

(1)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.332 OF 2021

Mr. Nageshwar s/o Salikrm Kirsan,
aged 22 years, Occupation Labour,
R/o Navoday Chowk Ward No.3,
Ugli Tah. Keolari, Dist. Sioni, M.P.

APPELLANT
(Ori. applicant)

// VERSUS //

Union of India, through it's General
Manager, South East Central Railway,
Bilaspur, C.G.

RESPONDENT
(Ori. Respondent)

Mr. R. S. Charpe, Advocate for the appellant.
Ms. Ashwini Athalye, Advocate for the respondent.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 17/01/2023
PRONOUNCED ON : 18/04/2023

JUDGMENT

1. **Admit.**

2. The present appeal is finally heard with the consent of the learned counsel for the parties.

3. The appellant who is the original claimant has filed this appeal against the Judgment and Award passed by the Railway Claims Tribunal, Nagpur in Claim Application No.OA(IIu)/NGP/109/2016 by

(2)

which the claim of the applicant is dismissed which was filed for grant of compensation.

4. Brief facts which are necessary for this appeal are as under.:

On 08.06.2015, the appellant was travelling by Gondia - Balaghat passenger train from Gatra to Balaghat by obtaining the valid ticket. As per the contention of the appellant, due to heavy rush and sudden jerk, he fell down from the running train at Railway Station, Gatra and sustained injuries on his right leg. After the accident, he was immediately moved to the Government Hospital, namely, Birsola Hospital, and thereafter at K.T.S. Hospital at Gondia. Thereafter, he was referred to Government Medical College and Hospital, Nagpur. During his treatment, his leg was amputated just below the knee. As per the contention of the appellant, he met with untoward incident when he was travelling by the train, and therefore he is entitled for the compensation.

5. The said application is strongly opposed by the Railway on the ground that applicant has sustained the injury which is self-inflicted injury due to his own negligence. Station Master Birsola received the information from Guard of train No.78821 Gondia - Balaghat train that at about 12.45 hours one person is fallen down from the train and received injuries and his leg was cut. The appellant has not sustained

(3)

the injuries while travelling in the train, but he sustained the injuries while boarding in the train, and therefore Railway is not liable to pay compensation. It is the contention of the Railway that injured got injuries due to his own mistake and negligence. Injured was trying to board the train when the train was in motion and he lost his balance and fell from the train and sustained the injuries. Thus, Railway Administration is nowhere responsible for the injuries sustained by him and not liable to compensate the act of the injured comes under clause (b) of Section 124-A of Railways Act, 1989 (for short 'the Act'), and therefore no compensation shall be payable to the appellant/applicant.

6. Taking into consideration the rival contentions, parties have laid oral as well as documentary evidence. After hearing both the sides, the learned Tribunal had come to the conclusion that the injured was trying to board in the train. The DMR report has also concluded that the applicant deliberately tried to board the running train, his leg slip and he came under the wheel of the train. Thus, the incident do not cover under the definition of untoward incident, but injured sustained injuries due to his own negligent act, and therefore, he is not entitled to receive the compensation and dismissed the claim. The learned Tribunal had considered that the passenger was trying to enter into the train and as a result fell down and sustained injuries which is not an untoward incident

(4)

under Section 123(c)(2) of the Act.

7. Heard learned Advocate Mr. Charpe, for the appellant and learned Advocate Mrs. Athalye, for the respondent.

8. It has been vehemently argued by the learned Advocate Mr. Charpe for the appellant that, the appellant is injured in the alleged incident. The DRM report is also supporting the case of the appellant/applicant to show that he was boarding in the train and due to the heavy rush his leg was slipped and he met with an incident and sustained the injuries.

