



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

FIRST APPEAL NO. 675 OF 2013

APPELLANT : Mr. Lalchand @ Gobriji Thakre
 (Original Claimant) Aged 33 years, Occ. Nil. R/o KEC
 Suyog Colony, Phase II Near
 Virsaokar Nagar, MIDC, Butibori,
 Nagpur

//VERSUS//

RESPONDENT : Union of India,
 (Original Non-App) through its General Manager, Central
 Railway, Shivaji Terminal, Mumbai

Shri R.S. Charpe, Advocate for appellant.

Shri N.P. Lambat, Advocate for respondent.

CORAM : G. A. SANAP, J.

DATED : 3rd OCTOBER, 2023.

ORAL JUDGMENT

In this appeal, filed under Section 23 of the Railway Claims Tribunal Act, 1987 (for short “the Act of 1987”), challenge is to the judgment and order dated 02/08/2011 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim application made by the appellant was partly allowed.

2. Background facts:-

The appellant met with an accident while travelling in railway. On 12.01.2011 the appellant was proceeding to Nagpur from Butibori by Bhusawal Nagpur passenger train with valid railway ticket. It is his case that due to heavy rush and sudden jerk he fell from running train at Butibori Station. He sustained serious injuries. He was shifted to Orange City Hospital. His left leg was amputated. In his right leg there was no sensation. According to appellant, he has sustained 100% permanent disability. He therefore, claimed compensation of Rs.10,00,000/-.

3. Respondent filed written statement and opposed the claim. It is denied that the appellant sustained the injuries in an untoward incident. According to the railway, the incident occurred due to negligent act of the appellant. The appellant did not take care. He boarded the running train. He lost his balance and fell down. The injury sustained was self inflicted injury. He was not entitled to get the compensation.

4. The learned Member of the Tribunal framed as many as three issues. The learned Member of the Tribunal answered the issues in favour of the appellant and awarded the compensation of

Rs.3,20,000/- (Rupees Three Lakhs Twenty Thousand Only).
Being aggrieved by the judgment and order of the Tribunal,
appellant has come before this Court.

5. I have heard Shri R.S. Charpe, learned Advocate for the
appellant and Shri N.P. Lambat, learned Advocate for the
respondent. Perused the record and proceedings.

6. In view of the facts and circumstances following points
fall for my determination.

i) Whether the appellant was a bona fide passenger
travelling with a valid journey ticket?

ii) Whether the appellant sustained the injuries due to fall
from running train and as such in an untoward incident?

7. Learned Advocate for the appellant submitted that there
is voluminous documentary evidence to substantiate the
contention of the appellant that due to the injuries sustained by
him, he has deprived of his capacity to do any work. Learned
Advocate submitted that the injury sustained is non schedule
injury and therefore, the appellant would be entitled to get higher
compensation. Learned Advocate submitted that in the disability
certificate produced on record, the percentage of disability

mentioned is 80%. Learned Advocate submitted that learned Member of the Tribunal instead of considering the injury as a schedule injury, ought to have considered the injury as covered under Rule 3 sub-rule (2) of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 (for short Rules, 1990). Learned Advocate submitted that the appellant in his evidence has stated that due to injury sustained by him, he is not capable to do any work. Learned Advocate pointed out that the appellant was doing labour work and the injury sustained by him has totally deprived him of his capacity to do the labour work. Learned Advocate therefore, submitted that the appellant is entitled to get compensation higher than the one awarded by the learned Member of the Tribunal.

8. Learned Advocate for the respondent submitted that the learned Member of the Tribunal has properly appreciated the evidence and on the basis of the evidence has rightly quantified the compensation. Learned Advocate submitted that the injury sustained by the appellant was schedule injury covered by Part III clause (17) of the Schedule. Learned Advocate submitted that the compensation awarded by the learned Member of the Tribunal at the rate prevailing on the date of the accident was therefore, just

proper and reasonable.

