

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 566 OF 2007
WITH
CIVIL APPLICATION NO. 1092 OF 2007**

Union of India

...Appellant

V/s.

Mr. Shahid Hussain

...Respondent

Mr. T.J. Pandian a/w. Mr. T.C. Subramanian a/w. Mr. Dheer Sampat, Advocate for the appellant.

Mr. Ashif Hussain a/w. Ms. Deepika Oswal i/by. Mr. Hashim Husain, Advocate for the respondent.

CORAM : SANDEEP K. SHINDE, J.

RESERVED JUDGMENT ON : 1ST APRIL, 2022.

PRONOUNCED JUDGMENT ON :- 26TH APRIL, 2022.

JUDGMENT :

1. This appeal under Section 23 of the Railway Tribunals Act, 1957 impugns the judgment and order dated 12th October, 2006 of Railway Claims Tribunal by which Tribunal, awarded compensation in the sum of

Rs.4,00,000/- to the applicant with interest at the rate of 6% p.a. from the date of the order till realisation.

2. Briefly stated facts of the case are that, on 4th October, 2003 applicant boarded a local train at Sandhurst Road Railway Station for going to his home at Kurla. After sometime, due to rush in the train and push of fellow passengers he fell down from the train on the platform of Sandhurst Road Station. He was found in seriously injured condition and was taken to St. George Hospital vide Station Master's Memo. The Memo at Exhibit-A4 states, the applicant was found in seriously injured condition on platform-1 and was sent to St. George Hospital alongwith Police Constable 3261. It appears, the statement of claimant was recorded by Police which states that he fell down from running local train due to crowd in the compartment. The statement is at Exhibit-A of the paperbook. Besides, discharge summary of St. George Hospital, states that claimant was brought by the police and was admitted in hospital with history of fall from running train. Additionally, applicant deposed and described the

circumstances in which he fell from the moving train. So also, the claimant in support of his application, examined Anish Ahmed as witness no.2. This witness deposed that, he had purchased two tickets at Ghatkopar station one, for himself and another for the claimant. In the claim application, claimant has stated that he had kept the railway ticket in his purse which has been lost in the incident. In consideration of the evidence brought on record, the Claim Tribunal held that, claimant was a bonafide passenger in local train on 4th October, 2013 and he met towards an untoward incident and sustained injuries and thus was entitled to receive the compensation.

3. Appeal challenges these findings, to contest that, claimant was not a bonafide passenger and injuries sustained by him, were not due to accidental falling from running train, but due to dash of the train, as he might be walking precariously on the edge of the platform due to his sheer negligence. In support of this contention, the learned Counsel for the appellant would rely on the statement of the GRP constable, which states that, claimant had suffered

injury due to dash by train. Contesting, as to issue of bonafide passenger, learned Counsel for the appellant, relied on the statement of On-Duty GRP Constable-Vijay Patil, which according to him, does not state or indicate, that the railway ticket was found in the possession of the claimant alongwith the other articles i.e. his wrist watch, one diary and one broken spectacle. Moreover, appellants would rely on claimant's statement recorded in the hospital (Exhibit-A2), which does not state about loss of his ticket. It is therefore contended that the applicant was neither the bonafide passenger in the local train nor he met towards an untoward incident and sustained injuries due to accidental fall from the running train. Learned Counsel, would therefore urge, that impugned Judgment and Award be quashed and set aside.

4. Law is, mere absence of ticket with injured claimant will not negative the claim that he was a "bonafide passenger" and although initial burden is on the claimant, and if the same is discharged by filing Affidavit of relevant facts, burden will shift on Railways to prove that he was not a "bonafide passenger" or that, he was a "ticketless

traveller”, as held and laid down by the Apex Court, in the case of Union of India V/s. Rina Devi, Civil Appeal No.4945/2018. In the case in hand, claimant in his application, had stated that, he had kept the railway ticket in his purse which was lost in the incident. In support of his assertion, claimant had examined Anish Ahmed who deposed that, he had purchased two tickets at Ghatkopar Station, one for himself and another for the applicant. Therefore, claimant had discharged the initial burden, whereafter it was shifted on the Railway. However, the burden has not been discharged by the Railways. In that view of the matter, the finding recorded by the Railway Claim Tribunal that the claimant was the “bonafide passenger, calls for no interference.

5. Next contest is that, the claimant had sustained injury due to dash of the train, as he might be walking on the edge of the platform due to his sheer negligence and as such the injury sustained by him, would clearly fall within the meaning of “self inflicted injury” as contemplated in Section 124A of the Railway Act. As to this contest, it may

be stated that, Railway did not lead evidence to prove claimant's negligence before the Claim Tribunal. Rather, statement of claimant to police, as well as the Station Master's Memo at Exhibit-A4, states that, applicant was found in seriously injured condition on platform no.1 of the Sandhurst Road Station. I have no reason to disbelieve, either of these. Infact, claimant's statement was recorded by the Police, soonafter the accident, which states, he sustained injury due to accidental fall from running train due to push by the co-passenger. In contrast to this assertion, Railway did not examine Motorman of the train which gave dash to the claimant, while claimant was allegedly walking on the edge of the platform. In that view of the matter, contest of the appellant-Railway, that the claimant had sustained "self-inflicted injury" as contemplated in proviso to Section 124A of the Railways Act, is rejected. Moreso, settled law is that, "negligence", will not disentitle grant of compensation under the Railway Act. In the case of **Rina Devi** (supra), the Apex Court has held, that the concept of "self-inflicted injury" would require

intention to inflict such injury and not mere negligence of any particular degree. The 'intention' was absent here.

6. Thus, in consideration of the facts of the case and for the reasons stated above, Appeal fails and it is dismissed alongwith applications therein.

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(SANDEEP K. SHINDE, J.)