



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

FIRST APPEAL NO.990 OF 2024

Pramod s/o Mohan Pando
Aged about 32 years,
Occupation-Nil,
R/o. Nadi Para, Post-Annapara,
Ramanujganj, Balrampur,
Chattisgarh.

.. Appellant
(Original Applicant on RA)

.. Versus ..

The Union of India,
General Manager,
Central Railway,
CSMT Mumbai.

.. Respondent
(Original Respondent on RA)

.....
Ms. S.M. Chaudhari, Advocate for Appellant.
Ms. N.G. Chaubey, Advocate for Respondent.
.....

CORAM : SANJAY A. DESHMUKH, J.
DATE : 02/12/2024.

JUDGMENT :

1. By this appeal, the appellant has challenged the judgment passed by the learned Railway Claims Tribunal, Nagpur in Claim Application No.OA (Ilu)/NGP/105/2016, dated 14.02.2018. The application filed by the appellant under Section

16 of the Railway Claims Tribunal Act, 1989 for compensation was dismissed.

FACTUAL BACKGROUND

2. The appellant was 27 years old in the year 2005. On 20.11.2015, he was travelling from Nagaruntari to Surat by Bhusawal-Surat Train No.59076 holding a valid journey ticket for the train. There was no direct train available to travel from Nagaruntari to Surat and the passengers were required to change the train at Bhusawal to reach Surat. The appellant reached Bhusawal Railway Station to go to Surat. He got down from train to fetch drinking water at Jalgaon Railway Station. Due to rush while re-boarding the train, he fell down from that train and came under the wheels of the train. His both legs were amputated. He was admitted in the hospital where he underwent a surgery. He prayed for compensation on account of 100% disability.

3. Respondent strongly opposed the claim of the appellant contending that no such untoward incident happened within the meaning of Section 124-A of the Railways Act, 1989. They prayed for the claim to be rejected.

4. Learned Tribunal framed the following issues :

- (i) Whether the applicant was a bona fide passenger of the train, on the relevant day, holding a valid journey ticket.?*
- (2) Whether the applicant proved that on the relevant day he sustained injuries due to an untoward incident in terms of Section 123 (c) of Railways Act, 1989.?*
- (3) What relief ? What order.?*

5. The learned Tribunal held that by the evidence of the respondent that the appellant attempted to commit suicide is proved. As a result, the claim was rejected. The learned advocate for the appellant submitted that an untoward incident occurred in the premises of the Railway Station, Jalgaon and it is proved by the spot panchanama drawn up after the incident. The journey ticket of the appellant is also proved. Learned Tribunal failed to consider the entire evidence on record in its proper perspective and came to the wrong conclusion. The evidence of appellant was not shaken during the cross-examination. There is no reason to disbelieve the evidence of appellant. She lastly prayed to allow the appeal by setting aside impugned judgment and prayed to

grant the compensation to the appellant for his 100% functional disability.

6. The learned advocate for the respondent submitted that the evidence of Loco-Pilot was rightly believed by the Tribunal as it held that no untoward incident had occurred. On the contrary, the appellant was found standing in front of the train engine, which struck him despite the whistle being blown. It was case of an attempt to commit suicide. She further submitted that the reasons and the findings of the learned Tribunal are based on the evidence on record and no interference is warranted in it. She lastly prayed for the dismissal of the appeal, asserting that there is no substance in the grounds of objections raised in this appeal.

7. Perused the impugned judgment, the grounds of objections raised in the appeal and the evidence adduced by both sides.

8. Following points emerged for consideration :

(i) Was it proved by the appellant that he sustained 100% disability in the said accident and that it was an untoward incident.?

(2) Was it proved by the appellant that he was bona fide passenger holding valid journey ticket for the train.?

(3) was the learned Tribunal illegal and interference is warranted in the impugned judgment.?

9. To substantiate his claim, the applicant - Pramod s/o Mohan Pando (AW-1) adduced his evidence by filing an affidavit of examination-in-chief. He also proved the documents marked at Exh. A-1 to A-11 about the investigation of the said case.

10. The respondent examined Sanjay Kothawade, Loco Pilot as RW-1, Santosh Thakur as (RW-2), Deputy Station Superintendent. The respondent relied upon the documents i.e. R-1 and R-2 to R-6. Additionally, the respondent has also produced DRM's enquiry report along with other supporting documents.

11. On perusal of entire evidence, it appears that the appellant, during his cross-examination, admitted that on the said day, he was not inclined to go to his job/work. He further stated that this thought developed in his mind at Jalgaon Railway Station. He denied that, due to this dual state of mind, he came

in front of the train i.e. Bhusawal-Surat Passenger Train No.59076. He also denied the allegation that he was not in possession of a train's journey ticket. The journey ticket of train is marked as Exh. A-11.

