



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

FIRST APPEAL NO. 137 OF 2019

APPELLANT : Mr. Rahul s/o Ramchandra Gedam,
(Original Claimant)
(As on R.A.) Aged 18 years, Occ. Student,
R/o Gautam Nagar Waranda, Pulgaon,
Dist. Wardha-442302

//VERSUS//

RESPONDENT : The Union of India,
(Original Respondent)
(As on R.A.) through its General Manager, Central
Railway, Chhatrapati Shivaji Terminal,
C.S.T. Mumbai

Ms. S.G. Barbate, Advocate for appellant.
Mrs. Neeraja Chaubey, Advocate for respondent.

CORAM : G. A. SANAP, J.
DATED : 12th 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 18/04/2018 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim filed for compensation on account of injury sustained by master Rahul s/o Ramchandra Gedam was dismissed.

2. Background facts:-

The application was filed by grand mother being guardian because at that time Rahul was minor. This appeal is filed by Rahul after attaining majority. It is stated that on 04.08.2015 the appellant purchased railway ticket No.16755627, dated 04.08.2015 of Mail/Exp. train, at Wardha Railway Station for his journey from Wardha to Pulgaon. When he was waiting for the train, at the relevant time train No.22846 came to the platform of Wardha Railway Station. The appellant boarded the said train for his journey to Pulgaon. It is stated that when the train reached near railway station Pulgaon, the appellant came to know that train had no scheduled halt at Pulgaon. The appellant was standing near door of his compartment. It is stated that due to rush and sudden jerk at Pulgaon Station, the appellant fell down from running train. He received injury to his leg. He was treated in the hospital, where his right leg was amputated above knee. It is stated that he was bona fide passenger. He sustained injuries in an untoward incident. He therefore, claimed the compensation.

3. The respondent-railway filed the written statement and opposed the claim. It was contended that railway is not liable because the injury was caused due to own criminal act of the

appellant. It was sort of self inflicted injury. He had boarded in a train which has no scheduled halt at Pulgaon. He tried to get down at Pulgaon from running train. The act committed by him was offence under the Railways Act. He was not entitled to get compensation.

4. Parties adduced the evidence before the Tribunal. Smt. Hirabai w/o Shrikrishna Gedam (A.W.-1) is grand mother of the appellant. A.W.-2 is the appellant. Railway has examined one witness. Learned Member of the Tribunal on consideration of the evidence dismissed the claim application filed by the appellant.

5. I have heard Ms. S.G. Barbate, learned Advocate for the appellant and Mrs. Neeraja Chaubey, 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 with valid journey ticket?
- ii) Whether the appellant sustained injuries in working train in an untoward incident?

7. Learned Advocate for the appellant submitted that

appellant was having valid journey ticket. Learned Advocate pointed out that journey ticket was produced on record. Learned Advocate submitted that due to mistake the appellant boarded a wrong train which had no scheduled halt at Pulgaon. Learned Advocate submitted that on this ground, the appellant could not be said to be a passenger without journey ticket. Learned Advocate further submitted that evidence of AW-1 and AW-2 is sufficient to establish that due to rush and sudden jerk, appellant fell down from running train and sustained the injury. Learned Advocate submitted that the evidence of AW-2 is sufficient to accept his claim. It is pointed out that respondent-railway has not adduced any evidence in rebuttal to show that the appellant had tried to get down from running train at Pulgaon Station and therefore, he fell down and sustained injury. Learned Advocate submitted that case of the appellant does not fall within any of the exceptions set out in proviso to Section 124-A of the Railways Act, 1989 (for short "the Act") and therefore, the defence of the railway that injury was self inflicted injury and due to his own criminal act cannot be accepted. In order to seek support to this contention, learned Advocate for the appellant has placed heavy reliance on the decision of the Hon'ble Apex Court in the case of *Union of India vs. Rina Devi* reported in *AIR 2018 SCC 2362* and decision of Coordinate Bench

of this Court in *First Appeal No.1072/2019 (Smt. Meerabai wd/o Arjun Gawande and ors. Vs. Union of India)* decided on 14/02/2020. Learned Advocate submitted that defence of negligence as sought to be made out is not available to the respondent-railway inasmuch as the liability is based on the principle of no fault theory. Learned Advocate therefore, submitted that proportionate to the disability, the appellant is entitled to get the compensation.

8. Learned Advocate for the respondent submitted that though the appellant was travelling with valid railway ticket, but he boarded wrong train which had no scheduled halt at Pulgaon. Learned Advocate pointed out that on the basis of this factual position, the Tribunal has recorded a finding that injured was not a *bona fide* passenger. Learned Advocate further submitted that there is ample evidence in the form of police case papers as well as DRM's report to come to the conclusion that the appellant while getting down from running train fell down and sustained the injury. Learned Advocate submitted that the act of the appellant was criminal act and, therefore, he is not entitled to get the compensation. Learned Advocate in short, supported the judgment and order passed by the learned Tribunal.

