward incident is shattered in any manner. Perusal of six line cross-examination of this witness shows that his evidence to the effect that he was bona fide passenger of Miraj-Hubli express and suffered accidental fall is not at all shattered in the cross-examination. What was suggested to him on this aspect is that he had not purchased ticket and that he had not sustained injuries in the rail accident. Both these suggestions were out-rightly denied by the applicant. Suffice to state that in such situation, there was no way

out left but to accept trustworthy and truthful evidence of injured victim who himself was eye-witness to the incident in question. At this juncture, it is apposite to state that in interpreting such welfare legislation, it is settled position of law that applicant/claimant is only required to prove accident as when witnesses to such accident cannot be said to be under control of such victim of the accident.

15. Though I have already held that evidence of injured applicant does not require any corroboration, perusal of record shows that same is duly corroborated by ample evidence on record. After sustaining injuries in the accidental fall, the applicant was taken to hospital of Dr.Umarani at Gokak which is stated to be 40 km away from Raybag railway station. Discharge card of the applicant is at record page A-64 and same is duly proved by Dr. Umarani. This contemporaneous document shows history of sustaining injury by the applicant. On 12.01.2000 itself it was recorded in the medical case

papers that the applicant has suffered injuries because of running over by a train. As such, it cannot be said that story of sustaining injuries in accidental fall from the passenger train is subsequently concocted by the applicant.

16. It is evidence of Dr. Umarani that on 12.01.2000 at about 11.05 a.m. injured Vasant Bagre was brought to his hospital by one Babu Mane with history of running over by train at Raybag railway station. This is a substantive evidence which remained unshattered in cross-examination. It duly corroborates version of injured claimant.

17. Injury certificate of the applicant issued by Dr. Umarani is at record page A-63. It is duly proved by Dr. Umarani. This injury certificate as well as version of Dr. Umarani shows that because of running over by a train, applicant suffered amputation of right feet as well as amputation of left leg on upper third. The

injuries suffered by the applicant proved by treating medical expert had corroborated version of the applicant that he suffered accidental fall from the passenger train in night intervening 11.01.2000 and 12.01.2000.

18. Now let us see what witnesses for non-applicant states and whether their testimony can outweigh evidence of the applicant. Congruous version of Mr.B.Ravi, Asstt. Station Master and Jaiprakash Ratan-Passenger Guard shows that there was no untoward incident at Raybag railway station by train No.7302 in night intervening 11.01.2000 and 12.01.2000 and neither driver nor any person has brought to notice any such untoward incident of accident. Both of them have stated that they were on duty as Asstt. Station Master at Raybag railway station and as a Guard on the passenger train respectively. None of them have stated in their chief-examination that they were vigilant and had a personal watch on the events happening at the Raybag railway station at the time of arrival and departure of said train. Merely because nobody had

reported them about the untoward incident, they are stating that no untoward incident had happened at the said railway station. This vague evidence by no stretch of imagination could be treated as sufficient material to dislodge trustworthy version of the injured application, having due corroboration from other material on record.

19. Even evidence of Jaiprakash Ratan duly corroborates the version of the injured applicant. His cross-examination reveals that in the night intervening 11.01.2000 and 12.01.2000, said train arrived little late at Raybag railway station. His evidence shows that train arrived late and at 00.56 hours of 12.01.2000. Evidence of injured applicant does show that he suffered accidental fall at about 00.50 hours of 12.01.2000. This timing of arrival of the train shows that evidence of injured applicant has a ring of truth.

20. Much capital was sought to be made out of the fact that evidence of Dr.Umarani shows that even though

the applicant arrived at his hospital after about 10 hours from the time of accident, his wounds were found to be fresh. Similarly finding of small stones on the wounds were sought to be capitalized to argue that incident happened somewhere else. However, such submissions are totally devoid of any substance. No attempts were made while cross-examination of Dr. Umarani to bring on record as to what wound should be treated as fresh wound and what should be treated as stale wound. It is not brought on record that with passage of ten hours, wound reflecting amputation would turn to stale wound. Similarly, the applicant after his accidental fall was required to be taken up to the hospital at Gokak. As such, finding of small stones on his wound cannot be construed to mean that accident did not happen on railway track. It might be the development in the journey to the hospital. Conjectures and surmises play no role while arriving at conclusion.

21. Net result of foregoing discussion requires me

to hold that the applicant who was a bonafide passenger of Miraj-Hubli express in the night intervening 11.01.2000 and 12.01.2000 met with an untoward incident because of his accidental fall from that passenger train resulting in amputation of his both legs. Medical evidence adduced on record shows that right feet of the applicant was amputated and his right feet was amputated at upper third level. In exercise of power conferred by Section 129 of the Railways Act, 1989, the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 are framed by the Central Government. Schedule annexed thereto deals with the quantum of compensation payable on account of death or injury to bonafide passenger. For double amputation through leg or thigh or amputation through leg or thigh on one side and loss of other foot entitles injured to statutory compensation of Rs.4 lakhs. As such, the applicant is found to be entitled for compensation of Rs.4 lakhs. In addition, in view of judgment of the Supreme Court in the matter of Thazhathe Purayil Sarabi & Ors. Vs. Union of India &

Anr., AIR 2009 SC 3098, the applicant is entitled for interest at the rate of 6% p.a. from the date of application.

22. In view of foregoing reasons, impugned judgment and award of learned Railway Claims Tribunal, Nagpur in Claim Application No. 178/OA-II/RCT/NGP/2003 between the parties passed on 16.02.2006 is quashed and set aside. Claim application is allowed. Respondent-Union of India is directed to pay compensation of Rs.4,00,000/- (Rupees Four Lakhs) to the applicant along with interest at the rate of 6% p.a. from the date of application till its realization. No order as to costs.

[A.M. BADAR, J.]