



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

FIRST APPEAL NO. 814 OF 2012

APPELLANT : The Union of India,
(Original Respondent on through the General Manager,
R.A.) Central Railway, Mumbai

//VERSUS//

RESPONDENT : Anant s/o Govind Lale,
(Original Applicant on Age 25 years, Occ.: Nil,
R.A.) R/o. Jaibhawani Colony, Partur Dist.
Jalna

Mrs. Neeraja Chaubey, Advocate for appellant.
Shri R.G. Bagul, Advocate for respondent.

CORAM : G. A. SANAP, J.
DATED : 21st SEPTEMBER, 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 25/01/2011 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the Tribunal allowed the claim for compensation filed by the respondent on account of permanent disablement suffered by him

in an untoward incident.

2. Background facts:-

It is the case of the respondent that on 26.02.2008 at about 15.30 hrs. he went to Diva Railway Station for going to Thane. After purchasing the railway ticket, he was proceeding on platform No.1. His aunt was standing at platform No.2 of Diva Railway Station. She was waiting for the local train. In the meanwhile, local train No.TL-33 Titwala Local Train came on Diva Railway Station Platform. It is stated that motor man did not blow the horn. Engine of the local train struck the respondent. Respondent fell down. He sustained serious injuries to his head and face. On account of injuries sustained to his face, he lost his vision. The respondent sustained injuries and suffered 100% disability. It was stated that incident occurred due to negligence, carelessness and mismanagement and mishandling of train by railway administration. He was a *bona fide* passenger. After accident, his travel ticket was lost. He therefore, claimed the compensation.

3. The appellant-railway filed the written statement and opposed the claim. It was contended that deceased sustained head

injuries while trespassing Diva Railway Station. He was not a *bona fide* passenger. Ticket was not recovered. He was trying to cross the railway line and at that time, he was in fact dashed by local train No.TL-33. It was stated that therefore, the accident was due to sheer criminal negligence of the respondent and he is not entitled to get the compensation.

4. Learned Member of the Tribunal framed as many as three issues. Learned Member of the Tribunal on consideration of the evidence adduced by the parties allowed the application and awarded the compensation. Being aggrieved by this judgment and order the appellant-railway has come before this Court in appeal.

5. I have heard Mrs. Neeraja Chaubey, learned Advocate for the appellant and Shri R.G. Bagul, 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 respondent was a *bona fide* passenger with valid journey ticket to travel in local train?
- (ii) Whether the respondent sustained injuries due to dash of the

train at Diva railway station and sustained 100% permanent disablement?

7. Learned Advocate for the appellant submitted that evidence adduced by the respondent is not sufficient to prove that he was a *bona fide* passenger with valid journey ticket. Learned Advocate submitted that first hand account of the incident placed on record by the respondent indicates that he had committed trespass on the railway premises and while crossing the railway line, he was dashed by the local train. Learned Advocate submitted that there was no negligence or carelessness on the part of the motor man as well as railway administration. Learned Advocate submitted that evidence of the respondent is not sufficient to accept his claim that after purchasing journey ticket, he was struck by railway engine at the platform and therefore, he sustained injuries. Learned Advocate submitted that learned Member of the Tribunal has not properly appreciated the evidence and has come to a wrong conclusion.

8. Learned Advocate for the respondent submitted that there is cogent and concrete evidence to accept the claim of the respondent that after purchasing the ticket on the platform, the

respondent was struck by train and he fell down and sustained injuries. Learned Advocate took me through the affidavit of the respondent and pointed out that he has categorically stated that he had purchased the journey ticket and when he was struck by the train on the platform, the ticket was lost. Learned Advocate therefore, submitted that this evidence is sufficient to discharge the initial burden that he was a *bona fide* passenger with valid journey ticket. Learned Advocate further submitted that first hand account of the incident narrated by respondent is sufficient to accept his claim that after purchasing ticket while he was standing on the platform, he was struck by local train and sustained injuries. Learned Advocate in short supported the judgment and order passed by the Railway Tribunal.

