



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

FIRST APPEAL NO. 1398 OF 2018

Smt. Anutai W/o Ashok Bansod,
Aged about 40 years, Occ.-Nil,
R/o. Kaniri Dagdi, Tah. Lakhni,
District Bhandara.

.... **APPELLANT**

// VERSUS //

Union of India,
The General Manager,
South East Central Railway,
Bilaspur (C.G.).

.... **RESPONDENT**

Mr. R. G. Bagul, Advocate for Appellant.
Ms. Neerja Chaubey, Advocate for Respondent.

CORAM : SANJAY A. DESHMUKH, J.

DATE : 05th SEPTEMBER, 2024.

ORAL JUDGMENT.

1. This appeal is preferred by the appellant/applicant against the Judgment dated 15.03.2016 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (IIu)/NGP/2012/0222, thereby claim of the appellant/applicant for grant of compensation was dismissed.

2. Brief facts of the applicant's case are as under :

(i) On 26.12.2011, the applicant was travelling by train from Saundad to Gondia, along with her relatives, holding a valid journey ticket. During the journey, she fell down from the moving train in an untoward incident. As a result, she lost her right leg just below her knee, four fingers of her right hand and left foot. Due to which, she sustained serious injuries and rushed to KTS Hospital, Gondia. Thereafter, she was admitted to Government Medical College & Hospital, Nagpur for further treatment. The applicant amended her application by contending that her journey ticket No.41221757 was in possession of the Police. Therefore, the applicant filed application for compensation before the Railway Tribunal.

(ii) The respondent-railway authority denied the claim of the applicant and contended that no untoward incident causing death within the meaning of Section 124-A of the Railways Act has occurred therefore, claim is not maintainable. It is further contended that the applicant was not a *bona fide* passenger of any train, therefore, she is not entitled to any compensation. The respondent lastly prayed for the dismissal of the applicant's claim.

3. The learned Tribunal cast the following issues :

- (1) *Whether the Applicant proves that on the relevant day she sustained injuries in the train, in an untoward incident in terms of Section 123(c) of Railways Act, 1989?*
- (2) *Whether the respondents prove that the claimant was not a bonafide passenger of the train, in question, on the relevant day?*

4. The learned Railway Tribunal held that the alleged untoward incident was not proved by the applicant. Consequently, the claim of the applicant was dismissed. Being aggrieved, the applicant filed this appeal for setting aside the impugned judgment.

5. Perused the record and proceedings. Heard learned Advocates for both sides.

6. The learned Advocate for the appellant submitted that there are certain admitted documents i.e. Spot panchnama, Medical Certificate, Ticket of train and Disabilities Certificate. These documents show that the incident occurred within the railway premises, thereby untoward incident is proved. The appellant was having a valid journey ticket therefore, she was a *bona fide* passenger. The learned Advocate for the appellant further submitted that reasons and findings of the learned Railway Tribunal are neither legal nor correct. It is therefore, prayed that the appeal be allowed

and compensation be granted to the appellant by allowing the application.

7. Learned Advocate Ms. Neerja Chaubey for the respondent strongly opposed the appeal and submitted that the untoward incident has not been proved. The applicant fell due to his own deliberate rash and negligent act. The injuries are clearly self inflicted, as the applicant made an attempt to alight from the moving train. Furthermore, the applicant did not have a valid journey ticket therefore, she was not a *bona fide* passenger. The reasons and findings of the learned Railway Tribunal are legal and correct and no interference is warranted in it. It is lastly prayed that the appeal be dismissed.

8. The following points emerged for consideration :

- (i) *Was it proved by the appellant that on the relevant day in an untoward incident, she sustained injuries?*
- (ii) *Was it proved by the appellant that she was a bona fide passenger of the said train?*
- (iii) *Is the impugned judgment illegal and require interference?*

9. To prove the claim, the applicant Anutai, adduced her evidence by filing an affidavit examination-in-chief Exhibit AW-1. She reiterated the contentions stated in her application for compensation.

The applicant relied upon the documentary evidence of Spot panchnama at Exhibit-A1, Discharged Cards at Exhibit-A2 and A3, Disabilities Certificate at Exhibit-A4, and Aadhar Card at Exhibit-A5. The applicant also adduced the evidence of Shri Bhanu Shankarrao Yawalkar AW-2, who is the Head Constable at Railway Station, Wardha. He produced on record journey ticket, which is at Exhibit AW-2/1. He deposed that he had prepared the Spot panchnama vide Exhibit-A1. He also deposed that he had seized the journey ticket from the daughter of the injured, which was kept in the travel bag at the hospital.

10. To disprove the evidence of the applicant, the respondent has examined Shri Sunil Jagdish Prasad Bandewar, Safety Counselor Operating, Nagpur as RW-1. He deposed that when he was on duty at 20.45 hours, one safaiwala informed him that a lady was lying in injured condition at Wadsa Main Line, Platform No.4. Therefore, he made an entry in Station Diary and reported the said message by telephone to Roster Clerk.

11. The spot panchnama, medical certificate and evidence of AW-2 corroborates the claim of the applicant that incident occurred within railway premises, due to which, she lost her right leg just

below her knee, four fingers of her right hand and left foot. The valid journey ticket was also found with the applicant, which shows that she was a *bona fide* passenger. This is a natural and reliable evidence. The reasons given by the Railway Tribunal are not found legal and correct. No independent evidence of witness is necessary to corroborate the case of the appellant that applicant was injured in the untoward incident, which occurred within the premises of railway. The evidence was collected by the Investigating Officer in the natural course of the investigation. To corroborates the case of appellant, even evidence of eye witness is not necessary.

12. The negligence of any person who sustained injuries or death within the premises of railway, having a valid journey ticket, cannot be considered even if he/she was negligent, which was held by the Hon'ble Supreme Court in the case of ***United India Insurance Co. Ltd., Vs. Sunil Kumar***, reported in ***2017 (13) SCALE 652***.

13. As far as disabilities of applicant, the Certificate for person with Disabilities is on record at Exhibit-A4, which shows that applicant was 100% permanently disabled. All these aspects were not properly considered by the learned Railway Tribunal. The learned Tribunal not appreciated the evidence in proper perspective and

failed to believe the evidence of applicant. The reasons and findings of the learned Tribunal are not sustainable in the eyes of law. There is no factual as well as legal reason to deny the compensation, to the appellant. Thus, *bona fide* passenger and that an untoward incident occurred has been proved. Hence, point Nos.1 to 3 are answered in the 'affirmative'. The appeal deserves to be allowed. The impugned judgment deserved to be set aside. For the reasons discussed above, the argument of learned Advocate for the respondent is not acceptable. Hence, the following order :

- (i) The Appeal is **allowed**.
 - (ii) The Judgment dated 15.03.2016 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (Ilu)/NGP/2012/0222, is quashed and set aside.
 - (iii) The respondent is directed to pay compensation of **Rs.8,00,000/-** (Rs. Eight Lakhs only) to the appellant. The compensation amount be deposited within four months before the Railway Tribunal.
 - (iv) The Record and proceedings be sent back to the Railway Tribunal.
14. The Appeal is **disposed of** accordingly.

(SANJAY A. DESHMUKH, J.)