12. To disprove the evidence of the appellant, the respondent's witness Sanjay Kothawade (RW-1), deposed that he was the Loco Pilot of Train No.59076, which was proceeding from Bhusawal to Surat. He stated in his evidence that at about 9.28 hours, one passenger was standing between up and down track i.e. in front of office of Deputy Station Superintendent at km No.420/02. He continuously blew the whistle to alert that person. However, the said person, instead of moving away from the track, remained standing in the same position, as a result of which, he was struck by the train's engine. The Loco Pilot applied the brake and stopped the train at Platform No.2 of Jalgaon Station. He immediately informed via walkie-talkie to the Guard and the Station Master at Jalgaon Railway Station about the incident. An entry regarding the incident was made in Loco Pilot Memo Book. He proved the driver's note-book marked as Exh.A-67. In his cross-examination, he admitted that he was not

aware of whether the Guard had given the memo about that incident to the Station Master or not. He denied that the injured person was already lying on the track of the Train No.59076. He also admitted that he had not given any written memo of the incident to the Station Master.

13. The learned advocate for the respondent pointed out that a note of the alleged incident is recorded at the bottom in Exh.R1-A67 in front of the Deputy Station Superintendent, indicating that one person was found injured on the track due to collision. There is no signature of this witness under the remark section of it. He did not sign it and even foreman has also not signed it if verified. It is thus not reliable evidence. The learned advocate for the appellant, therefore, rightly submitted that the said evidence is doubtful and cannot be safely relied upon.

14. Santosh Thakur, Station Master, deposed that he received information from the GRP and RPF at 9.35 hours. He stated that the Guard of Train No.59076 informed him that a person is lying injured between the main and down line at km no.420/02. He called an ambulance and took the injured person for treatment. Lastly in para no.5 he stated that no any untoward

incident, such as an accident or the fall of any passenger was noticed or reported by Loco Pilot or the Guard of the train. In his cross-examination, he admitted that he did not receive any information or memo regarding any untoward incident or accident from the Loco Pilot (RW-2) of Train No.59076. Loco Pilot of the train deposed that he had informed the Station Master i.e. RW-2 about the incident. Thus, the evidence provided by the respondent are contradictory and, therefore, it is not credible and hence it cannot be safely relied upon. The said evidence was not properly appreciated by the learned Tribunal. The learned Tribunal had erred in relying upon the evidence of RW-1 and RW2. The Tribunal also failed to appreciate the evidence of the journey ticket of railway marked as Exh.A-11. Therefore, the reasons and findings of the learned Tribunal are neither legal nor sustainable in the eyes of law.

15. The negligence of the passenger is not a legal ground to deny the compensation, as the law on this issue is well settled. According to the evidence of the appellant, particularly the report marked as Exh A22 A24 by Investigating Officer, PSI, RPF Jalgaon, concluded that the appellant went to fetch water and,

while re-entering the train, resulted in the amputation of both his legs. This conclusion was drawn by the Investigating Officer which corroborated the case of the appellant. This evidence is reliable as it is independent and can be safely relied upon to hold that it was an untoward incident. If all these evidences are considered together, evidence of appellant is found to be probable, trustworthy and reliable. This evidence has not been disproved by the testimony of RW-1 and RW-2. The appellant has successfully proved his case of an untoward incident which took place within the premises of railway. It is proved that he was a bona fide passenger and his journey ticket marked as Exh.A-11 is valid.

16. Considering all these aspects, it is held that learned Tribunal was erred in deciding the claim of the appellant as per Section 123 (c) of the Railways Act, 1989 despite it being an untoward incident. Therefore, the appeal deserves to be allowed. The impugned judgment deserves to be set aside. The claim application deserves to be granted. The argument put-forth by the learned advocate for respondent is, therefore, not acceptable. Hence, point nos.1 to 3 are answered in the affirmative.

17. As far as the amount of compensation is concerned, 100% disability of appellant is proved by disability certificate (Exh.43), therefore, the appellant is entitled for compensation of Rs.8,00,000/- (Rs. Eight Lacs only). Hence, the following order :

ORDER

- (i) The appeal is allowed.
- (ii) The impugned judgment passed by the Tribunal is hereby set aside.
- (iii) The respondent is directed to pay Rs.8,00,000/- (Eight Lacs only) to the appellant within a period of **four months** from the date of receipt of the copy of this judgment.
- (iv) The appeal stands disposed of accordingly.

(Sanjay A. Deshmukh, J.)