

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

First Appeal No. 01341 of 2018

District : Nanded

Mohd. Saber s/o. Mohd. Illyas,
Age : 45 years,
Occupation : Nil,
R/o. Sumayya Nagar,
Near Masjid, Taroda,
Nanded.

.. Appellant
(Original
applicant)

versus

Union of India,
Through General Manager,
South Central Railway,
Secunderabad (Andhra Pradesh)

.. Respondent

.....

*Mr. Pavankumar S. Agrawal, Advocate, for the
appellant.*

Mr. D.V. Soman, Advocate, for the respondent.

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CORAM : SMT. VIBHA KANKANWADI, J.

**Date of reserving the
judgment : 13th June 2019**

**Date of pronouncing the
judgment : 10th July 2019**

JUDGMENT :

01. Present appeal has been filed by the original applicant, challenging the judgment and award passed in Claim Application No.

OA(IIu)/NGP/2015/0291, passed by learned Railway Claims Tribunal, Nagpur Bench, on 01-02-2018, whereby the claim for compensation filed by the present appellant came to be dismissed. *[Parties are referred as per their nomenclature before the Tribunal.]*

02. Present appellant had claimed that he had boarded Mumbai-Secunderabad Devgiri Express, Train No.17057 from platform no.02 of Nanded Railway Station, in the morning time of 10-11-2014. He was supposed to go to Umri. However, due to heavy rush in the train, he stood near the door of the compartment. When the train was entering Umri Railway Station, due to sudden jerk to the running train, he was thrown out and slipped from the train, as a result of which, he fell down between platform and the running train. His right leg and left hand got cut and he became unconscious. He was immediately admitted to Government Hospital at Umri and then shifted to J.J. Hospital at Mumbai for further treatment. As he has suffered injuries because of the train accident, he had filed the said application for compensation.

03. The respondent - railway contested the claim. It was contended that the injuries suffered by applicant are not arising out of 'untoward incident' defined under Section 123(c) of the

Railways Act, 1989. It was stated that no such incident causing injury to the applicant within the meaning of Section 124(a) of the Railways Act had taken place and, therefore, the claim application itself is not maintainable. Other averments in the application have been denied. It was specifically contended that the applicant is not entitled to get any amount of compensation.

04. Taking into consideration the rival contentions, parties have led oral as well as documentary evidence. After hearing both sides, the learned Tribunal has come to the conclusion that the applicant is not a bona fide passenger of the train on the relevant day. So also, he has not received injuries in any untoward incident and, therefore, as aforesaid, the claim application was dismissed. Hence, present appeal.

05. Heard learned Advocate Mr. P.S. Agrawal appearing for the appellant/ original applicant. So also, heard learned Advocate Mr D.V. Soman appearing for the respondent.

06. It has been vehemently submitted on behalf of the applicant, that the applicant has produced the original ticket at Exhibit A-1 to show that he had purchased the ticket and he was a bona fide passenger. In fact, when he had entered the railway

station platform, he was supposed to take ticket and the railway authorities had not detected him as a passenger travelling without ticket. Therefore, an inference can be drawn that he was travelling with valid ticket. In order to support his submissions, he has relied on the decision in *Union of India Vs. Prabhakaran Vijaya Kumar & others* [AIR 2009 SC (Supp.) 383], wherein it has been held that *"The expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger i.e. a passenger travelling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive and not literal interpretation should be given to the expression."* Further, in *Union of India Vs. Bimala wd/o. Pintho Tudu & others* [2012(3) Mh.L.J. 883], this High Court, Bench at Nagpur, has held that *"Fact that the deceased was not detected as passenger travelling without ticket, would give rise to an inference that he was travelling with valid ticket. Unless the negative is proved or there is evidence, may be, circumstantial in nature, that the deceased was not holding valid ticket, it would be desirable, to presume that deceased was authorised passenger."* Further, in *Union of India Vs. Nandabai w/o. Sheshrao Dangat & others* [2015(6) Mh.L.J. 295], this Court, Bench at Nagpur, has observed, that *"Merely because railway ticket was not recovered from dead body, it cannot be said that deceased was travelling without ticket. Possibility that ticket may have been lost during course of untoward incident cannot be ruled out and, therefore, presumption need to be drawn that the deceased was a*

