

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

FIRST APPEAL NO. 229 OF 2020

Shri Manoj S/o Lalchand
 Aged about 48 years, Occ. Nil,
 R/o Bhagchuri Bandiya,
 Tah. Khatima, Dist. Udhamasing
 Nagar, (Uttaranchal).

...APPELLANT

VERSUS

Union of India, through its
 General Manager, Central Railway,
 Mumbai CST – 400 001.

...RESPONDENT

Shri R.G. Bagul, Advocate for the appellant.
 Shri M.M. Agnihotri, Advocate for respondent.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 13/01/2022

ORAL JUDGMENT :

1. Heard. With consent appeal is taken up for final hearing,
 in view of the narrow controversy involved in the matter.

2. This is an appeal under Section 23 of the Railway Claims Tribunal Act, 1987 filed by the original claimant challenging the impugned judgment and order dated 17/11/2017 in Claim Application No. OA(IIu)/NGP/2015/0085. By the impugned judgment and order,

the Tribunal has dismissed the claim application filed by the aforesaid appellant.

3. The case of the appellant before the Railway Tribunal was that on 24/11/2014, he was traveling from Tandur to Allahabad by Secunderabad-Nagpur Express Train No.12771. He got down at Chandrapur Railway Station to get drinking water and that he fell down from the running train, while trying to board the train. The injuries sustained in the said incident resulted in amputation of both the legs below knees. The claimant therefore filed an application for compensation before the Railway Claims Tribunal.

4. The respondent contested the claim mainly on the ground that the Train No.12771 had departed from platform no.2 at 5.08 a.m. whereas the claimant was found in injured condition by the side of platform no.3 at about 4.30 a.m. The respondent also claimed that appellant had fallen down from the train due to his own negligence and that the Railway Administration is not responsible and is not liable to pay any compensation.

5. The Tribunal framed the issues and recorded the evidence of the appellant. Upon considering the evidence of the appellant and after hearing the respective parties, the Tribunal held that the appellant

was a bonafide passenger. The Tribunal further held that the appellant had sustained injuries due to fall from the train. The Tribunal has declined to grant any compensation on the ground that the appellant had made an unsuccessful attempt to board a running train and that such conduct amounts to criminal negligence. The Tribunal therefore held that the injury is self inflicted injury and was not an injury sustained in an untoward incident. Being aggrieved by this judgment and order, the appellant/original claimant has filed this appeal under Section 23 of the Railway Claims Tribunal Act, 1987.

6. Shri Bagul, learned Counsel for the appellant submits that the Tribunal has accepted the fact that the appellant was traveling by train No.12771. The fact that the appellant had fallen while boarding the train is also not in dispute. The learned Judge has declined to grant compensation solely on the ground that the appellant has suffered self inflicted injuries in the course of boarding the running train. Learned Counsel for the appellant has relied upon the decision of the Hon'ble Apex Court in the case of *Union of India Vs. Rina Devi* reported in *AIR 2018 Supreme Court 2362* to contend that the injuries sustained in the course of boarding or de-boarding the train, will amount to an

untoward incident which would entitle the appellant to the compensation.

7. Per contra, learned Counsel for the respondent contends that Train No.12771 had left platform no.2 at 5.08 a.m. whereas the appellant was found on platform no.3 at 4.30 am.. He submits that the appellant has not explained as to how he was found on platform no.3. Learned Counsel for the respondent further submits that the decision in *Rina Devi* (Supra) is distinguishable and not applicable to the facts of the present case, particularly in view of the observations of the Tribunal at para no.23 of the impugned judgment. Learned Counsel for the appellant contends that the appellant was not a bonafide passenger and that he had not sustained in an untoward incident. He therefore urges that the Tribunal was justified in rejecting the claim.

8. I have perused the records and considered the submissions advanced by learned Counsel for the respective parties. The short point for consideration is whether the appellant was a bona-fide passenger and whether he had sustained injuries in an untoward incident.

9. In the instant case, the evidence of the appellant clearly indicates that on the relevant date i.e. on 25/11/2014 he was traveling

from Tandur to Secunderabad by Secunderabad-Nagpur Express by Train No.12771 and that he was holding a valid ticket for train journey from Tandur to Allahabad. The Tribunal has recorded a finding that the appellant had a valid ticket for the journey on 24/11/2014 by Secunderabad-Nagpur SF Express by Train No.12771 and hence he was a bonafide passenger.

10. The question is whether the claimant had sustained injuries in an untoward incident.

11. The claimant has stated that when the train arrived at Chandrapur Railway Station, he got down from the train to get drinking water. While he was boarding the train, the train started moving, his hands slipped and he fell down from the train and came under the wheels of the train. The evidence of Kailash, Constable RPF also proves that the appellant was lying in an injured condition by the side of the platform no.3. The evidence on record proves that the appellant had sustained injuries which had resulted in amputation of both his legs. In the case of *Rina Devi (supra)* the Hon'ble Supreme Court has held that the Hon'ble Supreme Court has held that death or injury in the course of boarding or de-boarding a train will be an untoward incident, entitling a victim to the compensation and will not

fall under the proviso of Section 124-A, merely on the plea of negligence of the victim as a contributing factor. In the light of the aforesaid dicta, the Tribunal was not justified in holding that the appellant had sustained self inflicted injury, particularly in the absence of the evidence to show that he was callous or imprudent and unmindful of the consequences.

12. Under the circumstances and in view of the discussion supra the appeal is allowed. The impugned judgment passed by the Railway Claims Tribunal, Nagpur in Claim Application No. OA(IIu)/NGP/2015/0085 dated 17/11/2017 is quashed and set aside. It is held that appellant is entitled for statutory compensation of Rs.8,00,000/-. The respondent shall pay the said amount of Rs.8,00,000/- to the appellant, within a period of four months from the date of order.

JUDGE

R.S. Sahare