9. Learned Advocate Mr. Charpe for the appellant submitted that the intend of the person behind self-inflicted injury is to be proved as self-inflicted injury requires intention to inflict such injury and not mere negligence on any particular degree. He placed reliance on **Union of India Vs. Prabhakaran Vijaya Kumar and others** reported in (2008) **ACJ 1895** wherein it is held that a passenger trying to board a moving train, fell down and died. Railway authority liable to pay compensation even if there was no fault on the part of Railways. He further placed his reliance in the case of **Union of India Vs. Rina Devi** reported in **2018 (3) T.A.C. 26 (S.C.)** wherein it is held that the 'self-inflicted injury' would

(5)

require intention to inflict such injury and not mere negligence of any particular degree. Lastly, he placed reliance on **Ratta d/o. Subhash Meshram vs. Union of India** reported in **2022 DGLS (Bom.) 1295** wherein it is held that the concept of “self-inflicted injury” would require intention to inflict such injury and not mere negligence of any particular degree. He also relied upon the decision of this Court in **First Appeal No.1075/2019 in Smt. Asha wd/o Sandesh Kale and others Vs. Union of India** wherein it is held that even alighting from the train if a person suffers any injury it will be covered under the parameter of an untoward incident. It is further relied upon **Laxman s/o Ganesh Kanhojia vs. Union of India** reported in **2022 DGLS (Bom.) 3140** and **Malanbai w/o Shankar Dhotre and others Vs. Union of India in First Appeal No.481/2017 decided on 09.11.2022**, wherein also it is held that even it is assumed that appellant had fallen down while alighting from the train or whether or not the injury occurred while alighting from or deboarding the train on the station or just before the station it emerges that he fell down as he could not keep his balance. The Hon’ble Apex Court in the case of **Union of India Vs. Rina Devi (supra)** clearly holds that the death or injury in the course of boarding or deboarding a train will be an untoward incident. By relying on above said judgments, learned Advocate Mr. Charpe for the appellant submitted that thus in catena of decisions this issue was dealt by this Court as well as by the Hon’ble

(6)

Apex Court and it is held that if a person met with an accident and sustained injury or death while boarding or deboarding in a train it covers under the untoward incident. Thus, appellant is entitled to receive the compensation.

10. Per contra, learned Advocate Ms. Athalye, for the respondent - Railway submitted that as the appellant sustained injuries while boarding in the train, it is self-inflicted injury, and therefore Railway is not liable to pay compensation.

11. After hearing rival parties, following points arise for my determination and I answer the same as follows:

(i) Whether the deceased sustained injuries in an untoward incident in view of Section 123(c) of the Railways Act?

(ii) Whether the order passed by the Railway Claims Tribunal dismissing the claim of the appellant called for any interference?

12. The appellant has come with the case that on 08.06.2015, he was travelling by Gondia – Balaghat Passenger train as a *bona fide* passenger and during railway journey, he fell down from the running train at Railway Station, Gatra due to heavy rush and sudden jerk which is untoward incident and received injuries on his right leg. After the

(7)

accident, he was taken to the Birsola Hospital thereafter in KTS Hospital, and thereafter referred at Government Medical College and Hospital, Nagpur. During treatment his leg was amputated. Thus, he sustained 100% disablement, and therefore he is entitled to receive compensation.

13. To substantiate the said contention, he adduced his evidence by examining himself before the learned Tribunal. He reiterated the contentions besides his oral evidence. He produced on record the Discharge Card of Government Medical College and Hospital, Nagpur which shows that the right lower limb has sustained crush injury and his leg was amputated below the knee. He is cross-examined at length. During his cross-examination, it came on record that alleged incident occurred on 08.06.2015 when he was travelling Gatra to Balaghat. He admitted that he has not filed any journey ticket on record. But he denied that he was travelling without ticket. It further specifically came on record that the amputation as per Discharge Card is right lower limb and crush injury below the knee. In written statement no defence is taken by the Railway that injured was not a *bona fide* passenger. On behalf of Railway no evidence is adduced as no witness is examined. Railway relied upon the DRM report to show that injured has sustained injuries which a self-inflicted injury, and therefore applicant is not entitled for any compensation.

