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

FIRST APPEAL NO.191 OF 2020

Nagesh s/o Gulabrao Kale,
Aged 27 years, Occ.: Nil,
R/o. Nirwadi (Bk.),
Tah. Seloo, Dist. Parbhani.

APPELLANT

// VERSUS //

Union of India, through
its General Manager,
Central Railway, C.S.T., Mumbai.

RESPONDENT

Mr. R. G. Bagul, Advocate h/f Ms. Shweta V. Salwankar, Advocate
for the appellant.
Ms. Neerja Chaubey, Advocate for respondent.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 24/03/2023

ORAL JUDGMENT

1. Present appeal is preferred by the appellant against the Judgment and Award passed by the Railway Claims Tribunal, Nagpur in Claim Petition No.OA(IIu)/NGP/2013/0304 by which the claim of compensation of the claimant was rejected by order dated 06.09.2016.
2. The parties are hereinafter referred to as per their original nomenclature.

(2)

3. Present applicant Nagesh Gulabrao Kale is resident of Nirwadi (Bk), Tq. Selu, Dist. Parbhani. He filed the application for grant of compensation on account of accidental injury sustained by him in an untoward incident dated 15.04.2013. As per the contention of the applicant, on 15.04.2013 the applicant had been to Mumbai to meet his friend and while returning he purchased a ticket bearing No.Q44127439 Dadar to Pune of Pragati Express Train No.2125. There was heavy rush of the passengers in Pragati Express. He was boarded in a train at about 4.30 p.m. and while travelling the train reached at Kasarwadi Railway Station Tq. Haweli, Dist. Pune. At about 7.30 p.m. the applicant was watching which station came and there was sudden jerk to the train and applicant fell down from the train and sustained crush injury to both legs, chest, head and other multiple injuries on his person. After the untoward incident, he become unconscious. His both legs were amputated in the incident. The alleged incident took place at Kilometer No.180/4 at Kasarwadi Railway Station between up and down railway line.

4. As per the contention of the applicant, he was a *bona fide* passenger of the above said train and he was travelling by obtaining the valid ticket. When the train reached at Kasarwadi Railway Station accidentally, he fell down from the train and sustained injuries which

(3)

resulted in the amputation of both the legs. As he sustained the injuries in untoward incident, he is entitled to receive the compensation from the respondent – Railway.

5. In response to the notice, respondent – Railway raised strong objection to the application of the claimant and took a defence that the claimant/applicant had received the injuries due to his own negligence. He was not a *bona fide* passenger. As the act of the applicants covers under sub-clause (b) of Section 124-A of the Railways Act, no compensation is payable to the claimant as the injuries sustained by him are self-inflicted injuries, therefore claim of the claimant deserves to be rejected.

6. Learned Tribunal has recorded the evidence of both the sides and came to the conclusion that claimant had sustained the injuries due to his own negligence, and therefore he is not entitled to receive any compensation and rejected the claim of the claimant.

7. Being aggrieved and dissatisfied with the judgment and order of the Railway Claims Tribunal. The present appeal is preferred by the appellant who is the original claimant on the ground that learned Railway Claims Tribunal had not considered the settled law that mere

(4)

negligence of the claimant does not attract the provision sub-clause (b) of Section 124-A. The learned Railway Claims Tribunal erroneously held that the respondents – Railway is not liable to pay compensation by ignoring the legal principle. Therefore, the judgment and order of the Railway Claims Tribunal deserves to be quashed and set aside.

8. Heard learned Advocate Mr. Bagul, for the claimant/appellant, he submitted that there is no dispute that injured was travelling by Pragati Express by obtaining the valid railway ticket. To substantiate the contention, applicant adduced his evidence and reiterated the contention raised by him in the application. In support of his contention, he placed reliance on the police papers, FIR, Spot panchnama etc. as well as D.R.M. report. The D.R.M. report is on the basis of investigation carried out by Railway Administration which also shows that injured sustained injury as he fell down from the train. Mere negligence of the claimants is not sufficient to attract sub-clause (b) of Section 124-A of the Railways Act, 1989. He submitted that, in view of the decision of Hon'ble Apex Court in **Union of India vs. Rina Devi reported in 2018 (3) T.A.C. 26 (S.C.)** to attract Section 124-A the intention of the passenger is to be proved by the railway which is absent in the present case, and therefore railway is liable to pay compensation to the claimant.

(5)

9. Per contra, learned Advocate Ms. Chaubey for the respondent submitted that the applicant was peeping outside the train to see which station is the next station and, in that attempt, he fell down and sustained the injuries. This fact itself is sufficient to show that he sustained the injuries due to his own fault, and therefore it covers under the self-inflicted injuries, and therefore he is not entitled to receive the compensation.

