



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

FIRST APPEAL NO. 03 OF 2024

APPELLANT : Satish S/o. Baliram Padole, Age 23
 years, Occ. Education & Labour, R/o.
 At Village Palasgaon, Tq. Basmat, Dist.
 Hingoli – 431512.

//VERSUS//

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

Ms. Sumesha Choudhari, Advocate for the Appellant.
 Ms. Neerja Chaubey, Advocate for the Respondent.

CORAM : G. A. SANAP, J.
DATED : 13th MARCH, 2024.

ORAL JUDGMENT

. **ADMIT.** Heard finally with the consent of learned
 advocates for the parties.

02] 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 30th August, 2023,
 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur,
 whereby the claim filed by the appellant came to be dismissed.

03] BACKGROUND FACTS:

The appellant is the injured in this case. It is stated that on 21st September, 2018, he came to Pathrad Railway Station to go to Nanded. At the railway station, he purchased the journey ticket. After arrival of the Nizamabad-Nanded Passenger Train, the appellant, along with his friend Suraj Yedke, boarded the train. There was a heavy rush in the train. It is stated that while entering the train, there was a jerk to the train, and as a result thereof, he fell down and sustained the injury. His friend Suraj pulled the chain, and, therefore, the train was stopped. He sustained the injury to his right leg. His leg was crushed under the wheels of the train. He was carried by the same train to Nanded. The ticket was handed over by him to the police. It is stated that the injury sustained by him was in an untoward incident. He was a *bona fide* passenger.

04] The respondent-Railway filed the written statement and opposed the claim. The railway has denied the claim in *toto*. It was contended that the injured tried to board a moving train. The Guard of the train had seen him while running to catch the train. The Guard had warned him not to chase and board the train. He did not listen to the Guard. In the process, he fell down and was crushed under the wheels of the train. He was not having a valid

journey ticket.

05] The appellant examined himself as a sole witness in support of his claim. He has relied upon the documentary evidence to establish the disability and injury sustained by him. The railway examined one witness, namely the Guard of the Nizamabad-Nanded Express. Learned Members of the Tribunal, on consideration of the evidence, found that there was no substance in the claim and dismissed the same. The appellant, being aggrieved by this judgment and order, is before this Court in appeal.

06] I have heard Ms. Sumesha Choudhari, learned advocate for the appellant and Ms. Neerja Chaubey, learned advocate for the respondent-Railway. Perused the record and proceedings.

07] 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”)?*

08] Learned advocate for the appellant submitted that the journey ticket was recovered. Learned advocate submitted that the journey ticket was duly verified and found to be genuine. Learned advocate submitted that, after purchasing the journey ticket, the injured boarded the train, but due to heavy rush and sudden jerk to the train, he fell down and sustained injury. Learned advocate submitted that the evidence of RW-1 is not sufficient to prove that the injured tried to board a moving train. Learned advocate submitted that the evidence of RW-1 deserves to be discarded. Learned advocate further submitted that the right leg just below the knee was amputated and, therefore, the case of the appellant would be covered by Clause 20 of Part III of the Schedule to Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. Learned advocate submitted that the judgment and order passed by the Tribunal cannot be sustained.

09] Learned advocate for the respondent-Railway has supported the judgment and order passed by the Tribunal. Learned advocate submitted that the evidence of RW-1 is sufficient to prove that the injured came running from the village side to board the

moving train. Learned advocate submitted that, in this process, the injured fell down and sustained injury. Learned advocate submitted that the injury sustained would not fall within the definition of an 'untoward incident'. Learned advocate further submitted that the ticket relied upon is not a genuine ticket.

10] I have gone through the record and proceedings. The journey ticket, produced on record, is a valid journey ticket for the journey from Pathrad to Nanded. The ticket was purchased on 21st September, 2018 at Pathrad Railway Station. AW-1 has stated that, after the incident, the railway ticket was handed over to the police. The ticket was sent for verification. The railway employee who issued the ticket has certified that the said ticket was issued on 21st September, 2018 at Pathrad Railway Station for the journey from Pathrad to Nanded. It is not the case of the railway that this ticket was not found with the injured after the incident. Even if such a defence had been raised, it could not have been accepted because of the voluminous documentary evidence on record. The voluminous documentary evidence proves beyond doubt that, after purchasing the ticket, the injured boarded the train at Pathrad Railway Station.

The ticket was recovered from him. Learned Members of the Tribunal have failed to consider the voluminous evidence placed on record on this point. The finding recorded by learned Members of the Tribunal is without considering the material and evidence on record. The finding, therefore, cannot be sustained.

