

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

FIRST APPEAL NO.359/2020

Antaram s/o Ganpati Niralwad,
Age 38 years, Occ. Labour,
R/o Dhangar Moha,
Tq. Gangakhed,
Dist. Parbhani

..APPELLANT

Versus

Union of India,
Through the General Manager,
South Central Railway,
Secunderabad.

..RESPONDENT

....

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

.....

CORAM : PUSHPA V. GANEDIWALA, J
DATED : AUGUST 25, 2021.

ORAL JUDGMENT :

1. Heard.
2. Considering the issue involved in this appeal, it is heard finally at the stage of admission, with the consent of leaned counsel appearing for both parties.
3. Admit.

4. Shri N.P. Lambat, learned counsel waives service of notice for the respondent.

5. This is the claimant's appeal under Section 23 of the Railway Claims Tribunal Act, 1987 against the judgment and award dated 18.11.2015 passed in Claim Petition No. OA (Ilu)/NGP/2011/0105 by the Member (Judicial), Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the learned Tribunal rejected the claim of the appellant for compensation on account of the scheduled injuries received to him in an untoward incident. The claim for compensation was rejected on the sole ground that the appellant was negligent in boarding the running train and, therefore, the injuries being self-inflicted, the appellant is not entitled to receive any compensation as per law.

6. A short question arises for consideration of this Court is "Whether the appellant received scheduled injuries in an untoward incident, while travelling as a bonafide passenger?"

7. The facts, in brief, may be stated as under: -

It is the case of the appellant that on 13.9.2010, the appellant - injured was going to Parbhani from Gangakhed for some personal work. He had purchased a valid journey ticket bearing

No.82530031 dated 13.9.2010 to undertake the journey from Gangakhed to Parbhani by Parli to Akola Passenger Train No. 540. It is stated that there was heavy rush in the train. The appellant boarded the train and was standing near the door. It is further stated that due to jerk, he fell down from the train and received serious injury. He, therefore, filed a Claim Petition claiming statutory compensation with interest *pendente lite*.

8. The respondent- Railway Administration opposed the Claim Petition by filing its written statement. The respondent denied the contents in the Claim Petition in toto. It is the specific pleading of the respondent that Railway Administration conducted detailed inquiry with regard to the alleged incident and according to which, Passenger Train no.540 left Parli at 13.17 hours on 13.9.2010 and arrived at Gangakhed Railway Station at 13.49 hours. After receiving the starter signal, the train was started from the platform and when the train was leaving the platform one person came running and tried to catch the running train, during the process he slipped and fell down from the train and he sustained injuries. Therefore, it is stated that the injuries sustained by him are due to his own conduct and not due to the sudden jerk of the train. The respondent claims that there was no jerk in the train as alleged.

9. It is further the defence of the respondent - Railway Administration that it was not the case of accidental fall from the train and it is a case of self-inflicted injury and hence, the application is not maintainable.

10. The learned Tribunal framed necessary issues and recorded evidence. The Claimant examined himself and brought on record the following documents:-

- (i) Railway Ticket (Exh.A-1);
- (ii) Memo issued by Station Master, Gangakhed (Exh.A-2);
- (iii) Spot panchanama (Exh.A-9);
- (iv) Discharge card (Exh.A-12) and
- (v) Disability Certificate (Exh.A-14).

11. The respondent/Railway Administration has brought on record the Statutory Report at page numbers A-25 to A-28 of the record and proceedings.

12. The learned Tribunal on the basis of oral as well as documentary evidence before it rejected the claim of the appellant mainly on the ground that the appellant failed to prove that the accident occurred due to the negligence of the railway. On the contrary, it is held that it was the self-inflicted injuries, as the claimant was trying to board the running train. This judgment of

the Tribunal is assailed in this appeal.