10. After hearing both the sides, the relevant question which arises for consideration is –

- (i) Whether the railway claims tribunal is justified in rejecting the claim of the claimants for compensation?

11. Present application was filed by the claimant for grant of compensation on the ground that on 15.04.2013, he was travelling by Pragati express bearing No.2125 Dadar to Pune by obtaining the ticket. While the train passing from Kasarwadi Railway Station, he peeped to see that which station is next station and there was sudden jerk to the train and thereby he fell down and sustained the injuries. The said contention is denied by the railway. To substantiate the contention claimant examined himself vide Exh.A45. He reiterated the contention raised in the application. During his cross-examination, he admitted that

(6)

accident spot at Kasarwadi Station. Chikhli was 15 Km away from Kasarwadi. There is no schedule halt of train at Kasarwadi Station by which he was travelling. He further admits that the train was slow in speed at the time of accident. Thus, attempt was made by the railway to place on record that the train was not in an excessive speed, but it was the fault of the claimant to peep out side the train to see the name of the next station and he fell down and sustained the injury. Thus, the act of the claimant covers under the self-inflicted injury.

12. On behalf of Railway one Narendra Madhukar Dhavle Station Master was examined who testified that Booking Clerk of Kasarwadi Station informed him by telephonic call that one unknown person was run over by Pragati Express on Kasawardi platform and lying in track and is alive. He further states that the Pragati Express stops at Lonavala, Shivaji Nagar and Pune only. There was no scheduled halt of Pragati Express at Kasawardi Station. Admittedly, this witness is not cross-examined by the claimant. On the basis of the evidence of Station Master Shri Narendra Dhavle, learned Advocate Ms. Chaubey submitted that the evidence of Station Master remained unchallenged which shows that injured has sustained the injuries as he was run over by the Pragati Express.

(7)

13. Besides oral evidence, claimant placed reliance on police papers i.e. FIR, Spot panchnama, Injury certificate etc. The injury certificate on record shows that after the accident injured was shifted to Sassoon General Hospital, Pune. The history narrated at the hospital also shows that railway accident at Kasarwadi on 15.04.2013. He had sustained the head injury. Disability certificate issued to the claimant shows that his both the legs were amputated due to the accidental injuries. Thus, it is an admitted position now that injured had sustained the grievous injuries its resulted into the permanent disablement due to the amputation of both the legs. The D.R.M. report which is filed by the railway after due investigation. There is no dispute that injured was having valid ticket dated 15.04.2013 bearing No. Q44127439. The D.R.M. report also supports the contention of the claimant that he was a *bona fide* passenger. Therefore, contention of the railway that injured was not a *bona fide* passenger is not sustainable and not acceptable. Now only question remains whether injured has sustained the injuries in an untoward incident or the injuries are self-inflicted injuries.

14. Before entering into the merits of the case, it is necessary to see the definition of untoward incident.

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.]

15. In the present case, there is no dispute that injured was travelling by the Pragati Express. It is also not disputed that injured was standing at the entry of the bogie and was peeping to see that which is the next station. In the said attempt, he slipped and fell down and sustained the injuries. As per the contention of the claimant, there was a jerk to the train, and therefore he fell down and sustained the injuries. Whereas it is the contention of the railway that he sustained the injuries due to his own negligence. Now it is well settled that mere negligence is not sufficient to attract the terms self-inflicted injury. The Hon'ble Apex

(9)

Court in **Union of India Vs Rina Devi** reported in **2018 (3) T.A.C. 26 (S.C.)** held that the meaning of the terms “self-inflicted injury” used in the statute can be deduced as one which is a person suffers on account of one’s own action, which is something more than a rash or negligent act but it shall not be an intentional act of attempted suicide. While there may be cases whether there is intention to inflict oneself with injury amounting to self-inflicted injury, which falls short of an attempt to commit suicide, there can also be the cases where irrespective of intention, a person may act with total recklessness, in that, he may throw all norms of caution to the wind and regardless to his age, circumstances, etc. act to his detriment. It is further held that by the Hon’ble Apex Court that the concept of ‘self-inflicted injury’ requires 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’. The Hon’ble Apex Court has referred the Judgment of **United India Insurance Company Ltd. vs. Sunil Kumar 2017(13) SCALE 652**, laying down that plea of negligence of the victim cannot be allowed in claim based on ‘no fault theory’ under Section 163A of the Motor Vehicles Act, 1988. Accordingly, it was 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

(10)

not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributory factor.

