



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

FIRST APPEAL NO. 483 OF 2023

Ajay s/o Vasant Babaskar
Aged about 26 years, Occ.:- Nil,

R/o. Ward No.48, Near Ram Mandir,
Chinchala, Burhanpur (M.P) 450331

} ... Appellant

Versus

Union of India
Through General Manager
Central Railway,
CSMT Mumbai

} ... Respondent

Ms. Sumesha Chaudhari, Advocate for appellant.

Ms. Neerja G. Chaubey, Advocate for respondent.

CORAM : MRS. VRUSHALI V. JOSHI, J.

RESERVED ON : 26.10.2023.

PRONOUNCED ON : 11.01.2024.

JUDGMENT:

Heard finally by consent of both the learned counsel
for the parties.

(2) Being aggrieved by the judgment passed by Railway
Claims Tribunal, Nagpur Bench, Nagpur in Claim Application
No.OA(IIu)/NGP/206/2019, dated 31.08.2022, thereby dismissing
injury claim of the applicant under Section 16 of the Railway Claims

Tribunal Act, 1989. The injured/applicant was travelling by train No.15017 dn. Kashi express train from Jalgaon to Burhanpur on 02.12.2018. He has purchased ticket from Jalgaon to Burhanpur and has boarded the train in general compartment. Due to rush and unexpected sudden jerk in the train he fell down from the train at KM 444/22-23 near Bhusaval yard, District – Jalgaon (M.S.) and got severely injured. In said accident, he lost his both legs. He has filed claim petition for permanent disability caused in untoward incident.

(3) The respondent-railway has resisted the claim of the applicant stating that the injured was not bonafide passenger of the train and he was unauthorized vendor and injuries sustained to the injured are self inflicted injuries. The alleged incident of accident is not an untoward incident of accident within the meaning of Section 123(c)(2) of the Railway's Act. The railway Tribunal after considering the evidence and documents on record, has rejected the claim stating that the claimant was unauthorizedly selling the eatables. The ticket filed on record is false and bogus and not purchased by the appellant/applicant and he was not a bonafide passenger and hence, rejected the claim.

(4) I have heard learned counsel for the parties and I have perused the record and proceedings. Following points fall for my determination :-

(1) Whether the deceased died due to fall from running train and as such the death was in an untoward incident ?

(2) Whether the deceased was bonafide passenger of the train with a valid journey ticket ?

(5) The main reason for rejecting the claim by Tribunal is that the appellant was unauthorized vendor in the railway. For twice, he was fined under Section 144(A) and 137 of the Railway's Act, for selling the eatables unauthorizedly. The Tribunal has come to the conclusion that at the time of incident, he tried to board from the opposite side of the platform in train No.15017 for selling eatables unauthorizedly, as a result, he came under the wheels of train. The Tribunal has declared that the ticket which was found at the time of panchnama is bogus and false and not purchased by the claimant/appellant.

(6) In this case, in my view the documentary evidence is

sufficient to prove that deceased was bonafide passenger. The appellant/applicant was holding ticket of said train. There is reason to discard said ticket as bogus. His evidence is also reliable. It is sufficient to accept the contention that deceased was a bonafide passenger travelling with a valid journey ticket. In my view, therefore, in this case learned Member of the Tribunal was not right in rejecting this contention of the appellant. The next important question is whether the injuries caused to the appellant in untoward incident as understood by Section 123(C)(2) of the Railway Act, 1989.

(7) The appellant was travelling in said train and he fell down from said train is not denied by the Railway authority. Only because for twice he was caught by the railway police for unauthorisedly selling the eatables, he was declared as unauthorized passenger, though, he was having railway ticket. The said railway ticket was discarded by the Tribunal without any reason, without any evidence on record that it was not purchased by him, only because he was working as vendor, the Tribunal has rejected his claim as the passenger. The ticket was found in panchnama, he has immediately given the statement and has stated that he went to Jalgaon for purchasing clothes. The panchnama which was drawn immediately

after the incident, does not reveal any eatables lying on the spot, nothing is there to prove that he was selling eatables and at the relevant time and fell down. Relying on the statement of one of the employees of the railway without considering the spot Panchnama, the Tribunal has come to the conclusion that he was selling the eatables and said Tokni was lying there on the spot. There is no any evidence that he was boarding from the opposite side of the train. There is no any evidence that the said ticket was false and fabricated. On the contrary, it is proved that the appellant was travelling in said train as a bonafide passenger as the ticket was found in his pocket at the time of spot panchnama. It is not necessary that the vendor in the train cannot travel by purchasing ticket in the train only because he is doing said business it cannot be presumed that he was not the bonafide passenger.

(8) It is not disputed that he fell down from the said train and received the injury and both legs of the claimant were amputated in the said accident. There is no evidence on record brought by the respondent that he fell down by boarding from the opposite direction of the train. Therefore, the reasoning given by the Tribunal is not correct, the claimant was travelling in said train as

bonafide passenger and he fell down, it was an untoward incident as per Section 124(a) of the Railways Act. The statement of injured is recorded immediately in hospital his evidence is trustworthy only because he has denied the punishment for unauthorisedly selling eatables his entire evidence cannot be discarded.

(9) In the facts and circumstances, therefore, the case of the appellant that he fell from running train and received injuries cannot be discarded and disbelieved. The claimant can be denied compensation if the respondent/railway is able to establish any of the Clauses of the proviso to Section 124(A) of the Act. If the case falls in first part of Section 124(A) of the Act, 1989, then railways is liable to pay the compensation. In this case, it is noticed that the learned Tribunal has not properly appreciated the facts and evidence. He has come to a wrong conclusion. As such, I record my findings on above points in affirmative.

(10) In the instant case, the material on the record indicates that the injured was shifted to civil hospital Jalgaon and thereafter, to Ashwini Hospital Critical Care & Trauma Centre, Jalgaon. The medical report particularly injury certificate issued by M.P

Government Burhanpur reveals that both legs below knee were amputated 80% disability is proved through disability certificate. Amputation of leg below knee is scheduled injury and as per the schedule, compensation payable is Rs.8,00,000/- (Rs. Eight Lakhs Only) with interest.

(11) Under the circumstances, the appeal is allowed.

The applicant is held to be entitled for total compensation of Rs.8,00,000/- (Rs. Eight Lakhs Only) with interest at the rate of 6% per annum from the date of application and the amount be deposited in the account of appellant within three months from the date of uploading the corrected judgment and order. The applicant to give the details of the bank to the Registry.

Para No.11 is corrected as per Court's order dated 18.01.2024

(12) Appeal stands disposed of in the above terms.

(13) Pending applications, if any, shall stand disposed of accordingly.

[MRS. VRUSHALI V. JOSHI, J.]

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