(8)

14. On the basis of evidence adduced by the claimant/appellant, it is submitted that claimant has sustained injuries in an untoward incident, and therefore he is entitled for compensation. On the other hand, it is submitted by the Railway that as the injuries are sustained by the claimant while boarding in the train it is self-inflicted injury and Railway is not liable to pay compensation.

15. Before entering into the merit of the case, it is necessary to see the definition of untoward incident. The definition of untoward incident defined in Section 123(c) of the Railways Act, 1989 which is reads as under:

Section 123(c)

[(c) “untoward incident” means--

(1)(i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers.]

(9)

16. Now considering the matter on merits, the claimant has adduced the evidence by examining himself. He has also placed reliance on the DRM report. The Railway has raised the issue that injured was not a *bona fide* passenger. The Railways Act, 1989 prior to insertion of Section 124-A the definition of passenger in clause 29 of Section 2 runs as “passenger” means a person travelling with the valid pass or ticket. Thus, a person who under takes a journey must travelled with a valid ticket or pass. Chapter 3rd of the Act contains provisions regarding carriage of passengers. In view of Section 55 there is a prohibition against travelling without pass or ticket. Sub-section (1) of Section 55 provides that no person shall enter or remain in any carriage on a railway for the purpose of travelling therein as a passenger unless he has with him a proper pass or ticket. Thus, Section 55 clearly prohibits travelling without pass or ticket. It is stated by the applicant on affidavit that he obtained the ticket and was travelling by the train by holding valid ticket. Admittedly, he had not produced the said ticket. Admittedly, the railway has not raised the defence in written statement that injured was not a *bona fide* passenger as no ticket was found along with him.

17. The Hon’ble Apex Court has explained the application of principle of strict liability and held that the object of the act is to be considered and liberal meaning is to be given and not the literal

(10)

meaning. In case of **Dalit and others Vs. Union of India General Manager South Central Railway Secunderabad** reported in 2019 (6) BCR 444, wherein after referring several decisions of the Hon'ble Apex Court, it is held by this Court that merely because railway ticket was not recovered from dead body it cannot be said that the deceased was travelling without ticket, possibility that ticket may have been lost during the course of untoward incident cannot be ruled out. Here in the present case also, injured was trying to catch the train and in that circumstances possibility of missing the ticket cannot be ruled out and, therefore, the contention of the Railway that applicant was not a *bona fide* passenger is not sustainable. Admittedly, in the present case, it is not disputed that the injured met with an accident when he was attempting to catch the train. The Railway has not disputed that applicant was trying to catch the train and at that time he fell down and sustained injury. The said accident is also noted by the witness of the railway. The DRM report specifically states that after due investigation and from perusal of the record, it is clear that claimant on 08.06.2015 was trying to board in the train and at that time his leg slipped and he fell down and sustained injuries. Thus, it is crystal clear that when injured was trying to board in the train, he fell down and sustained the injuries.

(11)

18. The law is settled by the Judgment of the Hon'ble Apex Court in the case of **Union of India Vs. Prabhakaran Vijaya Kumar** (supra) wherein it is held that a passenger trying to board in moving train fell down and died. Railway Authorities liable to pay compensation even if there was no fault on the part of the railways. The Hon'ble Apex Court had considered various judgments and also discussed that if the word used in a beneficial or welfare statute which are capable of two constructions, the one which is more in consonance with the object of the act and for the benefit for the person for whom the act was made should be preferred. In other words, beneficial or welfare statutes should be given liberal and not literal or strict interpretation. The Hon'ble Apex Court had also considered the judgment of *Rylands Vs. Fletcher* reported in 1866 LRI Ex 265 wherein the fact created a new legal principle, though professes to be based on analogist drawn from existing law. Hon'ble Apex Court has held that 'accidental falling of passenger from a train carrying passengers' in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents by adopting a restrictive meaning to it. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford travelling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of

(12)

victims of train accidents from getting compensation under the Railways Act. Hence in our opinion the expression accidental falling of a passenger from a train carrying passengers includes accidents when a *bona fide* passenger i.e. a passenger travelling with a valid ticket or pass or trying to enter into a railway train and falls during the process. In other words a purposive, and not literal, interpretation should be given to the expression.