16. In the present case, it is an admitted position that injured was standing at the entrance and was peeping out side the train to see which station is the next station. Admittedly, he has not taken the due care and caution while travelling in the train. But, as already held by the Hon'ble Apex Court mere negligence is not sufficient to attract the concept of self-inflicted injury.

17. The principle behind the grant of compensation under the Railways Act is enumerated as it is a beneficial legislation. It is well settled that if the word used in a beneficial or welfare statute are to be interpreted with a purposive construction and it should be interpreted literally. The Hon'ble Apex Court in **Union of India Vs. Prabhakaran Vijaya Kumar** reported in **2008 ACJ 1895**, wherein the Hon'ble Apex court held that "it is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the act and for the benefit of the person for whom the act was made should be preferred. In other words, beneficial or welfare statutes should be given in liberal and literal or strict interpretation."

(11)

18. In the present matter, there is no dispute that the D.R.M. report, spot panchnama and Police report clearly shows that the injured fell down from running train and sustained the injuries and resulted into the amputation of both the legs. The act of the claimant does not cover under the self-inflicted injuries. In view of that claimant is entitled to receive the compensation in view of Schedule under Rule 3 part 2 clause (3) of the Railways Act, 1989. In view of the said Schedule, the claimant is entitled to receive the compensation of Rs.8,00,000/-. As per the notification issued by the Railway on 16.12.2016 came into effect from 01.01.2017.

19. Learned Advocate Ms. Chaubey, vehemently submitted that the claimant is not entitle to receive any interest on the compensation amount. In view of the decision of the Hon'ble Apex Court in **Union of India Vs. Radha Yadav** reported in **2019 (3) SCC 410**. As per the old Schedule the claimant was entitled to receive the compensation of Rs.4,00,000/-, but now in view of new Schedule, he is entitled to receive revised amount of compensation of Rs.8,00,000/-. He is entitled to receive the revised amount of compensation the amount which is highest one after adding the interest is to be granted to the claimant.

20. In **Union of India Vs. Radha Yadav** (supra) it is held by the

(12)

Hon'ble Apex Court that the liability will accrue on the date of the accident and the amount applicable as on that date will be the amount recoverable. Compensation will be payable as applicable on the date of accident with interest as may be considered reasonable from time to time on the same pattern as an incident claim cases. However, if the amount so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts. In para No.11 of the Judgment it is observed by the Hon'ble Apex Court that the issue raised in the matter does not really require any elaboration as in our view, the judgment of this Court in **Rina Devi** is very clear. What this court has laid down is that the amount of compensation payable on the date of accident with reasonable rate of interest shall first be calculated. If the amount so calculated is less than the amount prescribed as on the date of the award. The claimant would be entitled to higher of these two amounts. As on the date of the award the claimant would be entitled to higher of these two amounts. Therefore, if the liability had arisen before the amendment was brought in, the basic figure would be as per the Schedule as was in existence before the amendment and on such basic figure reasonable rate of interest would be calculated. If there be any difference between the amount so calculated and the amount prescribed in the schedule as on the date of the award, the higher of two figures would be the measure of

(13)

compensation. For instance, in case of death, in an accident which occurred before amendment, the basic figure would be Rs.4,00,000/-. If, after applying the reasonable rate of interest, the final figure were to be less than Rs.8,00,000/-, which was brought in by way of amendment, the claimant would be entitled to Rs.8,00,000/-. If, however, the amount of original compensation with rate of interest were to exceed the sum of Rs.8,00,000/- the compensation would be in terms of figure in excess of Rs.8,00,000/-. The idea is to afford the benefit of the amendment, to the extent possible. Thus, according to us, the matter is crystal clear. The issue does not need any further clarification or elaboration.

21. In the light of the above said principles after applying the interest in addition to the amount in view of old Schedule the amount comes to Rs.6,40,000/- and if the revised schedule is applied on the date of award the claimant is entitled to receive Rs.8,00,000/-. In view of the judgment of the Hon'ble Apex Court the claimant is entitled to receive the higher amount. If highest amount is to be paid then claimant is not entitle to receive any interest on the said amount. In view of that, in the present case, the claimant is entitled to receive the compensation of Rs.8,00,000/-. However, he is not entitled to receive the interest on the compensation amount.

(14)

22. In the light of the observations, the appeal deserves to be allowed.

23. The appeal is allowed.

24. The Judgment and Award passed by the learned Railway Claims Tribunal is hereby quashed and set aside.

25. The respondent – Railway is directed to pay the compensation of Rs.8,00,000/- within 60 days to the claimant from the order of the judgment received by the Railway.

(URMILA JOSHI-PHALKE, J.)

Sarkate./-