

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR
FIRST APPEAL NO. 1079 OF 2019**

Nilesh S/o Bhagwan Madke	)	
Aged about 29 years,	)	
Occ- Labourer, R/o Near No.3	)	
School, Belipura, Amaravati,	)	
Tq. Dist- Amaravati (M.S.)	)	 Appellant. (Original Claimant)

V/s

Union of India	)	
Through General Manager,	)	
Central Railway, CST Mumbai	)	 Respondent. (Original Respondent)

Mr. R.G. Bagul, Advocate for the Appellant.
Mr. Nitin P. Lambat, Advocate for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: SEPTEMBER 22, 2021

JUDGMENT:

1] This appeal is under Section 23 of the Railway Claims Tribunal Act, 1987.

2] The Tribunal vide impugned Judgment dated 17/01/2018 has rejected the prayer of the Appellant for grant of compensation in accordance with the provisions of Section 124-A of the Railways

Act, 1989 (For short “the Act”). As such, this appeal.

3] Facts necessary for deciding the present appeal are as under:-

4] Appellant, accompanied with his mother, was traveling on Amravati-Nagpur Passenger Train No.51261 on 20/9/2014. His mother entered general bogie, whereas he was unable to enter the bogie because of heavy rush which has resulted into his fall and as a consequence, he lost both of his legs.

5] Based on the aforesaid, Claimant has moved the Tribunal seeking compensation. In support of claim for compensation, Appellant Nilesh examined himself as AW-1 and has produced on record various documents viz Journey Ticket, Intimation Letter by In-charge Officer, Railway Station to GRP, Spot Panchanama of the Appellant, Invoice issued by the Hospital, Certificate issued about amputation of both legs of the Appellant, Statement of the Appellant, Statement of the witness of the Respondent, Aadhar Card of the Appellant and the Extract of the Bank Pass-book of the Appellant.

6] The Respondent/Railway Authority examined Mr. Sam Babu, Passenger Guard as R.W.1 who has produced Guard Memo Book at Exhibit R-1. So also DRM's Enquiry Report alongwith documents.

7] Tribunal, based on rival claims, framed issues whether the Appellant was bonafide passenger holding a valid journey ticket and whether Appellant sustained injuries in train accident which can be termed as "untoward incident" in terms of section 123(c) of the Act.

8] The passenger ticket produced on record prima facie demonstrates that the Appellant was travelling on the date of incident i.e. on 20/9/2014 from Badnera to Sewagram with valid journey ticket in Amravati-Nagpur Passenger Train No. 51261 and as such Tribunal recorded that the Appellant was a bonafide passenger travelling on valid journey ticket.

9] In view of above, Appellant can be termed as a passenger within the meaning of explanation to Section 124-A of the Act.

10] This takes us to the next contention whether incident of the

railway accident in which the Appellant has lost both of his legs could be termed as “untoward incident” as defined under subsection (c) of Section 123 of the Act.

11] From the perusal of the record and proceedings, it appears that the Appellant has produced on record his examination-in-chief wherein he has specifically narrated that on the date of the incident i.e. on 20/9/2014, after purchasing general class ticket, he reached Railway Platform No.3 and boarded general bogie of Train No.51261. In view of rush of passengers in general bogie, he got jerk, resulting into he falling down from the bogie and sustaining serious injuries, resulting into amputation of both of his legs. He has narrated about his hospitalization and expenses incurred.

12] In cross-examination of the Appellant, a suggestion was given by the Respondent that narration of the incident in his examination-in-chief was incorrect as he tried to board running train, resulting into an accident. Appellant was also confronted with the statement dated 23/9/2015 recorded by RPF. Though he has admitted his signature on the contents of the said statement as true and correct, he has stated that contents of the said

statement were not correct. Rather, suggestion given to him that because of his criminal act he suffered accident was specifically denied by him.

13] Aforesaid statement of the Appellant dated 23/9/2015 about incident of 20/09/2014 is not admitted by the Appellant and as such said statement cannot be relied upon for deciding the claim Petition.

14] There is one more statement of the Appellant recorded by the authorities which is produced at A-40 dated 19/10/2014. The said statement produced at A-40 specifically speaks of the contentions narrated by him about his slipping from the running train after having boarded the same. Apart from above, fact remains that evidence of witness of Respondent Mr. Sam Babu which is at A-44 speaks of his knowledge about happening of incident and amputation of legs of the Appellant. The said witness has stated that he has received information about the incident in the capacity of guard of the train in which the Appellant was travelling as one of the passengers. The said statement, if analysed, including that of his examination-in-chief, it is apparent that the said statement is based on hearsay evidence as he has

not himself witnessed the incident but has relied on the information of some passenger whose details are not disclosed. In examination-in-chief of this witness, he has not stated as to how he got knowledge of the incident and whether the Appellant was boarding running train. However, he has admitted that GRP has recorded his statement in the matter. Though the aforesaid witness of Respondent was not subjected to cross-examination, however, having regard to the knowledge that he has not stated about fact of the Appellant boarding running train, there is sufficient space to infer that incident in question has to be termed as untoward incident within the meaning of section 124-A of the Act. It appears that the Tribunal while rejecting the claim has relied on the statement of the Appellant recorded at Exhibit A-10. There is no basis for accepting the aforesaid statement dated 23/9/2015 recorded by RPF, particularly when the Appellant has entered into witness box and stated about contents being not recorded as per his narration. As such, Tribunal, in my opinion, has erred in accepting the statement at Exhibit-A-10 and forming the same to be basis for rejecting the claim. Merely because witness of Respondent was not cross-examined, that by itself will not come in the way of the Appellant for claiming compensation, as the said witness has not narrated about the fact that the

Appellant has tried to board a running train. Perverse findings are recorded by the Tribunal while appreciating the evidence of witness of the Respondent. Even if it is mentioned that he has received the information from unknown person informing him about boarding of the running train by the Appellant, neither details of such person who has narrated the incident are brought on record nor his statement is noted. As such, testimony of witness of Respondent does not repose any confidence.

15] In the aforesaid backdrop, it has to be noticed that the Appellant has suffered injuries during untoward incident and he is entitled for compensation as provided in Schedule-II considering the injuries suffered by him, resulting in amputation of both of his legs.

16] As such, appeal stands allowed. Judgment impugned dated 17/1/2018 delivered by the Tribunal is set aside. It is directed that the Appellant is entitled for compensation of Rs 8 lakhs with accrued interest. The compensation is ordered to be paid to the Appellant immediately.

(NITIN W. SAMBRE, J.)