

(1)

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

FIRST APPEAL NO.114 OF 2019

The Union of India,
General Manager, Central Railway,
Mumbai CST

APPELLANT

// VERSUS //

Shri Ashok S/o Narayan Samudravar
Age 61 years, Occ.- Retd.,
R/o Ranilaxmibai Ward,
Tah. Ballarpur
Dist. Chandrapur, Maharashtra.

RESPONDENT

Mr. N. P. Lambat, Advocate for the appellant.
Mr. N. R. Mankar, Advocate for respondent.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 21/03/2023

ORAL JUDGMENT

1. Present appeal is preferred under Section 23 of the Railway Claims Tribunal Act, 1987 against the Judgment and Award passed by the Railway Claims Tribunal, Nagpur in Claim Petition No.OA-II(U)/NGP/2014/0150 by which claim of the claimant is allowed and compensation of Rs.5,60,000/- is granted to the claimant by the Judgment and Award dated 28.08.2017. Being aggrieved with the same, present appeal is preferred by the Central Railway.

(2)

2. The parties are hereinafter referred as per their original nomenclature.

3. Brief facts which are necessary to decide the appeal are as under.

On 19.11.2013, the claimant was travelling by Train No.12592 Yesvantpur – Gorakhpur Express on 19.11.2013 by obtaining the valid ticket. When he was travelling by the said train, accidentally he fell down from the running train due to heavy crowd and sudden jerk and sustained the injuries. In the said untoward incident, he has sustained grievous injuries which resulted into amputation of left hand below shoulder with stump less than 8 inches. After the accident, he was treated in Government Hospital, Ballarpur and Lata Mangeshkar Hospital for the period 19.11.2013 and 05.12.2013 to 23.01.2014. As per contention of the claimant, due to the accidental injuries sustained by him, now, he is unable to work. His working capacity is affected. He is permanently disabled. It is further contended that the claimant that on the day of accident he purchased ticket from Ballarshah Railway Station and boarded in the train. He was standing near the door holding the bar of the coach and suddenly his hand's grip holding the bar became loose and he lost the balance due to jerk of the train, and fell down from the running train and came under the wheel of the train. It

(3)

resulted into the grievous injuries, and due to the grievous injuries, now he is permanently disabled. As he has sustained the injuries in an untoward incident, he is entitled to receive the compensation from Railway.

4. The said application is strongly opposed by the Railway on the ground that claimant has sustained the injuries due to his own negligence, therefore Section 124-A of the Railways Act is attracted against him. It is primary duty of the claimant to prove that untoward incident has occurred while he was travelling in the train. The report filed on record clearly shows that, it was the act of self-inflicted injuries on the part of the claimant only because of which he has suffered the injuries as alleged, and therefore, he is not entitled to receive any compensation. It is further contended by the Railway that applicant was not *bona fide* passenger, and therefore, he is not entitled to receive any compensation from the Railway.

5. The Railway Claims Tribunal perused the rival pleadings, recorded the evidence and come to the conclusion that injured has sustained the injuries in an untoward incident, and therefore he is entitled to receive the compensation and awarded the compensation at the rate of Rs. 5,60,000/-.

(4)

6. Being aggrieved and dissatisfied with the Judgment and Award passed by the Railway Claims Tribunal, the present appeal is preferred on the ground that learned Tribunal has not considered that claimant has sustained the injuries, due to his own negligence. The act of the claimant is covered under the self-inflicted injuries. Moreover, he is not a *bona fide* passenger as he was not holding a journey ticket. Therefore, the award passed by the learned Tribunal liable to be set aside.

7. Heard learned Advocate Mr. Lambat for the appellant – Railway. He submitted that the act of the applicant/claimant injured covered under the self-inflicted injuries. It was the duty of the claimant to take due care and caution while travelling in the train, which he has not taken, therefore the contention of the applicant that, he received the injuries in untoward incident is not acceptable. It is further submitted by the learned Advocate for the appellant that the journey ticket filed on record is of dated 19.11.2013 which was issued at 13.43 hours and the alleged train No.12592 departed from the Ballarshah Railway Station at 13.40 hours, which is three minutes before from issuing the ticket, hence the presumption can be safely drawn that the deceased tried to board in a running train hurriedly, and in the said circumstances, he met with an accident and fell down from the train. Thus, it is completely the

(5)

negligence of the applicant due to which, he sustained the injuries which is not covered under the untoward incident. He submitted that the Tribunal has not considered the same, and therefore the Judgment and Award passed by the Tribunal is liable to be set aside.

8. Per contra, learned Advocate Mr. Mankar for the respondent/claimant supported the judgment and award passed by the Railway Claims Tribunal and submitted that Railway Claims Tribunal awarded the compensation on the basis of the evidence adduced before it. The evidence on record sufficiently shows that the claimant has fell down from the train as there was crowd and he was standing at the entry of the bogie. Due to the jerk to the train, he fell down from the train and sustained the injury which covered under the untoward incident. Therefore, the appeal has no merit and liable to be dismissed.

9. After hearing both the sides and perusal of the evidence on record following points arise for my consideration.

(i) Whether Railway Claims Tribunal is justified in awarding the compensation to the claimant?

10. As per the case of the claimant, he was a *bona fide* passenger as he has obtained the valid ticket to travel in the train

(6)

bearing No.12592 Yesvantpur – Gorakhpur Express dated 19.11.2013.