9. The appellant has examined himself as sole witness in support of his claim. It is the case of the appellant that he has been deprived of his capacity to do any work because of the amputation of his left leg. On the basis of this contention, the appellant claimed the higher compensation than one provided under the schedule. The main question which needs to be addressed is whether the evidence on record is sufficient to establish that injury sustained by the appellant was non schedule injury. On the basis of the evidence on record, the appellant submitted before the learned Member of the Tribunal. Learned Member of the Tribunal, on the basis of the available evidence found that the injury was schedule injury. As far as the contention of the appellant that he was deprived of his capacity to do work is concerned the learned Member took note of the condition of the appellant. Learned Member has observed that when the appellant was present at the time of the evidence, he had seen the condition of the appellant. It therefore, indicates that learned Member of the Tribunal after considering the physical condition of the appellant made this pertinent observation. In short, learned Member of the Tribunal observed that the contention of the appellant that he was deprived

of his capacity to do any work was not tenable.

10. The appellant has placed on record disability certificate. Disability certificate is silent about the lack of sensation in the right leg. According to the Medical Board, the disability was 80%. Undisputedly the appellant was doing labour work. The disability certificate does not indicate that the appellant has been deprived of his capacity to do any work. Learned Advocate took me through the entries from the discharge card issued by the hospital. The discharge summary is on record. In the discharge summary, it has been mentioned that in the right leg there was no sensation. The submission advanced by the learned Advocate for the appellant that the appellant has been fully paralyzed and is not in a position to move from his house is not supported by the evidence on record.

11. Rule 3 of the Rules 1990 provides for amount of compensation payable in respect of death or injury in the railway accident. Sub-rule 2 provides that the amount of compensation payable for injury not specified in part II or part III of the schedule but which in the opinion of the Tribunal is such as to deprive a person of all capacity to do any work shall be Rs.8,00,000/-. Perusal of this sub rule II indicate that amount of compensation payable for injury specified in schedule must be as provided in the

schedule. Sub rule 2 is an exception to the schedule. In order to award compensation more than what has been provided in schedule the Tribunal must come to a conclusion on the basis of the evidence that injury is such as to deprive a person of all capacity to do any work. It needs to be mentioned that deprivation of capacity to do any work is a question of fact. The question of fact therefore, has to be addressed on the basis of the evidence. The appellant has produced on record the disability certificate. Disability certificate is not sufficient to make out the basic ingredients of sub rule 2 of Rules 3 of the Rules 1990. In my view, therefore, the submission advanced by learned Advocate that appellant would be entitled to get the compensation of Rs.8,00,000/- cannot be sustained.

12. The appellant was travelling with valid journey ticket. The ticket has been produced on record. The appellant in his evidence has narrated in great detail the account of the incident. He has stated that he fell from running train due to rush and sudden jerk to the train and sustained the injuries. The railway has not examined any witness. There is no other eye witness to the incident. This witness was cross-examined on behalf of the respondent. The answers given in the cross-examination are not

sufficient to accept the defence of the railway that injury was not sustained due to fall from running train. The defence of the railway is of negligence on the part of the appellant. In my view, considering the law laid down by the Hon'ble Supreme Court in the case of *Union of India vs. Rina Devi* reported in *AIR 2018 SCC 2362* this defence cannot be entertained. The Hon'ble Supreme Court has addressed this issue in paragraph No.16.6.

Paragraph No.16.6 is extracted below:-

“16.6 We are unable to uphold the above view as 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’. We may in this connection refer to judgment of this Court in United India Insurance Co. Ltd. v. Sunil Kumar laying down that plea of negligence of the victim cannot be allowed in claim based on ‘no fault theory’ under Section 163-A of the Motor Vehicles Act, 1988. Accordingly, we hold 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 to Section 124A merely on the plea of negligence of the victim as a contributing factor.”