bona fide passenger." Similar view was taken in *Union of India Vs. Hari Narayan Gupta & another* [AIR 2007 Rajasthan 38], *Smt. Vaishali Wd/o. Nitesh Bhalerao Vs. Union of India* [2010(5) ALL MR 726], *Maniben Paljibhai Parmar Vs. Union of India* [MANU/MH/1494/2004]. Learned Advocate for the appellant has further submitted that the learned Tribunal has wrongly held that the injuries were self-inflicted injuries when he himself has given the story about the accidental fall. The facts have been unnecessarily stretched by the Tribunal to hold that it was not an untoward incident.

07. Per contra, learned Advocate representing the respondent has supported the reasons given by the Tribunal and submitted that when immediately after the accident, when RW 01 G. Venkateshwara Rao, who was the Guard, reached the spot, at that time, he had not found ticket on the person of the applicant. There was no alarm, chain pulling or any unexpected jerk and even there was no rush in the train. The testimony of this person has been rightly believed by the learned Tribunal. In fact, as per the report of D.R.M., the applicant had tried to alight from a running train, when he was travelling from the foot board. In fact, that is an offence under Section 156 of the Railways Act. The said accident occurred due to the negligence on the part of the applicant himself for which the railway is not responsible to compensate. In order to

support his contentions, he relied on the decision in *Geeta & others Vs. Union of India* [2013 SCC OnLine Del. 2168] and *Gurcharan Singh & others Vs. Union of India* [2014 SCC OnLine Del. 101] and further in *Jamirul Nisha & another Vs. Union of India* [2008 SCC OnLine Del. 320]. In all these cases, after considering the similar facts, the Delhi High Court had come to the conclusion that the applicant was a bona fide passenger, however, the factum of his death / injury has not been proved in an untoward incident. In that case also, deceased / injured had tried to alight from running train.

08. Taking into considering the rival contentions, following points are arising for determination. Findings and reasons for the same are as follows :-

(I) Whether the applicant was a bona fide passenger on the date of the incident ?

(II) Whether the applicant had sustained injuries in an untoward incident, as contemplated under Section 123(c) of the Railways Act, 1989 ?

(III) Whether the applicant is entitled to get compensation ? If yes, to what extent ?

All the points are taken up together for discussion

for the sake of convenience and to avoid repetition.

09. Now, as to whether the applicant can be said to be a bona fide passenger of the train, it can be seen from the ticket that has been produced at Exhibit A-1, that it is validly issued. No contrary evidence has been produced by the respondent to show that the said document produced as ticket, is forged. Unless proof about the forgery or, in other words, that it is not a genuine ticket, is positively adduced, the said inference cannot be drawn which the respondent intends to draw. When the applicant has stated that he had purchased the ticket and then he has produced it on record straightway, in fact, the learned Tribunal ought to have held that he is a bona fide passenger. However, it appears that the learned Tribunal unnecessarily went on to discuss that when the Constable or Guard had been to the spot immediately after the accident, they could not find anything on the person of the deceased in the form of ticket.

10. The ratio laid down in the authorities those have been cited by the learned Advocate for the applicant are definitely applicable here. When the applicant was not caught by Ticket Collector for travelling from the train without ticket, it will have to be presumed that he had bought valid ticket. The ratio in the authorities relied by the

respondent, the facts before the Delhi High Court, would not show that the applicants therein had produced on record a ticket. Here, the basic difference is that original ticket has been produced on record. Therefore, to that extent, it can be said that there was error on the part of the Tribunal to come to the conclusion that the applicant was not a bona fide passenger. In *Union of India Vs. Rina Devi* [AIR 2018 SC 2362], the Hon'ble Supreme Court has dealt with the point "Burden of proof when body found on railway premises - Definition of 'passenger'". The conflicting decisions on the subject were noted and it has been observed thus :-

" We thus hold that mere presence of a body on the Railway premises will not be conclusive 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. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly. "

Taking into consideration these observations, when in this case, the original ticket itself is produced and no contrary evidence about it being fake

document, it will have to be held that the applicant was a bona fide passenger.