9. In order to appreciate the rival submissions, I have gone through the record and proceedings. As far as the first point is concerned, it is undisputed that the appellant was travelling with valid ticket. He was bona fide passenger. The ticket was recovered at the time of the drawing the panchanama on the spot. The appellant has stated that in hurry he purchased the railway ticket and by mistake boarded the concerned train. He has stated that when the train reached near Pulgaon Station, he realized that train had no scheduled halt at Pulgaon. In my opinion, boarding a wrong train, could be said to be a mistake. Such act could not be said to be an act of travelling without a ticket. The ticket purchased by the appellant was of general compartment. It is not the case of railway that he had travelled in any compartment other than general compartment. It therefore, goes without saying that for the purpose of travelling in general compartment of the said train, ticket was valid in all respect. Therefore, in my view, the findings recorded by the Tribunal that he was not a *bona fide* passenger cannot be sustained.

10. The next important question is as to whether the appellant had sustained injury in an untoward incident as defined under Section 123 (c)(2) of the Act. It is undisputed that he fell from running train. He sustained injury to his right leg. His right

leg has been amputated. The question is whether the case of the appellant falls within any of the clauses of the proviso to Section 124-A of the Act. The Hon'ble Supreme Court in the case of Rina Devi (**supra**) has answered this question. Para No.16.6 would be relevant for the purpose of addressing this issue.

It 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.”

11. In my view, the question raised in this appeal can be answered on the basis of this proposition of law. The Hon'ble Apex

Court has held that claim under the Railways Act is based on no fault liability which is akin to Section 163-A of the Motor Vehicles Act, 1988. It is held that principle of contributory negligence cannot be invoked in the case of liability based on no fault. It is categorically 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 to Section 124-A of the Act merely on the plea of negligence of the victim as contributing factor.

12. It would be necessary to consider the decision of Coordinate Bench in First Appeal No.1072 of 2019. The facts of the present appeal and facts of the case before Coordinate Bench are identical. The victim was travelling in a train which had no scheduled halt at Badnera. The accident occurred at Badnera. The contention of the respondent-railway in the similar set of facts to the effect that the claimant was not entitled to get the compensation was rejected. In my view, the case of the appellant would be squarely covered by the decision of Hon'ble Supreme Court as well as by the decision of Co-ordinate Bench of this Court in First Appeal No.1072 of 2019.

13. It is to be noted that this provision is a beneficial piece of

legislation. The provision for compensation has been made to take care of the legal heirs of deceased in an untoward incident as well as the injured in an untoward incident. The Hon'ble Supreme Court in the case of *Union of India Vs. Prabhakaran Vijaya Kumar and others* reported in *2008 (5) ALL MR 917* has held that Section 124-A of the Act casts strict liability on the Railway even if the deceased died due to his own fault. It is held that since the liability is based on no fault liability theory, the railway is liable to pay amount of compensation. It is further held that while interpreting this provision, the Court has to take liberal view.

14. Appellant has examined himself as A.W.2. In his evidence, he has placed on record the first hand account of the incident. He has stated that at the time of accident, there was heavy rain. He has stated that when he came near to the door, he realized that he had boarded a wrong train which had no scheduled halt at Pulgaon. He has stated that when he was holding the handle, due to rush and jerk, his hand slipped and he fell down. It has come on record in the evidence of witness No.1 examined by respondent that at the relevant time, there was heavy rain. There was no eye witness to the actual incident except the appellant. In my view, therefore, the evidence of the appellant is sufficient to prove that he fell from running train, in the circumstances stated

by him. There is no evidence in rebuttal to come to a conclusion that appellant jumped from running train to get down at Pulgaon. Therefore, in my view, on the basis of the evidence, I conclude that appellant fell from running train. The injuries sustained by the appellant are therefore, in an untoward incident as defined under Section 123 of the Act. Therefore, in my view, on this point also the finding recorded by learned Member of the Tribunal cannot be sustained. Accordingly, I answer both the above points in affirmative.

15. Appellant has admittedly sustained serious injury. His right leg was amputated. His photograph is placed on record. It appears that his right leg above knee level was amputated. The appellant is therefore, entitled to get the compensation in terms of Railways Accidents and Untoward Incidents (Compensation) Rules, 1990 and more particularly provided in Schedule. Considering the nature of the injury sustained by him, his case would be covered by part III clause 18 of Schedule. The amputation in this case is below knee with stump exceeding 5” in length. In view of this, the appellant would be entitled to get the compensation of Rs.5,60,000/- (Rs. Five Lakhs Sixty Thousand Only).

16. The appeal is accordingly allowed.

17. The order passed by Railways Claims Tribunal, Nagpur Bench, Nagpur dated 18.04.2018 is quashed and set aside.

18. The claim petition filed by the appellant is allowed.

i) The respondent-Railway is directed to pay compensation of Rs.5,60,000/- (Rs. Five Lakhs Sixty Thousand Only) to the appellant.

ii) The amount of compensation be deposited within four months.

iii) The amount of compensation of Rs.5,60,000/- (Rs. Five Lakhs Sixty Thousand Only) be transferred directly in the bank account of the appellant. The appellant shall provide the details with regard to his bank account to the respondent.

19. The First Appeal stands disposed of.

(G. A. SANAP, J.)