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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

FIRST APPEAL NO.801 OF 2022

Bhupati s/o Bapuraoji Sao,
Age – 44 years, occupation – labour,
r/o Indarwada, tahsil Narkhed,
District Nagpur. **Appellant.**

:: V E R S U S ::

Union of India,
Through the General Manager,
Central Railway, C.S.T.,
Mumbai. **Respondent.**

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Shri K.U.Fule, Counsel for the Appellant.

Mrs.Neerja Chaubey, Counsel for the Respondent.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 14/02/2023

PRONOUNCED ON : 10/04/2023

JUDGMENT

1. By this appeal, the appellant (the injured claimant) challenges judgment and award dated 11.2.2016 passed by learned Member, Railway Claims Tribunal, Nagpur (learned Member of the Tribunal) in Case No.OA(IIu)/NGP/2011/0322 whereby the claim of the claimant was rejected.

2. Facts of the case in brief are as follows:

On 19.11.2010, the injured claimant had purchased a Second Class Railway Journey Ticket bearing No.86130009 from Katol Railway Station for three adult passengers and

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boarded train No.2791 Secunderabad-Patna Express at about 8:18 pm for proceeding to Baitul for his personal work. Two ladies accompanying him entered into general compartment of the train. However, the injured claimant stepped on second footstep of the compartment. As the train started and due to the jerk the injured claimant lost his balance, he fell down from the train between platform and railway track of Katol Railway Station and sustained the injuries. He was immediately removed to the Government Hospital at Katol for necessary treatment and, thereafter, he was refereed to the Government Medical College and Hospital, at Nagpur for further treatment. Due to the accidental injuries, that is compression fracture of L2 vertebra with fracture fragment displacement, he is permanently disabled. During the surgery rod and pedicular screw were fixed in his legs. Now, he became paralyzed and bedridden. He had completely lost his earning and now is depending upon the mercy of other relatives and friends. As per the contentions of the injured claimant, he sustained the injuries in an untoward incident and, therefore, he is entitled for the compensation.

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3. In response to the notice, the railway administration filed its written statement and raised the defence that the injured claimant stood on steps in a careless manner which resulted in his fall and he sustained the injuries. The injured claimant sustained the injuries due to his own negligence and, therefore, the railway administration is not responsible for the said accident and, therefore, the claim of the injured claimant deserves to be dismissed.

4. The injured claimant adduced his evidence before learned Member of the Tribunal and reiterated the contentions. In support of his contentions, he had also examined his co-passenger Ratna Mukunda Bambal who was also travelling along with him by the said train. Besides the oral evidence, he placed reliance on the police papers, DRM report, and medical treatment papers. The railway administration has also adduced the evidence of Vithoba Govindrao Taywade, the Deputy Station Superintendent of Katol Railway Station. The railway administration also placed reliance on the DRM report.

5. After the appreciating the evidence on record, learned Member of the Tribunal held that the injured claimant was under the condition of intoxication as he had consumed

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alcohol. Thus, he was negligent and not entitled for compensation.

6. Being aggrieved and dissatisfied with the judgment of learned Member of the Tribunal, the present appeal is preferred on the ground that learned Member of the Tribunal erroneously held that the injured claimant was under the influence of liquor as there is no evidence to that effect. Admittedly, the injured claimant was a *bona fide* passenger and sustained injuries in an untoward incident. The injured claimant has proved that due to the accidental injuries, he became paralyzed and, therefore, he is entitled for the compensation.

7. Heard learned counsel Shri K.U.Fule for the injured claimant and learned counsel Mrs.Neerja Chaubey for the respondent/Railway Administration.

8. Learned counsel Shri K.U.Fule for the injured claimant submitted that there is absolutely no evidence to show that the injured claimant was under the influence of liquor. His blood samples were not obtained by the medical officer to ascertain whether he was under the influence of liquor at the relevant time. The railway administration had also not raised

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the said defence in their statements. Thus, observations of learned Member of the Tribunal are erroneous and liable to be set aside.

9. On the other hand, learned counsel Mrs. Neerja Chaubey for the railway administration supported the judgment rendered by learned Member of the Tribunal and invited my attention to the medical papers wherein the injured claimant was shown to be alcoholic. She submitted that the observations of the medical officer of the Government Hospital, where the injured claimant was admitted, are sufficient to show that under the influence of liquor the injured claimant could not balance himself and fell down from the train. Thus, he was negligent and is not entitled to receive any compensation.

10. I have heard learned counsel for both the sides. With their able assistance, I have gone through record and proceedings of the case.

11. A point arises for my determination is:

Whether learned Member of the Tribunal is justified in rejecting the claim of the injured claimant for compensation?

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12. It is not in dispute that the injured claimant has obtained the valid Railway Ticket before boarding the train. The railway administration has also not raised the defence that the injured claimant was not a *bona fide* passenger. The Railway Ticket is at Exhibit-A66 which shows that the injured claimant has obtained the Railway Ticket on 19.11.2010 from Katol Railway Station to Baitul Railway Station incurring expenses of Rs.147/-. The railway administration further not disputed that the injured claimant was travelling by train No.2791 Secunderabad-Patna Express. Thus, the evidence on record sufficiently shows that the injured claimant was a *bona fide* passenger.

13. The injured claimant has come with a case that he was travelling along with two ladies. He obtained the ticket for three passengers. Two ladies boarded the train and he was standing on the second footstep of the bogie. At the relevant time, the train started and due to jerk of the train, he fell down and sustained the injuries. Whereas, as per the contentions of the railway administration, the injured claimant fell down due to his own negligence and, therefore, the railway administration is not liable to pay the compensation.

