

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

**FIRST APPEAL NO.35 OF 2021
WITH
INTERIM APPLICATION NO.3733 OF 2019
IN
FIRST APPEAL NO.35 OF 2021**

Mr. Praful Shantaram Lokhande

...Appellant

Versus

Union of India through General
Manager, Western Railway, Churchgate,
Mumbai-400 020.

...Respondent

...

Ms Kavita Anchan for the Appellant.

Mr. T.J. Pandian for the Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 5th AUGUST, 2022.

P. C. :-

1. With consent, heard finally at the stage of admission.
2. This is an appeal under Section 23 of the Railway Claims Tribunal Act, 1987 filed by the aforesaid Appellant assailing the judgment dated 31/01/2017 whereby the Railway Claims Tribunal dismissed the Claim Application for compensation for the injuries sustained in an untoward incident.

3. It is the case of the Appellant that on 14/05/2012 he purchased a ticket bearing No.82023278 and boarded slow train from Platform No.1 of Churchgate station. He got down at the next station i.e. Marine Lines to purchase cold drink and water. He slipped and fell down while trying to board the train and came under the running train. The Appellant suffered injuries resulting in amputation of both legs below the knees and left hand above the elbow. The Appellant therefore filed claim application for statutory compensation under Section 124 of the Railways Act.

4. The Respondent denied that the deceased had sustained injuries in an untoward incident. The Respondent claimed that the Appellant had sustained injuries due to his own negligence and carelessness and that the incident was not covered under the provisions of Section 123(c)(2) of the Railways Act and consequently the Respondent is not liable to pay compensation under Section 124-A of the Railways Act.

5. The Tribunal held that though the Appellant was holding a valid ticket, he had got down from the train and fell down while trying to board a running train. The Tribunal therefore held that the

Appellant was not a bonafide passenger. The Tribunal further held that the incident had occurred due to criminal act and negligence and thus concluded that the Appellant had not sustained injuries in an “untoward incident”. The Tribunal therefore held that the Respondent is not liable to pay any compensation to the Appellant and accordingly dismissed the claim application. Being aggrieved by this judgment, the Appellant has filed this appeal.

6. Ms Kavita Anchan, learned counsel for the Appellant states that the Appellant had boarded the train after purchasing a valid train ticket. He got down at Marine Lines Station to purchase cold drink and fell down while trying to board the train. She submits that the evidence adduced by the Appellant amply proves that the Appellant had sustained injuries in an untoward incident. Learned counsel for the Appellant has relied upon the decision in ***Union of India vs. Rina Devi (2019) 3 SCC 572*** wherein the Hon’ble Supreme Court has held that “*‘self inflicted injury’ would require intention to inflict such injury and not mere negligence of any particular degree.*” Learned counsel for the Appellant submits that in the light of the judgment of the Apex Court in ***Rina Devi*** (supra) injuries sustained in the course of boarding or de-boarding a train will be an ‘untoward incident’ entitling the

victim to the compensation and the same will not fall under the proviso to Section 124-A merely on the plea of negligence of the victim as a contributing factor.

7. Per contra, Mr. T.J. Pandian, learned counsel for the Respondent submits that though the deceased was holding a valid ticket from Churchgate station to Elphinstone Road station, he had got down at Marine Lines Railway station to purchase cold drink and water. He submits that evidence on record reveals that the deceased had fallen down while trying to board a running train. He therefore submits that the Tribunal was justified in holding that the Appellant had not sustained injuries in an untoward incident.

8. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

9. It is not in dispute that the Appellant was holding a valid journey ticket to travel from Churchgate station to Elphinstone road station. The train had halted at Marine Line station and the Appellant had got down from the train to purchase cold drink and water. It is on record that the Appellant fell down while he was trying to board the train. He sustained injuries resulting in amputation of both his legs

below knees and the left hand above the elbow. The only question for consideration is whether the Appellant had sustained injuries in an untoward incident.

10. In ***Rina Devi*** (supra) the Hon'ble Supreme 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. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'.* Referring to the judgment in ***United India Insurance Co. Ltd. vs. Sunil Kumar, (2019) 12 SCC 398*** the Hon'ble supreme Court has held that plea of negligence of the victim cannot be allowed in claim based on "no fault theory". It is further held that death or injury in the course of boarding and de-boarding a train will be an "untoward incident" entitling a victim to the compensation and will not fall under the proviso to Section 124-A merely on the plea of negligence of the victim as a contributing factor. Thus, considering the dictum of the Apex Court in ***Rina Devi*** (supra) even if it is accepted that the Appellant had sustained injuries while boarding the train, same would not be a self inflicted injuries and the injuries sustained by the

Appellant while boarding the train would be covered by definition of “untoward incident” which will entitle him for compensation. The Railway Claims Tribunal was therefore not justified in rejecting the application and thereby depriving the Appellant from getting compensation under the Railways Act, which is a beneficial piece of legislation.

11. The evidence on record reveals that the Appellant had sustained injuries in an untoward incident resulting in amputation of both legs below the knees and left hand above the elbow. Undisputedly, the injury suffered by the Appellant is a schedule injury, which would entitle the Appellant for compensation of Rs.8,00,000/-.

12. Under the circumstances and in view of discussion supra, the appeal is allowed. The impugned judgment is quashed and set aside. The Respondent shall pay to the Appellant compensation of Rs.8,00,000/- within a period of 8 weeks from the date of uploading of the order.

13. In view of disposal of the Appeal, interim application does not survive and hence stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)