9. It is undisputed that after the incident, injured was found lying on the platform. This fact has been confirmed in the cross-examination by Bhagwan Hadu Patro (R.W.2.) In his evidence R.W-2 has stated that at about 15.50 hrs., he heard the shouts on the platform in front of his office. He went to the spot and found that one unknown person was knocked down by CST to Tilwala Local train No.33. He has admitted that said person fell down on the platform itself. This evidence has been taken into

consideration by the Member of the Tribunal to reject the defence of the appellant that while crossing the railway line, the injured was dashed by the train and therefore, he sustained injuries. R.W.-2 has further admitted that when he went to the platform the members of the public told him that the injured was standing on the platform with his back towards the engine of the train and due to dash given by the train, he fell down. The evidence of this witness R.W-2 corroborates the version of respondent.

10. The respondent has stated in his evidence that after purchasing the journey ticket for going to Thane from Diva, he came to platform. He has stated that when he came to platform, platform was over crowded with passengers. He has stated that while coming towards platform No.2 near the foot over bridge at the edge of platform No.1, he was struck by local train No.LT-33 coming from behind. In his cross-examination, he has again reiterated that after purchasing the railway ticket, he went to platform No.1. He has further stated that he was walking on the platform which was over crowded and at that time local train came without announcement and gave a dash to him. He has stated that he fell down on the platform of Diva Railway Station. His evidence is therefore, consistent. It has been further corroborated by the

evidence of R.W.-2 Dy. Station Master.

11. Kishor Dattatray Khismatrao (R.W-1) is motorman of local train TL.33. He has stated in his examination-in-chief that no untoward incident took place by his train between railway station CST to Titwala. He has stated that no passenger had complained to him about the incident. He has admitted in his cross-examination that his train arrived at Diva Railway Station at about 15.56 hrs. He has denied the suggestion that when the train was rolled up in the Diva railway station one person was injured near foot over bridge by his train. Perusal of his evidence would show that it is conspicuously silent about dash given by his train to a person crossing the railway line at Diva railway station. In the backdrop of his evidence, it is not possible to accept the defence of the appellant that injured while crossing the railway line was dashed by train at Diva railway station. The evidence is sufficient to prove that after the injured was struck by the train, he was found lying on the platform. The incident occurred in the railway precincts. The injured was immediately sent to Civil Hospital, Thane with GRP No.831. He was admitted in the said hospital. The evidence is therefore, sufficient to conclude that injured sustained injuries due to dash of train at the platform.

12. In this case, the defence of negligence or contributory negligence on the part of respondent may not be available to the appellant-railway in view of the above evidence. The Hon'ble Apex Court in the case of *Union of India vs. Rina Devi* reported in *AIR 2018 SCC 2362* has held that in order to cover the case under the head of 'self inflicted injury' it would require intention to inflict such injury and not mere negligence of any particular degree. It is held that in the railway claim cases, the liability is based on principle of 'no fault theory'. It is held that when the liability is strict liability or based on 'no fault theory' the principle of contributory negligence cannot be invoked. It is held that death or injury in the course of boarding or de-boarding train will be untoward incident, victim will be entitled to get compensation and will not fall under proviso to Section 124-A of the Act of 1987 merely on the plea of negligence of victim as contributing factor.

13. In this case, therefore, the appellant-railway has failed to establish its defence. The case would not be covered by any of the clause of proviso to Section 124-A of the Act of 1987. The evidence on record is sufficient to conclude that injured sustained injury in an untoward incident. The act of respondent walking on

the platform after purchasing the ticket could not be said to be criminal act. He was walking on a track to catch the train after purchasing the journey ticket. Perusal of the judgment and order passed by the learned Member of the Tribunal would show that learned Member of the Tribunal has properly appreciated the evidence on record and has come to a right conclusion. The tribunal has not committed any mistake in accepting the claim.

14. The next important question is whether the injured was a *bona fide* passenger with a valid journey ticket. The respondent has filed his affidavit. In his affidavit, he has placed on record first hand account of incident. He has categorically stated that after purchasing ticket at Diva railway station, he was proceeding to platform No.2 to catch local train to Thane. He has stated that while proceeding to platform No.2, he was struck by local train. Therefore, he fell down on the platform. He has stated that he sustained serious injuries to his head and after sometime he became unconscious. He has further stated that in this process, his journey ticket was lost. It is undisputed that after providing first aid to him he was shifted by Deputy Station Master of Diva railway station to Civil Hospital, Thane. The question is whether the statement made by him in his examination-in-chief/affidavit is sufficient to

accept his contention that he was a *bona fide* passenger with valid journey ticket.