11. It is to be noted that the applicant has examined himself only and then has produced the ticket. Respondent - railway has examined Guard of the said train from which the applicant was travelling. Further, the enquiry documents have also been produced for perusal of the Tribunal. At the outset, it can be said that there appears to be no dispute that the applicant was found in injured condition and further it is also not in dispute, that RW 01 G. Venkateshwara Rao noticed that one unknown male person fell down and got injured. He had fallen from Mumbai-Secunderabad Devgiri Express, Train No. 17057 on 10-11-2014 at Umri Railway Station platform no.01. As per the contention of the applicant, when the train was entering Umri Railway Station, at that time, there was a sudden jerk to the train, as a result of which, as he was travelling from the door of the compartment, he fell down. According to him, there was heavy rush and, therefore, he had no option but to travel from the door of the compartment. In order to support his said contention, he has not examined anybody. Therefore, except interested words of the applicant, that there was heavy rush and he had no place to sit in the compartment, he was rather constrained to travel from the door of the compartment, there is

nothing on record. There is no evidence except the statement of the applicant that there was a sudden jerk to the train. The Guard of the said train i.e. RW 01 G. Venkateshwara Rao is denying the said fact. Under such circumstance, when there is word against word, some more evidence ought to have been led by the applicant who wants to canvass that it was an untoward incident. One more fact that is also required to be considered in mind, that the train was entering Umri Railway Station. Under such circumstance, we can take note of a fact that the speed of the train might have been more or would have been slowed down as it had started entering the railway station. Then what was the reason for the jerk, would be a question. No doubt, since applicant was travelling from a compartment, he could not have got knowledge about the reason why there was a jerk if that fact is to be believed. Under such circumstance, when some more evidence was required, it has not been led by the applicant. This fact can be tested from another angle also. If there was heavy rush in the compartment from which injured applicant was travelling, then immediately after he fell down, some passenger would have pulled the chain in order to save the applicant. There is no suggestion to the Guard, that the jerk was prior to falling of the applicant and it was due to sudden pulling of chain. In fact, the train was about to stop on the platform. Under such circumstance, why

one should pull the chain. Therefore, the reason for the unexpected jerk cannot be gathered. On the contrary, there appears to be substance in the defence that has been taken, that the applicant was travelling without any reasonable ground from the foot board of the compartment and then he had tried to alight from a running train. It is required to be considered whether this act of applicant is 'untoward incident' or not.

12. Section 123(c) of the Railways Act defines '*untoward incident*'. In the said provision, accidental fall of any passenger from a train has been covered. However, Section 124A of the Railways Act deals with '*liability of the railway to pay compensation on account of untoward incident*'. It has been specifically provided that no compensation is payable by the Railway Administration if the passenger suffers injury due to (a) (b) self-inflicted injury (c) his own criminal act (d) (e) Thus, for our consideration, taking into consideration the finding arrived at earlier, that the evidence shows that the applicant had tried to alight from running train, is required to be considered as to whether it is self inflicted injury or his own criminal act, disentitling him compensation.

13. The decisions relied by the learned Advocate

for the respondent are of various High Courts, that too, from 2008 to 2014. However, in this case, now the position stands clarified by the Hon'ble Supreme Court in *Rina Devi's case* (*supra*). The Hon'ble Supreme Court has explained "*Application of principle of strict liability - Concept of self inflicted injury*". The decision by High Court of Kerala in *Joseph PT vs. Union of India* [AIR 2014 Kerala (12)], this Court's decision in *Pushpa Vs. Union of India* [(2017) III ACC 799 (Bom.)] and Delhi High Court's decision in *Shayam Narayan Vs. Union of India* [(2018) ACJ 702], were considered and it has been held thus :-

" We are unable to uphold the above view as the concept of 'self inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. We may in this connection refer to judgment of this Court in *United India Insurance Co. Ltd. Vs. Sunil Kumar* [2017 (13) SCALE 652] laying down that plea of negligence of the victim cannot be allowed in claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988. **Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor.** " [Stress supplied by me]

Thus, above portion which has been stressed clearly indicates the legal position explained by the Hon'ble Supreme Court, that in case of injury in the course of boarding or de-boarding a train would be an '*untoward incident*' entitling a victim to compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor. Therefore, it was not held to be covered under self inflicted injury in Section 124A of the Railways Act. Further, it cannot be said to be a criminal act intentionally done. For a criminal act to come under Section 124A of the Railways Act, there has to be an intention either to cause loss to anybody else or to himself or to the railways in respect of its property. Therefore, though in *Shayam Narayan's case (supra)*, act of criminal negligence was considered, yet, the Hon'ble Supreme Court did not approve the view taken by the Delhi High Court. In view of the said clear legal position, it is held that the present appellant is entitled to get compensation. Points no.02 and 03 are answered accordingly.