He was boarded in the train and standing near the door holding the bar of coach and suddenly due to the jerk, he lost his balance and fell down from the train and sustained the injuries. He had sustained the crush injuries on his hand which resulted into the amputation of left hand below shoulder with stump less than eight inch. Regarding the said accident, he was treated in Government Hospital Ballarpur and Lata Mangeshkar Hospital from 19.11.2013 and 05.12.2013 to 23.01.2014. Due to the injury sustained by him, now he is permanently disabled and his working capacity is affected. To substantiate the contention claimant stepped into the witness box by filing affidavit of examination-in-chief vide Exh.A47. He reiterated the contentions as per his pleadings. Besides his oral evidence, he placed reliance on the Police papers i.e. Report of the accident, Spot panchnama and Medical Certificate. He is cross-examined at length by the Railway, however nothing incriminating is brought on record during his cross-examination. On behalf of Railway Shri Ganesh Rambhau Ghatode working as Guard of Yesvantpur – Gorakhpur Express is examined. As per his evidence, no untoward incident of accidental fell down of any passenger was reported to him either by Loco Pilot or by any other person. His evidence is not challenged as no cross-examination is carried out on behalf of the claimant. On the basis of oral as well as documentary evidence,

(7)

claimant has claimed that he received the injuries in an untoward incident.

11. Before entering into the merit of the case, it is necessary to see the definition of an untoward incident. Section 123(c) of the Railways Act, 1989 defines untoward incident means.

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.]

12. Now by considering the definition of the untoward incident it is to be seen whether the deceased was travelling by the train which was carrying the passenger and whether he was holding the valid ticket,

(8)

and therefore he was a *bona fide* passenger. Though Railway has challenged and contended that the claimant was not a *bona fide* passenger but the D.R.M. report filed on record vide Exh.A19 itself shows that the claimant has obtained the ticket from Ballarshah Railway Station. The ground raised by the Railway in the appeal also shows that he has purchased the ticket at about 13.43 hours and the train departed from the Ballarshah Railway Station at about 13.40 hours. So, hurriedly the applicant/claimant has boarded in the train and he fell down from the train and sustained the injuries. Thus, the question regarding a *bona fide* passenger doesn't arise as railway ticket is also found along with the claimant bearing No.T62337169. This fact sufficiently shows that applicant was travelling by obtaining the ticket.

13. The next contention raised by the learned Advocate that alleged accident has taken place due to the own negligence of the claimant. So far as, the issue regarding the untoward incident is concerned, the investigation report of the railway is on record which shows that while catching the train the claimant lost his control and fell down and sustained the injuries. Thus, the evidence on record is sufficient to show that when applicant/claimant was trying to catch the train, he lost his balance and fell down and sustained the injuries. Whether the said act of the applicant/claimant covers under the

(9)

self-inflicted injuries or not is to be considered on the basis of evidence on record.

14. Before commenting on the evidence regarding the untoward incident it is necessary to see the principle laid down by the Hon'ble Apex Court in the case of **Union of India Vs. Prabhakaran Vijaya Kumar & Ors., 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 a liberal and not literal or strict interpretation." By referring various judgments Hon'ble Apex Court further held that the principles of statutory constructions are well settled. In our opinion if we adopt a restrictive meaning to the expression accidental falling of a passenger from a train carrying passengers in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford traveling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a

(10)

large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression 'accidental falling of a person from a train carrying passengers' includes accidents when a bona fide passenger i.e. a passenger traveling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression.

15. In the light of the above principles, if the evidence in the present case is to be appreciated, there is no dispute that deceased was travelling in a train by holding a valid ticket. Though Railway Administration has come with the case that, said accident took place due to the negligence of the applicant himself, as he has not taken due care and caution while catching the train or while travelling in the train. Whether it covers under the self-inflicted injury or not is dealt by the Hon'ble Apex Court in the case of **Union of India Vs. Rina Devi** reported in **2018(3) T.A.C. 26 (S.C.)** wherein it is held that for attracting the provisions of Section 124-A of the Railways Act intention of the person who had sustained a self-inflicted injury is to be proved. The Hon'ble Apex Court in the said Judgment in para 16 held that self-inflicted injury would require intention to inflict such injury and not mere negligence of

(11)

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 earlier decision in **United India Insurance Co. Ltd. vs. Sunil Kumar** reported in **2017(13) SCALE 652** wherein it is laid down that plea of negligence of the victim cannot be allowed in a claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988 and it is 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 merely on the plea of negligence of the victim as a contributory factor.

16. In the present case, admittedly, initial onus lies upon the claimant to show that the injuries are sustained by him in untoward incident when he was travelling as a *bona fide* passenger. The burden is already discharged by the claimant by adducing reliable and cogent evidence. The law only expects that the claimant who has to discharge the burden on the basis of preponderance of probability by filing affidavit. It has not only the affidavit of the claimant, but the claimant has also adduced the evidence on the basis of the police papers, the D.R.M. report filed by the Railway Administration on the basis of investigation carried out by them also supports the case of the claimant.

(12)

Thus, onus is discharged by the claimant. The claimant has proved that he was a *bona fide* passenger and sustained injuries in an untoward incident when he was travelling by Ballarshah to Nagpur by Yesvantpur – Gorakhpur Express bearing No.12592 as a passenger.

17. The learned Tribunal rightly come to the conclusion that he had sustained the injuries in an untoward incident and injured was *bona fide* passenger.

18. In the light of the above evidence, and in view of the discussion, the learned Tribunal rightly come to the conclusion that claimant is entitled to receive the compensation, therefore the appeal filed by the Railway is devoid of merits and liable to be dismissed. Hence, I proceed to pass the following order.

19. Appeal is hereby dismissed with no order as to costs.

20. Claimant is entitled to receive the compensation amount which is deposited by the appellant - Railway in this Court. Civil Application (CAF) No.810/2023 seeking permission for withdrawal of the decretal amount is disposed of.

(13)

21. As the appeal is disposed of, therefore Civil Application (CAF) No.809/2023 for early hearing is also disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate./-