

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

FIRST APPEAL NO. 708 OF 2018

Mr. Mohd. Qaisar Mohd. Ajmal Usmani ..Appellant.

v/s.

Union of India ..Respondents

Mr. Vasant More for the Appellant.

Mr. T.J.Pandian a/w. Dheer Sampat for the Respondent.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 11th NOVEMBER, 2022.**

P.C.

1. With consent, heard finally at the stage of admission. This is an appeal under Section 23 of the Railway Claims Tribunal Act, 1987 challenging the judgment and order dated 27.09.2017 in an Application No.OA (IIU)/MCC/0188/2012. By the impugned judgment, the Railway Claims Tribunal dismissed the Application filed by the Appellant-Original Claimant under Section 124A of the Railways Act, 1989 r/w. Section 13(1A) of the Railway Claims Tribunal Act, 1987.

2. The Appellant, hereinafter referred to as the Claimant filed a Claim Petition with an assertion that on 12.11.2011, while traveling by local train from CST to Masjid Station, he accidentally fell off the running train and sustained fracture of left femur shaft, left tibia fibula

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left and fracture of right ulna left, resulting in amputation below elbow of right hand. The Appellant claimed that he was a bonafide passenger and he had sustained injuries in an untoward incident and therefore filed Claim Petition seeking compensation of Rs.4,00,000/-.

3. The Respondent contested the claim inter alia on the ground that the Claimant had sustained injuries due to his own negligence. The Respondent claimed that the injuries were self inflicted injuries and were not caused in an untoward incident within the meaning of Section 123(c) of the Railways Act, 1981. The Respondent also denied that the Claimant was a bonafide passenger and thus denied its liability to pay the compensation.

4. The Railways Claims Tribunal framed issues and upon considering the evidence adduced by the respective parties, recorded a finding that the Claimant was a bonafide passenger. The Tribunal has also recorded a finding that the Claimant had sustained fracture of left femur shaft, left tibia febula and fracture of right ulna resulting in amputation of the right hand below elbow. The Railway Claims Tribunal observed that the Claimant had suffered these injuries while attempting to board a running train, and recorded a finding that the act of the Claimant was nothing short of 'self inflicted injury' which is covered by proviso to Section 124A of the Act. The Tribunal concluded that the

injuries were not sustained in an untoward incident, and hence held that the Claimant is not entitled for any compensation. Being aggrieved by this Order, the Claimant has filed the present appeal.

5. Heard learned Counsel for the Claimant and the Respondent. I have perused the record and considered the submissions advanced by the learned Counsel for the respective parties.

6. It is not in dispute that the Claimant, a bonafide passenger, accidentally fell from a running train and sustained fracture of left femur shaft, fracture of left tibia, fracture of right ulna resulting in amputation below elbow. The only issue is whether accidental fall while boarding the train is an 'untoward incident' within the meaning of Section 123(c) (2) of the Railways Act. This issue is no longer res-integra in view of the decision of the Honourable Supreme Court in ***Union of India vs. Rina Devi 2018 ACJ 1441***, wherein the Supreme Court has held that death or injury in the course of boarding or de-boarding a train will be an untoward incident, entitles a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor. In the light of the above, the findings recorded by the Tribunal, viz. that the injury was not caused in an untoward incident, cannot be sustained.

7. The injuries suffered by the Claimant viz. amputation of hand below elbow falls under item 4 of Schedule (part III), under which the Claimant is entitled for compensation of Rs.4,80,000/-, whereas fracture of tibia fibula and femur shaft fall under item no.33 of Schedule 3, under which the Claimant is entitled for compensation of Rs.80,000/-. The Claimant is thus entitled for total compensation of Rs.5,60,000/-

8. Hence the Appeal is allowed. Impugned judgment is quashed and set aside. It is held that the Claimant is entitled for compensation of Rs.5,60,000/-. The Claimant shall furnish the details of the Bank Account within a period of one week. The Respondent shall deposit the compensation in the account of the Claimant within eight weeks thereafter.

(ANUJA PRABHUDESSAI, J.)