13. I have heard Shri R.G.Bagul, learned counsel appearing for the appellant and Shri. N. P Lambat, learned counsel appearing for the respondent. Shri. Bagul invited my attention to the discharge card (Exh.A-12) and disability certificates (Exh.A-7 and A-14) and submitted that the appellant sustained crush injury to his left hand, amputation to distal Phalanx of thumb bilateral pubic rani and amputation to left thumb, index finger, middle finger contusion on palm.

14. The learned counsel also drew my attention to the Schedule of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 (amended with effect from 1.1.2017) and submitted that the aforesaid injuries fall under the scheduled injuries as per Item Nos.4, 5, 6 and 7. The learned counsel also submits that the amended provisions to the aforesaid Rules would be applicable as per the ratio of the Hon'ble Apex Court in the case of **Union of India Vs. Rina Devi** reported in **2018 SCC 2362**, wherein it is held in para15.4, which reads thus:

“Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so

calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay. Seeming conflict in Rathi Menon (AIR 2001 SC 1333) and Kalandi Charan Sahoo (supra) stands explained accordingly. The 4-Judge Bench judgment in Pratap Narain Singh Deo (AIR 1976 SC 222)(supra) holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given”.

15. The learned counsel also referred to Section 124A of the Railways Act, 1989 and submitted that as per this provision, the issue of negligence of the appellant is not to be considered while deciding the amount of compensation on account of untoward incident. The learned counsel urged to grant compensation as per the prescribed rates in the Schedule in the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990.

16. The learned counsel Shri N.P. Lambat appearing for the respondent/Railway Administration restricted his argument only to the point that if at all this Court is going to hold that the appellant is entitled to receive compensation as per the aforesaid Schedule, it would not be appropriate to grant him compensation separately for

injuries to thumb, fingers and palm, as argued by learned counsel Shri Bagul. It is the submission of learned counsel Shri Lambat that at the most, Entry no.4 in the Schedule would be applicable in this case.

17. I have considered rival submissions.

18. At the outset, as per Section 124-A of Railways Act, 1989, when in the course of working a railway an untoward incident occurs, then whether or not there has been wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependent of a passenger who has been killed to maintain an action and recover damages in respect thereof, the Railway Administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed.

Proviso to the aforesaid section enumerates the conditions wherein the railway administration shall not be liable to pay compensation, which reads thus:

- a) suicide or attempted suicide by him;
- b) self-inflicted injury;
- c) his own criminal act;
- d) any act committed by him in a state of intoxication or insanity;
- e) any natural cause or disease or medical or surgical treatment

unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation to the said Section defines “passenger” includes,

- (i) a railway servant on duty; and
- (ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.

19. Now, the question is “ whether the injuries sustained by the appellant, being a bonafide passenger, is due to an ‘untoward incident’ or self-inflicted injuries?

20. The definition of ‘untoward incident’ is given under Section 123(c) (2) of the Railways Act, 1989, which *inter-alia* means the accidental falling of any passenger from a train carrying passengers.

21. The appellant/claimant in his testimony has deposed that on 13.9.2010, he came to the Railway Station, Gangakhed to go to Parbhani and took railway ticket of passenger train at Gangakhed railway station and boarded Train No. 540 Parli to Akola passenger train. There was heavy rush in the train. He stood near the door of the train. Thereafter the train started with jerk and due to push by other passengers, he lost his balance and fell down

from the train on the platform and sustained injuries. In his cross-examination, he denied the suggestion that he was standing on the foot board of the train and while leaning out he fell down from the train. The tenor of the cross-examination on behalf of Railway Administration would reflect that the questions were asked on the premise that due to his own negligence he fell down from the train. In terms of the Section 124-A of the Railways Act, the claimant has to prove that in an untoward incident, he sustained injuries, irrespective of the aspect of negligence. The appellant in his pleadings and the evidence has clearly established that due to a jerk and heavy rush in the train he fell down and sustained injuries. Nothing could be brought on record by the respondent to rebut the case of the claimant. In the circumstances, there is no reason not to believe the testimony of the claimant-the injured witness.

