



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

FIRST APPEAL NO. 834 OF 2019

Farukh Khan S/o Pir Khan Pathan,
Aged about 20 years, Occ.-Nil,
R/o. Baba Nannashah Ward, Hinganghat,
Tq. Hinganghat, Dist. Wardha.

.... **APPELLANT**

// VERSUS //

Union of India,
Through It's General Manager,
Central Railway, Mumbai,
CST, Mumbai.

.... **RESPONDENT**

Mr. Mir Nagman Ali, Advocate for Appellant.
Ms. Neerja Chaubey, Advocate for Respondent.

CORAM : SANJAY A. DESHMUKH, J.

DATE : 02nd SEPTEMBER, 2024.

ORAL JUDGMENT.

1. This appeal is preferred by the appellant/applicant against the Judgment dated 05.04.2018 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (Iiu)/NGP/2015/0272. The claim of the appellant/applicant for grant of compensation was dismissed.

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

(i) On 30.09.2014, the applicant after completing his business of taking orders of spectacles for selling, fitting and cutting of glasses from optical shops, was travelling by train No. 51196 Ballarshah-Wardha Passenger from Chandrapur to Hinganghat with a valid journey ticket bearing No.11236461. There was a huge crowd in the train. While attempting to board the train, the train suddenly started, as a result, the applicant fell down in between the train and the railway platform. Due to which, the wheels of train were passed over his both legs and his right hand and thereby causing serious injuries. Consequently, his both legs and right hand were amputated. Therefore, the applicant filed an application for compensation before the Railway Tribunal.

(ii) The respondent denied the applicant's claim and contended that no such incident causing permanent disability, as defined under Section 123(c) read with Section 124-A of the Railways Act, had occurred, therefore, the claim is not maintainable. Furthermore, it was contended that the applicant was not a *bona fide* passenger of any train, as he did not possess a valid journey ticket. Therefore, the applicant is not entitled to any compensation. It is lastly prayed that the claim of the applicant be dismissed.

3. The learned Tribunal cast the following issues :

- (1) *Whether the applicant was a bonafide passenger of the train on the relevant day, with valid journey ticket?*
- (2) *Whether the applicant proves that on relevant day he sustained injuries in the train, in an untoward incident in terms of Section 123(c) of the Railways Act, 1989?*

4. The learned Railway Tribunal held that the applicant failed to prove the alleged untoward incident. Consequently, the applicant's claim was dismissed.

5. Perused the record and proceedings. The learned Advocates for both sides were heard.

6. The learned Advocate for the appellant submitted that certain admitted documents i.e. spot panchnama, extract of the injury register of the railway Police Chowkey Ballarshah, and the discharge card of the appellant, show that the incident occurred within the railway premises and that an untoward incident is proved by cogent evidence. The appellant possessed a valid journey ticket for the train, establishing his status as a *bona fide* passenger. He submitted that the reasons and findings of the learned Railway Tribunal are neither legal

nor correct. It is lastly prayed to allow the appeal and application by granting compensation to the appellant.

7. Learned Advocate Ms. Neerja Chaubey, for the respondent strongly opposed the appeal and submitted that the untoward incident is not proved. She contended that the applicant fell down due to his own deliberate rash and negligent act. The injuries are self inflicted, as the applicant attempted to board a running train. She further contended that the applicant was not a *bona fide* passenger. The reasons and findings of the learned Railway Tribunal are legal, correct and no interference is warranted. 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, he sustained permanent disability?*
- (ii) *Was it proved by the appellant that he was a bona fide passenger of the said train?*
- (iii) *Is the impugned judgment illegal and does it require interference?*

9. To prove the claim, the applicant, Farukh Khan Pir Khan Pathan, adduced his evidence by filing his affidavit of examination-in-

chief at Exhibit A-1. He reiterated the material contentions pleaded in his application for compensation. The applicant relied upon the documents i.e. Railway Ticket (Exhibit-A1), Discharged Card (Exhibit-A2), Medical Certificate (Exhibit-A3), Extract of injures register (Exhibit-A4), his statement Exhibit-(A5), Spot panchnama (Exhibit-A6), Statement of one Sanjay Chaurasiya – Sweeper (Exhibit-A7) and Statement of RPF Head Constable Shri Lokpal Yadav (Exhibit-A8).

10. To disprove the evidence of applicant, the respondent examined Shri Ramrao Nagorao Shirsikar, Loco-pilot, Nagpur, as RW-1. He deposed that he was on duty dated 30.09.2014 as loco-pilot on train No.51196 Wardha Passenger train from Ballarshah to Wardha, and his duty hours were from 16.40 to 23.00 hours. He further deposed that when the train arrived at Chandrapur railway station at about 18.35 hours and departed at about 19.00 hours, he noticed that while the train was entering the station on the common Loop-Line, some passengers, including the applicant, were standing on the opposite side/wrong side of platform to board the train. The applicant was talking on mobile handset. He blew the whistle to get his attention, but the applicant suddenly came from the offside and lay down on the track, due to which he was dashed by the train.

Thereafter, some passengers rushed to the spot, called an ambulance and removed the applicant from the track. He immediately informed to the on duty Guard via Walky talky and cellphone. He also informed the on duty official S.S. Chandrapur, through his Loco-pilot (Drivers) Memo Book. The respondent relied upon the documents i.e. Memo to Official S.S. Chandrapur (Exhibit-R1), Drivers Memo Book (Exhibit-R2), letter to Sr. Divisional Electrical Engineer, Nagpur (Exhibit-R3).

11. The spot panchnama and medical certificate corroborate the applicant's claim that incident occurred in the railway premises, resulting in the amputation of both legs and the right hand. The valid railway journey ticket found with the applicant indicate that he was a *bona fide* passenger. The applicant also submitted a Disability Certificate on record, which constitutes a natural evidence. The reasons provided by the Railway Tribunal are neither legally sound nor correct. There is no need for independent witness testimony to corroborate the applicant's claim that he was injured and sustained a 100% permanent disability in an untoward incident in the railway premises. The evidence collected by the Investigating Officer is in the course of investigation is natural which corroborates the applicant's case. Thus, evidence of an eye witness is not necessary.

12. The negligence of any person who sustains permanent disability/injuries or death on railway premises while holding a valid ticket cannot be considered, even if he/she was negligent, as 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. The Certificate of Disability of the applicant is at page-A114, shows that applicant is 100% permanently disabled. All these aspects were not properly considered by the learned Railway Tribunal. The learned Tribunal failed to appreciate the evidence in its proper perspective and wrongly disregarded the applicant's evidence. The reasons and findings of the learned Tribunal are not sustainable in the eyes of law. There is no factual or legal reason to deny compensation to the appellant. Thus, the fact that applicant was a *bona fide* passenger and sustained 100% permanent disability in an untoward incident is proved. Hence, point Nos.1 to 3 are answered in the 'affirmative'. The appeal deserves to be allowed and the impugned judgment deserved to be set aside. The application deserves to be allowed. For the reasons discussed above, the argument of the learned Advocate for the respondent is not acceptable. Hence, the following order :

- (i) The Appeal is **allowed**.

- (ii) The Judgment and order dated 05.04.2018 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (Ilu)/NGP/2015/0272, 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 shall 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.)