13. The Hon'ble Supreme Court has held that defence of the negligence or contributory negligence is not available in the railway accident claims in as much as the liability is based on the principle of strict liability or 'no fault theory'. The defence of the negligence has no place in claim based on no fault theory. It is held that the death or injury in the course of boarding or deboarding 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. In my view, the defence of the negligence or contributory negligence on the part of the appellant as sought to be canvased by the railway cannot be accepted. The learned Member of the Tribunal was therefore, right in answering the issues in favour of the appellant. Similarly, the learned Member of the Tribunal was right in holding that injuries sustained by the appellant would be covered by schedule part III clause 17. As such I do not find any reason to unsettle this finding of fact.

14. The learned Advocate for the appellant submitted

that there was amendment to the Rules 1990 in the year 2017. It is pointed out that with effect from 01.01.2017 the compensation amount payable has been increased. Learned Advocate submitted that the Hon'ble Supreme Court in the cases of *Union of India vs. Rina Devi* as well as *Union of India Vs. Radha Yadav*, reported in, *AIR 2018 SC 2362* and *(2019) 3 SCC 410* has held that in a pending proceeding on the date of the award the claimant would be entitled to get the compensation as per the amended provisions.

15. According to the learned Advocate, the appellant would be entitled to get the compensation of Rs.6,40,000/- (Rupees Six Lakhs Forty Thousand Only).

16. Learned Advocate for the respondent-railway submitted that the appellant is not entitled to get the benefit of the amended provisions. Learned Advocate submitted that the case of the appellant would be governed by the provisions existing with regard to the quantum of compensation on the date of accident and as well as on the date of the award. Learned Advocate submitted that the decision in the case of

Union of India vs. Rina Devi and Union of India Vs. Radha Yadav (supra) would not be applicable.

17. It is to be noted that in this case, the claim was decided on 02.08.2011. The accident had occurred on 12.01.2011. The appeal filed by the appellant remained pending for all these years. In my view, in appeal filed before amendment and pending on the date of amendment the benefit of the amended provisions cannot be denied. It is not out of place to mention that appeal is a continuation of the main proceeding. The proceeding gets finally terminated, in case the statutory appeal is provided, on the decision of the appeal. Therefore, the submission advanced by the learned Advocate that merely because of pendency of the appeal the appellant would not get benefit of the amended provisions, in my view is not tenable by applying this analogy. The Hon'ble Supreme Court in the case of Rina Devi (supra) as well as in Radha Yadav (supra) has categorically held that the 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 in accident claim cases. It is further held that if the amount so calculation is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of these two amounts. It is further held that this order will not affect the awards which have already become final and where limitation for challenging such awards has expired. The Hon'ble Apex Court in the case of Radha Yadav (supra) has explained this position further. Paragraph No.11 would be relevant to address the issue. It is extracted below:-

“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. 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 compensation. For instance, in case of a death in an accident which occurred before the amendment, the basic figure would be Rs.4,00,000/- If after applying 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”.

18. In my view, in the backdrop of law laid down in the above two decisions the submissions advanced by learned Advocate for the appellant deserves acceptance. The submissions advanced by the learned Advocate for the respondent cannot be accepted in view of this law. The appeal therefore, will have to be partly allowed.

19. The appeal is accordingly partly allowed.

20. The appellant is held entitled to get compensation of Rs.6,40,000/- (Rs. Six Lakhs Forty Thousand Only). Learned

Advocate for the appellants submits that in terms of the award passed by the Tribunal the amount of Rs.3,27,946/- (Rs. Three Lakhs Twenty Seven Thousand Nine Hundred and Forty Six Only) was directly remitted in his bank account. This amount will have to be deducted from the amount of Rs.6,40,000/-. The respondent is directed to pay the balance amount of Rs.3,12,054/- (Rs. Three Lakhs Twelve Thousand and Fifty Four Only) to the appellant within eight weeks. The amount be directly deposited in the bank account of the appellant. The appellant shall provide the particulars of his bank account to the respondent.

21. The appellant will not be entitled to get any interest on the said amount. However, the appellant would be entitled to get interest @ 7% per annum from the date of this judgment till realization of the amount, if the amount is not deposited within four months.

22. The First Appeal stands disposed of. No order as to costs.

(G. A. SANAP, J.)