22. With regard to the pleading of a bonafide passenger, a perusal of the record would reflect that the appellant at the relevant time was holding a valid journey ticket as the copy of the ticket has been produced on record at Exh.A-1 and the Railway Administration could not prove as to how the aforesaid ticket (Exh. A-1) is false and manipulated document and, therefore, the appellant has clearly established that at the relevant time he was a bonafide passenger travelling in the aforesaid Train no.540 Parli to Akola. On this

aspect, the learned Railway Tribunal has erroneously recorded the finding in negative without considering the facts on record. Without any basis, the learned Tribunal has wrongly held that the ticket placed on record is manipulated and procured. Once the appellant - claimant has produced on record the valid journey ticket, the onus is shifted on Railway Administration to establish that the ticket was manipulated and procured and in the instant case the respondent-Railway Administration has manifestly failed to discharge its burden.

23. It appears that without considering the evidence of the appellant in proper perspective, the learned Tribunal erroneously reached the conclusion that the injuries sustained by the appellant were self-inflicted injuries, which were caused while boarding the running train and there was no accidental fall from the train amounting to 'untoward accident'.

24. For the reasons aforesaid, in the opinion of this Court, the appellant could prove that there was an 'untoward incident' happened on 13.9.2010 wherein he sustained injuries as per disability certificate (Exh.A-14) and the discharge certificate (Exh.A-12) . Now the question is under which Item of the schedule, the case of the appellant would fall? Item nos.4, 5, 6, 7 and 8 of

Rules of Schedule of the Railway Accident and Untoward Incident (Compensation) Rules, 1990 deal with amputation to the hands, thumb, finger etc. For ready reference the said items are reproduced below:-

PART I	Amount of compensation (in rupees)
xxx	
PART II xxxx	
PART III	
(1) xxx	
(2) xxx	
(3) xxx	
(4) For loss of a hand or the thumb and and four fingers of one hand or amputation from 4½	4,80,000
(5) For loss of thumb	2,40,000
(6) For loss of thumb and its metacarpal bone	3,20,000
(7) For loss of four fingers of one hand	4,00,000
(8) For loss of three fingers of one hand	2,40,000

25. As per Item (4) for the loss of a hand or the thumb and four fingers of one hand or amputation from 4½ inches below space tip of olecranon, amount of compensation prescribed is at Rs.4,80,000/-.

26. The accident occurred in the year 2010 and the Schedule to the Railway Accidents and Untoward Incidents

(Compensation) Rules, 1990 came to be revised on 1.1.2017. However, in the judgment in the case of **Union of India Vs. Rina Devi** (supra), Their Lordships of the Hon'ble Apex Court has held in para 15.4 that "Compensation as applicable on the date of accident has to be given with reasonable interest and to keep effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given".

27. The learned counsel Shri R.G.Bagul urged to grant compensation to the appellant under the heads of Item (5) and (7) separately.

28. Considering the injuries sustained to the appellant, which includes injury to his thumb, middle finger and index finger, in the considered opinion of this Court, the injuries collectively fall for loss of a hand or the thumb and four fingers of one hand and or amputation from 4½ below space tip of olecranon, and therefore, he would be entitled for compensation under Item (4) at Rs. 4,80,000/- as statutory compensation.

29. Considering the reasons aforesaid, I find merit in the appeal and impugned judgment and award of the Tribunal needs to

be set aside and the same is quashed and set aside. I pass the following order:

ORDER

1. The appeal is allowed.
2. The impugned judgment and award order passed by the Tribunal is quashed and set aside.
3. Respondent - Railway Administration shall deposit compensation of Rs. 4,80,000/-with the registry of this Court within a period of two months. Thereafter, the appellant-claimant is permitted to withdraw the same with interest accrued thereon.
4. The appeal stands disposed of. In the circumstances there shall be no order to costs.

JUDGE

Ambulkar