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14. To substantiate the contentions, the injured claimant adduced his evidence and reiterated the contentions. The sum and substance of his evidence is that on 19.11.2010 he had purchased the Railway Ticket and was travelling by the Secunderabad-Patna Express. He was standing at the footstep of the bogie. However, due to jerk of the train, he fell down and was caught between the track and platform and sustained the injuries. Due to the accidental injuries, he was immediately removed to the Government Hospital at Katol and, thereafter, the Government Medical College at Nagpur. He sustained compression fracture of L2 vertebra with fracture fragment displacement and he became permanently disabled. During the surgery, rod and pedicular screw were fixed in his legs due to which he became paralyzed and bedridden. He had also sustained the injuries to his spinal cord. Besides his oral evidence, he examined his co-passenger Ratna Mukunda Bambal who corroborated the version of the injured claimant. She also testified that she along with another lady was travelling along with the injured claimant. They boarded the train and the injured claimant was standing at the footstep of the bogie. However, due to the jerk of the train, the injured claimant fell down and sustained the injuries.

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15. The above witnesses are cross-examined. The injured claimant has admitted that he was standing on the second step of the bogie and he lost his control and fell down. The witness Ratna Bambal had also admitted the same.

16. Besides the oral evidence of the injured claimant and co-passenger Ratna Bambal, the injured claimant relied upon DRM Report which also shows that the injured claimant was holding the rods at the door of the bogie and his hands slipped from the rod and he fell down and sustained the injuries. The merg report and spot panchanama also support the said contention.

17. The railway administration also examined its witness Vithoba Govindrao Taywade, the Deputy Station Superintendent of Katol Railway Station. The said witness had also stated that he received an information that a person was lying near first bogie and was removed to the hospital. He admitted that he is not the eyewitness of the incident.

18. To support the contention of the injured claimant, that due to the accidental injuries, he became completely paralyzed, he placed on record discharge card of the Medical

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College and Hospital at Nagpur A-33, scan report Exhibits-A34 and A35, original discharge card Exhibit-A70, disability certificate Exhibit-A73. It is apparent from the discharge card that he had sustained fracture of L2 with paraplegia with fracture of calcaneus. During the surgeries, rod and pedicular screw fixation was done on 11.1.2011. Thus, the fact that the injured claimant sustained the grievous injuries in the said accident is established by him on the basis of his evidence as well as the medical papers.

19. The railway administration raised the defence that the said accident took place due to the negligence of the injured claimant himself and, therefore, he is not entitled to receive the compensation.

20. Admittedly, there is no direct evidence to show that the injured claimant was negligent while boarding the train.

21. The Honourable Apex Court in the case of Union of India vs. Rina Devi, reported in (2019)3 SCC 572 held that 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

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shown or the attending circumstances. It is further held that for attracting the provisions of Section 124A of the Railways Act, 1989, intention of person who had sustained "self inflicted" injuries is to be proved. "Self inflicted" injury would require intention to inflict such injuries and mere negligence of any particular degree is not sufficient. 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 Honourable Apex Court has referred its earlier decision in the case of United India Insurance Co. Ltd. versus Sunil Kumar and another reported in 2017(13) SCALE 652 wherein it is held that the 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. It has also been 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 124A merely on the plea of negligence of the victim as a contributing factor.

22. In the present case, admittedly, initial onus is discharged by the injured claimant by adducing reliable evidence. Whereas, the railway administration failed to prove

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that the deceased had sustained the injuries due to his own negligence.

23. Another ground raised by the railway administration during the submissions that as the injured claimant was in a state of alcoholic, he fell down under the influence of alcohol. Admittedly, the said defence is not raised by the railway administration in a written statement. Learned Member of the Tribunal came to the conclusion on the basis of medical papers of the Government Hospital Exhibit-A43 wherein it is mentioned that history of fall under the influence of alcohol was given. Admittedly, no blood samples are obtained by the medical officer to ascertain that at the relevant time the injured claimant was under the influence of liquor.

24. The Honourable Apex Court in the case of **Bachubhai Hassanalli Karyani vs. State of Maharashtra**, reported in (1971) 3 SCC 930 it is held that mere smelling of alcohol, unsteady gait, dilation of pupils and incoherence in speech not enough. It is held that no urine test of the appellant was carried out and although the blood of the appellant was sent for chemical analysis, no report of the analysis was produced by the prosecution. It seems that on this evidence it cannot be

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definitely held that the appellant was drunk at the time the accident occurred. It is held by the Hon'ble Apex Court that drunkenness cannot be said to be conclusively proved unless urine or blood test was carried out.

25. Learned counsel Mrs.Neerja Chaubey for the railway administration placed reliance on the decision of this Court (Coram : Abhay Ahuja, J.) in First Appeal No.565/2021 decided on 2.1.2021 wherein this Court held the negligence and rejected the compensation.

26. The facts of the above said decision and facts of the present case are not identical to each other.

27. In view of the above circumstances and the discussion, the injured claimant has proved that while he was travelling by the train Secunderabad Patna Express by obtaining the valid Railway Ticket, he sustained the injuries in an untoward incident which resulted into his permanent disablement. The injuries sustained by the injured claimant cover under Schedule 21 of the Railway Act, 1989 and, therefore, he is entitled to receive the compensation of Rs.4.00

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lacs with interest at the rate of 6% per annum from the date of application.

28. In the result, this Court passes following order:

ORDER

(1) The First Appeal is **allowed**.

(2) The judgment and award dated 11.2.2016 passed by learned Member, Railway Claims Tribunal, Nagpur in Case No.OA(IIu)/NGP/2011/0322 is hereby quashed and set aside.

(3) The respondent/railway administration is directed to pay the compensation Rs.4.00 lacs to the injured claimant within a period of 60 days from the date of receipt of copy of this judgment along with interest thereon at the rate of 6% per annum.

With this, the first appeal is **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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