15. On this point useful reference can be made to the decision of Hon'ble Supreme Court in the case of *Union of India Vs. Rina Devi (supra)*. Para No.17.4 would be relevant for the purpose of addressing the question involved before me.

Para No.17.4 is extracted below:-

“We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of the facts found. The legal position in this regard will stand explained accordingly.”

16. It is true that initial burden to prove that he was a *bona fide* passenger with valid journey ticket was on the respondent. The respondent, in his affidavit has stated that after coming to

Diva railway station he went to platform No.1 and purchased a journey ticket to travel to Thane. He has stated that after sustaining injury in a dash of train, journey ticket was lost. In my view, this evidence would be sufficient to accept his contention. In the case of *Rina Devi (supra)* the Hon'ble Apex Court has held that mere absence of ticket with such injured or deceased will not negative the claim that he was a *bona fide* passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found.

17. In my view, this decision is squarely applicable to the case of respondent. The respondent has placed on record first hand account of the incident. He has discharged the initial burden. The appellant-railway has not adduced the evidence to disprove this fact. Learned Member of the Tribunal has observed that loss of journey ticket in such type of accident is not uncommon. The learned Member of the Tribunal has properly appreciated the

evidence on record. The evidence on record is therefore, sufficient to accept the case of the respondent that he was a *bona fide* passenger with valid journey ticket. In view of the above, I record my findings on both the points in affirmative.

18. In this case, the injured lost his eye sight completely. Disability certificate is on record. On the basis of the evidence, it has been established that injured sustained 100% disability. Handicapped certificate is at Exh.A.W.1/5. It shows that the respondent suffered loss of total vision due to eyes optic atrophy. Disability has been assessed as 100%. Learned Advocate for the respondent submitted that in view of the amendment of Schedule to Railways Accident and Untoward Incidents (Compensation) Rules, 1990 and more particularly the notification issued by Ministry of Railways (Railway Board) dated 22nd December, 2016 with effect from 1st January, 2017 in case of such injury, claim compensation has been enhanced from Rs.4,00,000/- to Rs.8,00,000/-. It is seen that case of the respondent is covered under part II clause 4 of Schedule in terms of rule 3 of the Railway Accident and Untoward Incidents (Compensation) Rules, 1990. It

provides that for loss of sight to such an extent as to render the claimant unable to perform any work for which eye sight is essential the amount of compensation payable would be Rs.8,00,000/-.

19. Learned Advocate for the appellant-railway submitted that the case of the respondent would be covered by the amended provisions. In view of this, the respondent would be entitled to get Rs.8,00,000/- (Rs. Eight Lacs Only) towards the compensation. Learned Advocate for the respondent submitted that initially compensation awarded by the Tribunal with the interest would not be more than Rs.8,00,000/-. As such, in this case, the respondent would be entitled to get the compensation of Rs.8,00,000/- but without any interest.

20. The order of passed by Railway Claims Tribunal, Nagpur Bench, Nagpur dated 25th January, 2011 is accordingly modified.

21. The appellant-railway is directed to pay compensation of Rs.8,00,000/- (Rs. Eight Lacs Only) to the respondent.

22. ~~The amount be deposited within four months from today in the bank account of respondent/claimant, directly. The respondent shall provide the particulars of his bank account to the appellant.~~

The appellant has already deposited Rs.2,65,973/- with the Railway Claims Tribunal, Nagpur. The appellant is directed to deposit the balance amount of Rs.5,34,027/- within four months

Modified/
corrected
as per
C.O. dated
17.04.24

from today in the bank account of respondent/claimant, directly.

The respondent shall provide the particulars of his bank account to the appellant.

23. The respondent will not be entitled to get any interest on the said amount. However, the respondent 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.

24. If any amount is paid or deposited before the Trial Court

pursuant to the judgment and order dated 25.01.2011 the same shall be adjusted.

25. First Appeal stands disposed of accordingly.

(G. A. SANAP, J.)

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