



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

FIRST APPEAL NO. 50 OF 2024

APPELLANT : Krushana S/o. Prabhakar Mhaskar,
Aged 34 years, Occ. Nil, R/o.
Salegaon, Post Sindhi Kalegaon, Jalna -
431213

//VERSUS//

RESPONDENT : Union of India, through General
Manager, South Central Railway,
Secunderabad.

Mr. D.S. Lambat, Advocate for the Appellant.

Mr. P.V. Navlani, Advocate for the Respondent.

CORAM : G. A. SANAP, J.

DATED : 19th MARCH, 2024.

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 23rd October, 2023, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim filed by the appellant came to be dismissed.

02] BACKGROUND FACTS:

The appellant is the injured in this case. The appellant on 22nd September, 2021, after purchasing a journey ticket, was travelling from Hyderabad to Jalna by Hyderabad-Aurangabad Special Train. The appellant was standing near the door of the compartment of the train to disembark at Jalna Railway Station, and at that time, due to sudden jerk to the moving train, the appellant fell from the moving train at Jalna Railway Station. His left leg was crushed under the wheels of the train. His left leg has been amputated below the knee. He was a *bona fide* passenger.

03] The respondent-Railway filed the written statement and opposed the claim. It was contended that the appellant, while disembarking a train from the offside, fell down and came under the wheels of the train. The appellant was negligent. The injury was not sustained in an untoward incident. He was not a *bona fide* passenger.

04] The appellant examined himself as a sole witness. The respondent-Railway examined one witness. Learned Members of the Tribunal, on consideration of the evidence, disbelieved the case of the appellant and dismissed the claim. The appellant is before this Court in appeal.

05] I have heard Mr. D.S. Lambat, learned advocate for the appellant and Mr. P.V. Navlani, learned advocate for the respondent-Railway. Perused the record and proceedings.

06] The following points fall for my determination:

(a) *Whether the appellant was a bona fide passenger travelling with a valid journey ticket at the time of the incident?*

(b) *Whether the appellant sustained injuries in an untoward incident as understood by Section 123(c)(2) of the Railways Act, 1989 (for short, “the Act of 1989”)?*

07] Learned advocate for the appellant submitted that the injury sustained by the appellant was in an untoward incident and, therefore, he was entitled to get compensation. Learned advocate submitted that he was travelling with a valid journey ticket. It is submitted that the defence of negligence is not available to the railway. Learned advocate submitted that learned Members of the Tribunal, without assigning cogent reasons, have discarded and disbelieved the evidence adduced by the appellant.

08] Learned advocate for the respondent-Railway, in short, supported the judgment and order passed by the Tribunal. Learned

advocate submitted that the appellant, while taking a selfie, fell from the offside of the train and sustained injury. Learned advocate submitted that the injury was a self-inflicted injury.

09] It is undisputed that the journey ticket recovered from the appellant has been produced on record. It was duly verified. It was found to be a valid journey ticket for the journey from Hyderabad to Jalna. The appellant has deposed about this fact in his evidence. On the basis of oral and documentary evidence, it has been proved that the appellant was a *bona fide* passenger travelling with a valid journey ticket from Hyderabad to Jalna.

10] The important issue is as to whether the injury sustained by the appellant was in an untoward incident or not. The accidental falling of any passenger from a train carrying passengers falls within the definition of an 'untoward incident' as provided under Section 123(c)(2) of the Act of 1989. The railway is liable to pay compensation regardless of any wrongful act, neglect, or default on the part of the railway administration, as per the first part of Section 124A of the Act of 1989. The railway is not liable to pay compensation in case the death of a passenger or the injury to him is

caused due to any of the reasons enumerated in Clauses (a) to (e) to proviso to Section 124A of the Act of 1989. The defence of negligence is not available in such a claim, inasmuch as the liability is based on the principle of ‘no fault theory’. It is a settled legal position that, in the absence of malicious intention or *mens rea*, negligence cannot be held as a criminal act under the proviso to Section 124A of the Act of 1989. The law has been enunciated on this point in the case of ***Union of India Vs. Rina Devi [AIR 2018 SC 2362]***. Paragraph 16.6 is useful 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 [AIR 2017 SC 5710] laying down that 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. 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 view of the law laid down as above, the evidence on record needs appreciation. The appellant boarded the train in question at Hyderabad. He was supposed to disembark at Jalna Railway Station. The incident occurred near Jalna Railway Station. The appellant has stated that, due to a sudden jerk, he lost his balance and fell down and sustained injury. It is the case of the railway that the appellant was taking a selfie, and, in this process, he lost his balance and fell down. No evidence has been adduced by the railway to substantiate this defence. The accidental falling of any passenger in this manner falls within the definition of an 'untoward incident'. Therefore, in this case, the injury sustained by the appellant was in an untoward incident. Learned Members of the Tribunal have failed to appreciate the evidence on record as well as the legal position as enumerated above. In my view, therefore, the judgment and order passed by the Tribunal cannot be sustained.

12] It is undisputed that the left leg of the appellant was amputated below the knee. The photograph of the appellant is on record. As per Clause 20 of Part III of the Schedule to Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, in

case of amputation below the knee with the stump exceeding 3½ inches but not exceeding 5 inches, the compensation payable is Rs.4,00,000/-. In this case, the amputation is below the knee, with the stump exceeding 3½ inches but not exceeding 5 inches. Therefore, in my view, the case of the appellant would be covered under Clause 20 of Part III of the Schedule to Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. The appellant is, therefore, entitled to get compensation of Rs.4,00,000/- with interest @ 6% per annum from the date of the incident till realization of the amount.

13] In view of the above, I record my findings on the above points in the affirmative. As such, the appeal deserves to be allowed. Hence, the following order is passed:

- a) The appeal is **allowed**.
- b) The judgment and order dated 23rd October, 2023, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Claim Application No.OA(IIu)/NGP/11/2022 is set aside. The claim application is allowed.
- c) The respondent-Railway is directed to pay compensation

of Rs.4,00,000/- (Rupees Four Lakhs Only) to the appellant. The respondent-Railway is also directed to pay interest @ 6% per annum from the date of the incident till realization of the amount.

- d) The amount of compensation be deposited within four months from the date of uploading of this judgment.
- e) The amount of compensation be deposited directly in the bank account of the appellant. The appellant is directed to provide his bank account detail to the respondent-Railway.

14] The First Appeal stands disposed of in the aforesaid terms.
No order as to costs. Pending applications, if any, stand disposed of.

(G. A. SANAP, J.)

Vijay