11] The next important issue is as to whether the injury was sustained in an untoward incident or not. The appellant is the injured. He has placed on record first-hand account of the incident. He has also stated that, after purchasing the ticket, on the arrival of the Nizamabad-Nanded Express at the platform he along with his friend boarded the said train. He has further stated that there was a rush in the train, and, therefore, due to a sudden jerk to the train, he fell down and was crushed under the wheels of the train. It is the case of the railway that the injured, after seeing that the train started moving from the railway station, came running from the village side and tried to board the train. It is the case of the railway that when the Guard of the train saw the injured running towards the train, he warned the injured not to chase and board the said train. The injured did not listen to him, and in the process of boarding the

train, he fell down and sustained the injury. In my view, this statement of the Guard that he saw the injured running from the village side to board the train far from the ticket window cannot be accepted. This statement would show that the injured came running towards the platform by crossing the ticket window. If the statement of RW-1 is accepted as it is, then it would show that the injured without purchasing the ticket at the ticket window straightaway ran towards the platform and tried to board the moving train. In my view, this statement cannot be believed for more than one reason. The most important reason is that the ticket was already purchased by the injured, and the ticket was found with him after the incident. If the injured had tried to board the moving train, as stated by the Guard, then there was no question of finding the ticket with him. RW-1 has not stated in his evidence that he saw the deceased purchasing the ticket and then running towards the train. It is not the case of the railway as well as it cannot be seen from the record that the railway ticket was handed over to the police by the friend of the injured. In my view, therefore, this version of RW-1 about the incident cannot be believed.

12] The appellant has placed on record first-hand account of the incident. The ticket found with him after the incident fortifies his case that, after purchasing the ticket, he either boarded or tried to board the train at the railway station. He has stated that there was a rush in the train, and after entering the train due to a sudden jerk to the train, he fell down and was crushed under the wheels of the train. It has come on record that his friend, after the incident, pulled the chain and stopped the train. The injured was taken out of the track and carried to Nanded in the very same train. It is to be noted that RW-1 did not inform the Station Master at Pathrad Railway Station about the incident. The train was stopped after chain pulling. The Guard of the train RW-1 in the ordinary circumstances would have reported the incident to the Station Master at Pathrad Railway Station. He informed about the incident on walki-talki to the Station Master of the next railway station, i.e., Maltekadi Railway Station. This is another circumstance to disbelieve his evidence. The accidental falling of any passenger from a moving train is an 'untoward incident'. The evidence of the appellant is sufficient to prove that, after boarding the train with a valid journey ticket due to a sudden jerk to the train, he fell down and was crushed under the

wheels of the train.

13] Even if it is assumed for the sake of argument that there is substance in the statement of RW-1 about the incident, in my view, that by itself would not be sufficient to conclude that the injury was not sustained in an untoward incident. The decision of the Hon'ble Apex Court in the case of *Union of India Vs. Prabhakaran Vijaya Kumar and Ors. [(2008) 9 SCC 527]* has enunciated the law in this regard. The Hon'ble Apex Court has held that it will not legally make any difference whether the person was actually inside the train when he or she fell down or whether the person was only trying to get into the train when he or she fell down. It is held that in any case, it would amount to an 'accidental falling of a passenger from a train carrying passengers,' and as such, it would be an 'untoward incident' as defined in Section 123(c) of the Act of 1989. In this case, the Hon'ble Apex Court has held that the provision for compensation in the Railways Act is a beneficial piece of legislation and, therefore, it should receive a liberal and wider interpretation and not a narrow and technical one. It is held that the interpretation which advances the object of the statute and serves its purpose

should be preferred. On this count, the facts of the case on hand and the facts in the case of *Prabhakaran Vijaya Kumar and Ors.* (supra) are similar. In the case of *Prabhakaran Vijaya Kumar and Ors.* (supra), the passenger tried to board a moving train and fell down and died. It needs to be stated that the injury to a passenger or the death of a passenger in this manner and situation would fall within the definition of an 'untoward incident'. In my view, therefore, learned Members of the Tribunal were not right in rejecting the evidence adduced by the appellant. The evidence of RW-1 has not been properly appreciated. As such, the judgment and order cannot be sustained.

14] The next important issue is as to the nature of the injury. The disability certificate is on record. The photograph of the injured is on record. He has stated that his right leg below the knee has been amputated. The stump of the leg below knee can be seen in the photograph. It is seen that it is not exceeding 5 inches in length from the knee. In view of this, the case of the appellant would be covered by Clause 20 of Part III of the Schedule to Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. As per this clause,

for such an injury, the injured is entitled to get compensation of Rs.4,00,000/-. In this case, therefore, the appellant is entitled to get compensation of Rs.4,00,000/-.

15] 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 30th August, 2023, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Claim Application No.OA(IIu)/NGP/5/2020 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.

16] 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