

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 570 OF 2002

The Union of India

} **APPELLANT**

V/S.

Mohanadasan Neelandan

} **RESPONDENT**

* * * *

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

CORAM :- SANDEEP K. SHINDE, J.

CLOSED FOR ORDERS ON : 1/4/2022

PRONOUNCED ORDER ON : 8/4/2022

P.C. :

1. This Appeal under Section 23 of The Railway Claims Tribunal Act, 1987 preferred by the Union of India through the General Manager, Central Railways, C.S.T., Mumbai, impugns the judgment, of Railway Claims Tribunal dated 19th July, 1999 by which the learned Member (Judicial) allowed the application of the original claimant by awarding compensation in the sum of

Rs.2,00,000/- with interest at the rate of 9% p.a. from the date of the application till realisation.

2. Briefly stated facts of the case are as under :

. On 12th May, 1999 at 15.10 hrs, applicant-claimant after boarding the train at Kurla Terminus on Platform No.3, was pushed out when the train moved, due to heavy rush and sustained severe injuries to his right leg. As a consequence, his foot had to be amputated from the thigh in the LTMG Hospital, Sion. At the time of the incident, the applicant was travelling in the second class, holding IInd class ticket for journey Ex. Kurla Terminus to Palakkad. At the material time, applicant was aged 27 years and was serving in Saudi Arabia as mason. He lost the job due to loss of his right leg. The appellant-Railways, contested the claim and denied almost all averments made in the application, stating that the incident in question was neither covered by the definition of “untoward incident”, defined under Section 123(c) of the Railways Act, nor he

was bonafide passenger. The Tribunal, upon appreciating the evidence, held that claimant was “bonafide passenger” and had suffered injuries in “untoward incident”. Thus, granted compensation of Rs.2,00,000/- with interest.

3. Feeling aggrieved by the Judgment and Decree, Railways questioned, correctness of the judgment, particularly on the ground that, claimant had not discharged the burden, to prove, he was the “bonafide passenger” and had suffered injuries in “untoward incident”.

4. Heard learned Counsel for the parties. Perused the impugned judgment and record and proceedings.

5. Herein, claimant had filed Affidavit of his own, stating specifically that on 12th May, 1999, he boarded the train at Kurla Station on Platform no.3, holding IInd Class ticket from Kurla to Mangalore. However, he could not

produce the ticket which was lost after the accident. Thus, in essence, claimant had discharged primary or initial burden, by filing affidavit of relevant facts. Whereupon, the burden was shifted on the railways. However, Railways could not discharge the burden either by leading the evidence or displacing the claimant's evidence. As a result, Tribunal has correctly, held, claimant was "bonafide passenger". No interference is called for in this finding.

. Disputing, the finding, that claimant had sustained injuries in "untoward incident", the appellants have relied on the Affidavit of Noor Mohammed to contend, injuries were "self-inflicted". Mr. Noor, was Guard in Train No.2620 Matsyagandha Express, which at the material time, was coming from Mangalore to Kurla Terminus on 12th May, 1999. Noor Mohammed, stated that, when train was entering Kurla Terminus, one person attempted to get into the train compartment and fell down. It is therefore sought to be contended that, claimant had not sustained injuries in, "untoward incident", but were

“self inflicted” injuries and in consequence, no compensation was payable to him under Section 124A of the Railways Act. This contention is to be rejected in view of the law laid down by the Apex Court in the case of **Union of India V/s. Rina Devi, (2019) 3 SCC 572**. In that case, the Apex Court has held that, the concept of “self inflicted” injuries would require intention to inflict such injury and not mere negligence of any particular degree. Held thus, negligence will not dis-entitle grant of compensation under the Railways Act, which otherwise would amount to invoking the principle of contributory negligence, which cannot be done in case of a liability based on no-fault theory. Thus, held that, death or injury in the course of boarding or deboarding the train, will be an “untoward incident”, entitling the victim to compensation and will not fall under the proviso to Section 124A merely on plea of negligence of the victim, as contributing factor. In view of this settled position of law and evidence on record, the finding recorded by the Tribunal that the

applicant-claimant suffered injury in an “untoward incident”, calls for no interference.

6. For the reasons stated above, the judgment and the Award passed by the Tribunal calls for no interference. The Appeal is dismissed and disposed of.

7. In view of dismissal of the Appeal, claimants are at liberty to withdraw the amount, if not withdrawn.

8. Decree be drawn accordingly.

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(SANDEEP K. SHINDE, J.)