

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO. 270 OF 2021

Rukhmabai (Rukhminabai) wd/o Baban Kande,
aged about 50 years, Occ. Nil,
R/o Pardi (Nimbi), Taluka Pusad, Dist. Yavatmal.

...APPELLANT

Versus

The Union of India,
Through General Manager,
Central Railway, CST Mumbai.

...RESPONDENT

Shri R.G. Bagul, Advocate for the appellant.
Shri N.P. Lambat, Advocate for the respondent.

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CORAM : PUSHPA V. GANEDIWALA, J.
DATED : SEPTEMBER 01, 2021.

ORAL JUDGMENT :

Heard finally with the consent of learned counsel
appearing for the parties at the stage of admission itself.

2. This is the appellant's/ claimant's Appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987 ("the Act") assailing the judgment and award dated 10/12/2015 passed by the Member (Judicial) and Member (Technical), Railway Claims Tribunal, Nagpur Bench, Nagpur in

Case No. OA (IIu)/NGP/2012/0289, whereby the Tribunal has dismissed the claim of the appellant/ claimant for compensation of Rs.3,60,000/-.

3. The short question for consideration of this Court is as under :

Whether the appellant Rukhmabai is entitled to receive statutory compensation for the injury - left leg amputated from above the knee ?

4. It is stated that on 20/01/2021, the appellant/ claimant for performing journey from Akola to the religious place at Shegaon, had purchased one railway ticket bearing No. M 53726466 dated 20/01/2021 from Akola to Shegaon and boarded train No. 12810 – Howrah Mumbai Mail. There was a heavy rush in the bogi of the train.

5. It is the case of the appellant/ claimant that before the train reaches and stops at Shegaon railway station, due to

the sudden unexpected jerk and push of passenger, who were tried to alight at Shegaon railway station, she fell down from the running train at platform No.2 at Shegaon railway station, thereby sustained severe injuries to her both legs and other parts of the body. That after receiving first aid treatment at Shegaon, she states that she was transferred to the Akola Government Medical College & Hospital, and then again admitted in the Arvind Hospital and Accident Rehabilitation Academy at Akola. That due to severe injuries, she states that her left leg was amputated from above the knee and her right leg was treated for traumatic fracture and steel rod was inserted. That she filed a claim petition claiming Rs.3,60,000/- with interest towards compensation.

6. The respondent/ railway administration, through their written statement, resisted the claim of the appellant/ claimant on the ground that it is not a case of untoward incident, and she was not a bonafide passenger, and therefore, the railway administration is not responsible to pay any compensation to her.

7. The Tribunal framed necessary issues and recorded evidence as adduced by the parties. The appellant/ claimant examined herself below Exh. AW-1, while the respondent/ railway administration examined one Pundlik Gomaji Kurzekar, working as Deputy Station Superintendent, Badnera at the relevant time below Exh. RW-1.

8. The Tribunal, on the basis of oral and documentary evidence on record, recorded the finding that the appellant/ claimant has failed to prove that at the relevant time, there was an untoward incident occurred in the aforesaid train. The Tribunal also recorded that she was not a bonafide passenger. This judgment is impugned in this Appeal.

9. I have heard Shri Bagul, learned counsel for the appellant and Shri Lambat, learned counsel for the respondent. I have also perused the record with the assistance of learned both the counsel.

10. Shri Bagul, learned counsel for the appellant/claimant, reiterated the case as is before the Tribunal, and submits that the Tribunal has grossly erred in not considering the oral and documentary evidence on record in its proper perspective. He submits that the appellant is entitled to receive compensation as per entry 16 of Schedule 2 of The Railway Accidents And Untoward Incidents (Compensation) Rules, 1990 (**“Rules of 1990”**), and thus, he urged to quash and set-aside the impugned judgment and award.

11. Shri Lambat, learned counsel for the respondent, while supporting the impugned judgment and award, submits that in case this Court comes to the conclusion that the appellant is entitled to compensation, the case of the appellant would fall under entry 18 in the aforesaid Schedule.

12. I have considered the submissions put forth on behalf of both the sides.

13. At the outset, the appellant/ claimant, in her pleadings and evidence, has stated that on 20/01/2012, for performing journey from Akola to Shegaon, she had purchased a railway ticket bearing No. M53726466 dated 20/01/2012. In support of this pleading, she has produced on record the original ticket below Exh. A/1. Perusal of the said ticket would indicate that the date of journey mentioned in it was 20/01/2012, and the said ticket was purchased for Rs.116/-. The said ticket is verified as a genuine ticket vide report of the Deputy Station Manager, Shegaon (Central Railway).

14. From her cross-examination, nothing could be illicitated to show that she was not the bonafide passenger to the aforesaid train and that the aforesaid ticket is not a genuine ticket.

15. With regard to the untoward incident, a perusal of the record and proceedings of the Tribunal would reflect that at so many places, it has been stated that the appellant/ claimant, while travelling in the aforesaid train, fell down from train and

sustained injuries. That apart from the pleadings and evidence, the said fact can be found from a communication dated 07/05/2013 issued by the Divisional Railway Manager, Bhusaval to the Chief Claim Officer, CST, Mumbai (Central Railway) at page A-19, a communication dated 19/02/2013 issued by the Inspector, R.P.F. Akola (Central Railway) to the Divisional Railway Manager, Central Railway, Bhusaval at page A/21, Station Diary entry at Railway Station, Shegaon at page 26, extracts of movement diary at page A-33 and spot panchanama at page A-37, and therefore, the finding recorded by the Tribunal that the injuries sustained by the appellant/claimant were self-inflicted and not due to the untoward incident, is clearly erroneous.

16. With regard to the injuries sustained by the appellant/ claimant, the discharge card on record below Exh. AW1/6 indicates the following injury :

Post traumatic amputation towards left leg with sub
trenchantheric femer.

The photograph of the appellant/ claimant, which is placed on record at page A-39, would show that one of her legs is totally amputated from the middle of her thigh.

17. As per Schedule appended to the Rules of 1990, the entry 16 is with regard to compensation of Rs.7,20,000/- for amputation at hip. That entry 17 is with regard to compensation of Rs.6,40,000/- for amputation below hip with stump not exceeding 5” in length measured from tip of great trenchanter. That entry 18 is with regard to compensation of Rs.5,60,000/- for amputation below hip with stump exceeding 5” in length measured from tip of great trenchanter but not beyond middle thigh.

18. As can be seen from the facts and circumstances of the case, the amputation appears to be below the hip with stump exceeding 5” in length measured from tip of great trenchanter but not beyond middle thigh, and hence, the case of the appellant/ claimant falls under entry 18 for which the prescribed compensation is Rs.5,60,000/-.

19. For the aforesaid reasons, I pass the following order :

ORDER

- i. The Appeal is allowed.
- ii. The impugned judgment and award dated 10/12/2015 passed by the Member (Judicial) and Member (Technical), Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (Iiu)/NGP/2012/0289, is quashed and set-aside.
- iii. The respondent/ railway administration to deposit Rs.5,60,000/- with the Registry of this Court within a period of twelve weeks from the date of copy of this order is received by the concerned authority. After deposit of the said amount, the appellant/ claimant is permitted to withdraw the same.

JUDGE

Sumit