

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.50 OF 2021

APPELLANT:

(On R.A.)

Jitendra S/o Sitaram Raut
(Died during pendency of case)
Legal heir i.e. His Mother
Prabhabai wd/o Sitaram Raut,
Age about 60 years, occu.Pensioner,
R/o. Halbitola, Tah. Salekasa,
Dist. Gondia. (Mah) Pin-441916.

... Versus ...

RESPONDENT:

(On R.A.)

Union of India,
Through the General Manager,
South East Central Railway,
Bilaspur (C.G.).

Shri R.G. Bagul, Advocate for the Appellant.
Shri Z.S. Shekhani, Advocate h/f Shri R.G. Agrawal, Advocate for the Respondent.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE OF JUDGMENT : 26th FEBRUARY, 2021

ORAL JUDGMENT:-

This appeal under Section 23 of the Railway Claims Tribunal Act, 1987 challenges the judgment and award dated 13/12/2019 passed by the Railway Claims Tribunal, Nagpur in Claim Application No.OA(IIu)/NGP/2015/0043. By the impugned judgment and award, the Railway Claims Tribunal has dismissed the claim petition filed by Jintendra Raut, the son of the present Appellant.

02] Heard learned Counsel for the respective parties. I have perused the records. The son of the Appellant had filed the claim petition on the ground that he had sustained injuries in an untoward incident on 18/06/2014. It was the case of the Claimant that, on the relevant date, he he was travelling from Gondia to Salekasa by Itwari-Tata Nagar Passenger Train on a valid ticket. He fell down from the train due to heavy rush of passengers. He was admitted in the hospital and his left leg below the knee, right thumb and right index finger had to be amputated because of the injuries sustained in the said accident. He had also sustained head, chest and pelvic bone injuries and had to do plastic surgery was on hip. The Claimant claimed that he was a *bona fide* passenger and that he had sustained the said injuries in an untoward incident and hence, filed a claim petition for compensation.

03] The injured died during the pendency of the proceedings. The Appellant, who is the mother of the Claimant, was brought on record as the legal representative. She claimed that the death of the Claimant was on account of the injuries sustained in the said accident. The Railway Claims Tribunal after considering the evidence adduced by the Appellant dismissed the claim petition mainly on the ground that it was not a case of untoward incident and that the deceased was not a *bona fide* passenger. Being aggrieved by this judgment, the Appellant has filed this appeal under Section 23 of the Railway Claims Tribunal Act.

04] Since, there was no evidence to prove that the deceased had expired as a result of the injuries sustained in the accident, the Appellant has restricted the claim to the injuries sustained by the Claimant in an untoward incident.

05] The short point falling for consideration is whether the deceased had sustained injuries in an untoward incident and whether he was a *bona fide* passenger.

06] It is to be noted that the statement of the Claimant was recorded on the same day, while he was admitted in the hospital. He had stated that on 17/06/2014, he and his mother had gone to Gondia from Salekasa and had visited his brother Ravindra at Gondia. His mother had returned to the village by Itwari Passenger Train. He stayed back due to some work. On the next day, he purchased a ticket from Gondia to Salekasa to return to his village by Itwari Tata Nagar Passenger Train. He had stated that he had entered into the train after its arrival. There was heavy rush in the train and there was no place to sit hence, he stood near the door of the train. He had stated that as the train was moving, he slipped from the train and fell down and came under the train due to which his left leg below the knee, thumb and index finger of right hand had to be amputated. This statement, which was recorded immediately after the accident, clearly indicates that the

Claimant was a *bona fide* passenger and that it was a case of untoward incident. The police records also indicated that the Claimant was found in an injured condition near West Cabin Gondia Railway Station. He was shifted to KTS Hospital by GRP, Gondia. The statutory report and medical case papers record the history of fall from the running train. Thus, the initial burden stands discharged. The Railway Authorities have not adduced any evidence to rebut the evidence. From the facts and attending circumstances, it is evident that the Claimant – Jintendra Raut was a *bona fide* passenger and that he had sustained injuries in an untoward incident.

07] The Apex Court in ***Union of India Vs. Rina Devi*** reported in ***(2019) 3 SCC 572*** has held 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.

08] In the instant case, the material on record indicates that the injured was shifted to KTS Hospital at Gondia and thereafter he was shifted to Government Medical College, Nagpur. The medical report particularly the

discharge card of Government Medical College, Nagpur, reveals that left leg below knee, thumb had to be amputated. The amputation of leg below knee and amputation of thumb are scheduled injuries and as per the schedule, the compensation payable is Rs.4,00,000/- and Rs.2,40,000/- respectively. Considering the fact that the Claimant had also sustained other injuries viz. amputation of index finger, head injury, pelvic injury and had undergone plastic surgery, the Claimant would be entitled for additional compensation of Rs.1,00,000/- in respect of these injuries.

09] Under the circumstances, the appeal is allowed. The Appellant is held to be entitled for total compensation of Rs.7,40,000/- (Rupees Seven Lakhs Forty Thousand Only). The Respondent shall deposit the said amount within a period of three months.

10] The appeal stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

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