

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

FIRST APPEAL NO. 236 OF 2011

The Union of India,
through the General Manager,
Central Railway, Mumbai CST

...APPELLANT

VERSUS

Umesh s/o Liladhar Dhakite
Age 19 years, Occ. Student,
R/o. Ward No. 5, Narkhed,
Tah. Narkhed, Distt. Nagpur (M.S.)

...RESPONDENT

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

**CORAM : PUSHPA V. GANEDIWALA, J.
DATED : OCTOBER 05, 2021.**

ORAL JUDGMENT :

Heard.

2. The appellant takes exception to the Judgment and Award passed by the Railway Claims Tribunal, Nagpur in Application No.OA-II(u)No.162/RCT/NGP/2008, whereby the learned Judicial Member of the Tribunal granted compensation of Rs.2,00,000/- (Rs. Two lacs only) to the respondent/claimant towards injury i.e. amputation below knee, he has suffered in an 'untoward incident'.

3. The facts in brief leading to filing of the present appeal may be stated as under:

A] The respondent filed a claim petition before the Railway Claims Tribunal, Nagpur stating therein that while he was traveling on 13/06/2008 from Katol to Narkhed by Bilaspur-H. Nizamuddin Gondwana Express, he fell down from the running train. It is his case that when the aforesaid train arrived at Katol railway station, he entered in general compartment of the train. There was a heavy crowd in the general compartment and the appellant since suffocated inside, came near the door. Due to suffocation, he was feeling giddy and he lost his balance and fell down from the running train. He came under the wheel and sustained injury to his right leg which resulted into amputation below knee.

B] The appellant/Central Railways in their written statement resisted the claim of the injured. In their defence, they state that the injured was traveling on footboard which is an offence under the Railways Act, 1989. Due to his own negligence, he fell down and, therefore, railway administration is not responsible for his negligence.

4. The learned Tribunal framed the necessary issues and recorded evidence as adduced by the parties.

5. The claimant has examined himself as AW-1 and the appellant/railway administration has also examined one witness as RW-1 by name Ashokkumar Tiwari, who was on duty as a guard of the train No.2409–Gondwana Express and RW-2 Dashrath Damodar Mahant, Deputy Station Superintendent, Katol Railway Station.

6. The learned Member of the Tribunal, on the basis of oral and documentary evidence on record, recorded finding that the appellant/claimant has proved that he sustained injuries in an untoward incident of an accident under Section 123(c) of the Railways Act, 1989 occurred on 13/06/2008. It is also held that the injured was the bonafide passenger of the aforesaid train. This judgment of the Tribunal is challenged by the Railway Administration in this appeal.

7. I have heard Shri Lambat, learned counsel appearing on behalf of the appellant and Shri Bagul, learned counsel appearing on behalf of the respondent/claimant. I have also perused the record with the assistance of learned both the counsel.

8. The learned counsel on behalf of both the parties submit that a short issue involved in this appeal as to whether the compensation to the injured to be assessed in terms of Clause 20 or Clause 22 of Schedule (Rule 3) of The Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 (hereinafter referred to as 'aforesaid Schedule').

9. The learned Tribunal, on the basis of medical documents on record, considered the amputation being below knee, assessed compensation as per Clause 20 of the aforesaid Schedule.

10. It is the contention of the learned counsel Shri. N.P. Lambat appearing on behalf of the appellant that the claimant has not proved that the amputation sustained by him was within 5 inches below knee. Conversely, Shri Bagul, learned counsel submits that the medical report is silent on this aspect, however, considering the photograph of the claimants which is attached to this application, it is obvious that the amputation below knee is not more than 5 inches.

11. The only point to be considered is whether the case of the injured is covered under Clause 20 of Schedule (Rule 3) of The Railway Accidents and Untoward Incidents (Compensation) Rules, 1990?

12. At the outset, there is no dispute that the accident occurred due to falling down of the passenger i.e. claimant from the running train, he sustained injuries and suffered amputation below knee. It is also not disputed that he was at the relevant time, was the bonafide passenger in the aforesaid train.

13. Learned Tribunal on the basis of medical papers have considered the Clause 20 of the aforesaid Schedule would be applicable to the case of the claimant.

14. For ready reference Clauses 20 and 22 of Schedule (Rule 3) of The Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 are reproduced below:

“(20) For amputation below knee with stump exceeding 3½” but not exceeding 5” - Amount of Compensation Rs.4,00,000/-.

(22) For amputation below knee with stump exceeding 5” - Amount of Compensation Rs.3,20,000/-.”

15. A perusal of the photograph of the claimant which is annexed to his application, it is amply clear that his amputation below knee with stump, though appears to be more than 3.5 inches but certainly it is not more than 5 inches. The learned counsel Shri. Lambat

also concedes for this observation. Medical papers are absolutely silent on this fact. In such circumstances, there cannot be found any fault with the findings recorded by the learned Member of the Railway Claims Tribunal. Therefore, the appeal being devoid of any merit, deserves to be dismissed and the same is accordingly dismissed.

16. At this stage, Shri Bagul, learned counsel appearing on behalf of the respondent drew attention of this Court to the Notification dated 22/12/2016 and so also the judgment of the Co-ordinate Bench of this Court in the case of Union of India, South Central Railway, through its General Manager, Secunderabad Vs. Prabhakar s/o Venkatrao Tadkalaskar (since died) through Legal Heir Shantabai w/o Prabhakarrao Tadkalaskar in First Appeal No.878 of 2009 decided on 17/02/2020 and submits that the respondent is entitled for compensation of Rs.4,00,000/-.

17. A perusal of the aforesaid judgment would reflect that this Court by relying on the judgment in the case of Bandana Mishra Vs. Union of India reported in 2017 ACJ 2447 and the judgment of this Court in First Appeal No.924/2010 decided on 06/08/2019 wherein on the basis of said notification dated 22/12/2016, compensation has been awarded.

18. Considering the aforesaid, the respondent/claimant herein is also entitled to receive compensation of Rs.4,00,000/- and, therefore, on this aspect, the judgment of the Railway Claims Tribunal, Nagpur, needs to be modified and the same is accordingly modified.

19. The appellant to deposit balance amount of compensation in terms of the aforesaid order, within a period of three months. Thereafter the respondent/claimant is permitted to withdraw the said amount with accrued interest thereon, if any.

JUDGE

**DB*