19. The another defence raised by the Railway is that the claimant has sustained injury which is a self-inflicted injury. The aspect of self-inflicted injury for self-negligence is dealt by the Hon'ble Apex Court in **Union of India Vs. Rina Devi** reported in **2018 (3) T.A.C. 26** and it is held that Section 123 and Section 124-A are interpreted and held that the victim received injuries in the course of entering a train which started moving. Question was whether his claim that he had suffered injuries in an 'untoward incident' as defined under Section 123(c) could be upheld or whether he was covered by proviso to Section 124A Clause (b). The Hon'ble Apex Court had considered the judgment of **Joseph P. T. Vs. Union of India** reported in **AIR 2014 Kerla 12** wherein the concept of self-inflicted injury was discussed. In another Judgment **Pushpa vs. Union of India** reported in **(2017) III A.C.C. 799 (Bom.)** wherein a hawker died in the course of boarding a train was also discussed and

(13)

held that we are unable to uphold the above view as a concept of self-inflicted injury which 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. Thus, the Hon'ble Apex Court had interpreted the concept of self-inflicted injury and held that mere negligence of any particular degree is not sufficient to infer that it was a self-inflicted injury. Thus, the contention of the respondent that it was the injured who was negligent, and therefore he is not entitled for any compensation is not sustainable in the light of various decisions of the Hon'ble Apex Court. The expression accidental falling of a passenger from a train carrying passenger include accident when a *bona fide* passenger travelling tries to enter into a railway and falls down from the process covered under untoward incident. Therefore, the contention of the Railway that appellant is not entitled for compensation as he was not travelling in the train, but he sustained the injuries due to negligence is not sustainable. From the available evidence on record, it is established by the claimant that he was travelling by the train. The possibility that ticket may have been lost during the course of untoward incident cannot be ruled out. Here in the present case, injured was trying to catch the train and in that circumstances possibility of missing the ticket is possible, and therefore contention of the railway that he was

(14)

not a *bona fide* passenger is not sustainable. Admittedly, in the present case, it is not disputed that injured met with an accident i.e. he sustained injury in an untoward incident took place on 08.06.2015. It is also not disputed that he was trying to catch the train and at that time he fell down and sustained the injuries. Now only question is what amount the claimant is entitled for as a compensation. Learned Advocate Mr. Charpe for the appellant submitted that claimant is entitled to receive the compensation at the rate of Rs.8,00,000/- as he has sustained 100% disability. Whereas it is submitted by the learned Advocate Ms. Athalye for the respondent that the case of the claimant is covered under clause 22 of notification issued by the railway dated 22.12.2016. She submitted that the case of the appellant is not covered for grant of compensation i.e. Rs.8,00,000/-. In view of Schedule under Rule 3 the amount of compensation Rs.8,00,000/- is provided for part one i.e. in case of death and in case of loss of both hands or amputation at higher sides.

20. She submitted that the amount of compensation is categorized in three parts. In first part, the cases of death are covered, in second part the case i.e. loss of both hands or amputation at higher sides, loss of hand and the foot is covered. The case of double amputation through leg or thigh or amputation through leg or thigh on

(15)

one side and loss of other foot is covered. Under part two if a person lost the sight of such extent has to render the claimant unable to perform any work or any facial disfigurement or absolute deafness he is entitled to receive compensation of Rs.8,00,000/-. But when a person sustained injury of amputation below knee with stump exceeding five inch, he is entitled to receive the compensation to the extent of Rs.3,20,000/-.