14. Now, turning towards the quantum that can be awarded, a note of the judgments and law laid down by the Hon'ble Supreme Court in *Rathi Menon Vs. Union of India* [AIR 2001 SC 1333], *N. Parameswaran Pillai Vs. Union of India & another* [AIR 2002 SC 1834] and *Thazhathe Purayil Sarabi & others Vs. Union of India & another* [AIR 2009 SC 3098] is required to

be taken. In *Rathi Menon's case (supra)*, it was held that "The compensation must be fixed as per what on Rules prescribed at the time of making the order for payment of compensation and not in terms of money value which prevailed on date of accident." The observations are, "The relevance of the date of untoward incident is that the right to claim compensation from the Railway Administration would be acquired by the injured on that date. The statute did not fix the amount of compensation, but left it to be determined by the Central Government from time to time by means of rules. Hence the time of ordering payment is more important to determine as to what is the extent of the compensation which is prescribed by the rules to be disbursed to the claimant." Thereafter, in *N. Parameswaran Pillai's case (supra)*, it was held that in view of authoritative pronouncement made in *Rathi Menon's case (supra)*, the appellants were entitled to enhancement in the compensation. In that case, the legal representatives of the deceased had claimed compensation of Rs. 2,00,000/- but then in the meantime, the Central Government had enhanced the compensation and, therefore, enhancement was granted. In *Thazhathe Purayil Sarabi's case (supra)*, it was a point regarding interest to be paid and it was held that the interest can be awarded either from the date of claim or from the date principal sum adjudged to be payable and/or awarded.

15. Here, in this case, the untoward incident

had taken place on 10-11-2014 and, therefore, compensation that was claimed was to the tune of Rs. 4,00,000/-. However, Ministry of Railways by notification dated 22nd December 2016, enhanced compensation for loss of hand and foot to the tune of Rs. 8,00,000/-. The petition claiming compensation was filed on 21-10-2015 and it was decided on 01-02-2018 by the Tribunal. Under such circumstance, taking into consideration the date of making order for payment of compensation i.e. today, the notification which has come in force on 22nd December 2016, is required to be made applicable in view of the above said pronouncements by the Hon'ble Supreme Court and in view of the decision in *Thazhathe Purayil Sarabi's case (supra)*, interest that is required to be granted is 6 % simple interest per annum from the date of the application till the date of award and thereafter at the rate of 9 % per annum till the date of actual payment of the same. Taking into consideration these reasons, the appeal deserves to be allowed.

16. Hence, the following order :-

(a) The first appeal is hereby allowed.

(b) The judgment and award passed by learned Railway Claims Tribunal, Nagpur Bench, in Claim Application No. OA (11u)/NGP/2015/0291, dated 01-02-2018, is

hereby set aside. The said claim stands allowed. The respondent is directed to pay compensation of Rs. 8,00,000/- [Rupees eight lacs] together with interest at the rate of 6 % per annum from the date of the application till the date of the award i.e. today and thereafter, at the rate of 9 % per annum till the date of actual payment of the same to the applicant. The respondent shall pay costs of Rs. 10,000/- [Rupees ten thousand] to the applicant.

(c) After the said amount is deposited, an amount of Rs. 3,00,000/- (Rupees Three Lacs Only) be deposited in any nationalized Bank of the choice of applicant for a period of 5 years. Rest of the amount be given to him by account payee cheque. After the maturity of fixed deposits, the entire amount with interest be given applicant, without waiting for any order from Court.

(d) Award be drawn accordingly.

(Smt. Vibha Kankanwadi)
JUDGE

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