21. Here in the present case also, the appellant sustained injury on his right leg and his leg below knee is amputated. Learned Advocate Ms. Athalye for the respondent submitted that medical evidence adduced by the applicant is also sufficient to show that his leg below knee is amputated, and therefore he is entitled to receive compensation of Rs.3,20,000/-. She invited my attention towards the medical papers including Discharge Card issued by the Government Medical College and Hospital, Nagpur. The Discharge Card issued by the Government Medical College and Hospital, Nagpur shows that injured had sustained crush injury on his right leg and his leg below knee is amputated i.e. 1/3 leg. Learned Advocate Mrs. Athalye, placed her reliance on the medical terminology which defines a leg. She placed her reliance on medical editor which defines a leg as the portion of the lower extremity that runs from the knee to the ankle. In popular usage, the part of the body from the top of the thigh down to the foot, and in medical terminology, the

(16)

portion of the lower extremity that runs from the knee to the ankle. The leg (in the medical sense) has two bones 'the tibia (shinbone) and the fibula' both of which are known as long bones. The larger of the two is the tibia. The fibula runs alongside the tibia. Learned Advocate for the respondent further submitted that the leg is defined as the region of the lower limb below the knee. It consists of a posterior, anterior and lateral compartment. Thus, the muscles of the leg produced different movements in the ankle and foot that are important for many activities such as walking. Thus, the leg consists of tibia and fibula.

22. Here in the present case, the appellant has sustained the injury to his right leg and his leg is amputated below the knee. Though learned Advocate Mr. Charpe, for the appellant vehemently submitted that the appellant is entitled to receive the compensation to the tune of Rs.8,00,000/-, however his submission is not supported by any other evidence. In view of notification issued by the Railway, appellant is entitled to receive the compensation to the tune of Rs.3,20,000/-.

23. The Railway Claims Tribunal rejected the compensation by observing that the case of the applicant is not covered as it is self-inflicted injury. As already observed that the Hon'ble Apex Court had already held that the aspect of self-negligent or self-inflicted injury is to

(17)

be considered by interpreting it and the Hon'ble Apex Court interpreted it as that there should be intention to prove that it was self-inflicted injury. The concept of self-inflicted injury would require intention to inflict such injury and not mere negligence of any particular degree. Therefore, the observation of the Tribunal is not sustainable. The learned Tribunal ought to have consider that if we adopt a restrictive meaning to the expression accidental falling of a passenger from a train carrying passenger, it will be depriving a large number of railway passengers from getting compensation in railway accident. The learned Tribunal ought to have consider that it is a beneficial legislation and strict compliance is not required. Here in the present case, there is no dispute that the injured was travelling by the train and he sustained injury while boarding in the train. Therefore, the observation of the Tribunal is wrong and erroneous.

24. As far as the amount of compensation is concerned, in view of Schedule under Rule 3 of the Railway Accidents and untoward Incidents (Compensation) Rules, 1990. The appellant is entitled to receive the compensation of Rs.3,20,000/- on account of injuries sustained by him in the untoward incident which occurred when he was travelling by the train. The appellant has proved that he sustained injuries in untoward incident. It is also established that he was a *bona*

(18)

fide passenger, therefore he is entitled to receive the compensation at the rate of Rs.3,20,000/-. As the Railway Claims Tribunal has rejected the claim of the claimant and he is deprived from getting the compensation at earlier stage. Considering the same the appellant is also entitled to receive the interest at the rate of 6.00% per annum, till the realization of amount.

25. In view of the above discussion, the appeal is allowed.

26. The respondent is directed to pay compensation of Rs.3,20,000/- to the appellant within a period of 60 days along with the interest at the rate of 6.00 % per annum from the date of application, till realization of the said amount.

27. The respondent is directed to pay compensation within a period of 60 days from the date of receipt of the copy of the Judgment and after verification of the documents.

(URMILA JOSHI-PHALKE, J.)

Sarkate./-