



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

FIRST APPEAL NO. 47 OF 2024

APPELLANT : Dilipkumar S/o Arjunprasad,
Aged 24 years, Occu. Nil,
R/o Gram – Gothava, Post Babhani Mishra,
Amorhwa, Basti (Uttar Pradesh) 272 126.

VERSUS

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

Mr. D. S. Lambat, Advocate for the appellants
Ms. N. G. Choube, Advocate for the respondent.

CORAM : G. A. SANAP, J.
DATED : MARCH 18, 2024.

ORAL JUDGMENT

1. In this appeal, filed under Section 23 of the Railway Claims Tribunal Act, 1987 (hereinafter referred to as “the Act of 1987” for short), challenge is to the judgment and order dated 09.11.2023 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim filed by the appellant-claimant under Section 16 of the Act of 1987 for compensation on account of the injuries sustained by him in an untoward incident, was

dismissed.

2. BACKGROUND FACTS :-

The appellant claims that on 01.01.2020, after purchasing a journey ticket, he boarded Train No. 12542 / LTT – Gorakhpur Express from LTT (Lokmanya Tilak Terminus) Mumbai to go to Bhusaval. The incident occurred at Jalgaon Railway Station. It is stated that at Jalgaon Railway Station, the train had no scheduled halt. He had come to the wash basin of the compartment to wash his hands. At that time there was a sudden jerk to the train and he fell from the running train on platform no.3 at Jalgaon Railway Station. He sustained serious injury. His left leg has been amputated. He was a *bona fide* passenger. The injury sustained by the appellant was in an untoward incident.

3. The respondent-Railway filed written statement and opposed the claim. It was contended that the injured was not a *bona fide* passenger. The injuries sustained by him were not in an untoward incident. The injured was negligent. He did not take proper care while travelling by the said train. The injuries sustained by him were self-inflicted injuries. The appellant is not entitled to get compensation.

4. The appellant examined himself as sole witness. The respondent-Railway has examined one witness. Learned Member of the Tribunal, on appreciation of the evidence found that there was no substance in the claim and ultimately dismissed the claim. The appellant is before this Court in appeal.

5. I have heard Mr. D. S. Lambat, learned advocate for the appellant and Ms. N. G. Choube, learned advocate for the respondent. Perused the record and proceedings.

6. In the facts and circumstances, following points fall for my determination :-

- i] Whether the appellant was a bona fide passenger travelling by the train in question with valid journey ticket ?*
- ii] Whether the appellant sustained injuries in an untoward incident within the meaning of Section 123 of the Railways Act, 1989 ?*

7. Mr. Lambat, learned advocate for the appellant submitted that the journey ticket recovered from the possession of the appellant was a valid journey ticket. Learned advocate submitted that learned Member of the Tribunal has not recorded a categorical finding on this issue. Learned advocate submitted that as far as the injury in an untoward incident is concerned, learned Member of the Tribunal has failed to properly appreciate the material

on record as well as the provisions of law. Learned advocate submitted that in this case, learned Member of the Tribunal was not right in invoking the Proviso to Section 124-A of the Railways Act, 1989 (Hereinafter referred to as “the Act of 1989”) to deny compensation. Learned advocate submitted that the appellant in his evidence has placed on record the first hand account of incident and the same is sufficient to prove that he fell from a moving train from the off-side at Jalgaon Railway Station and sustained injury. Learned advocate submitted that the defence of negligence or contributory negligence is not available in such a claim inasmuch as the liability is based on ‘No Fault Theory’.

8. Learned advocate for the respondent-Railway, in short, supported the judgment and order passed by the Tribunal. Learned advocate submitted that the appellant is a resident of Jalgaon. Learned advocate submitted that though the ticket was valid for journey from LTT Mumbai to Bhusaval, the injured fell from a moving train while de-boarding the train at Jalgaon Railway Station from the off-side. Learned advocate submitted that therefore, learned Member of the Tribunal was right in rejecting the claim.

9. Perusal of the record and the reasons recorded by the learned Member of the Tribunal would show that learned Member has failed to

properly appreciate the evidence on record as well as the relevant provisions of law. The journey ticket was recovered. The ticket was valid for journey from LTT Mumbai to Bhusaval. The injured was a *bona fide* passenger. The injured had boarded the train at LTT Mumbai. The incident occurred at Jalgaon Railway Station. The injured fell from the off-side of the train. The train had no scheduled halt at Jalgaon Railway Station. Perusal of the impugned judgment and order would show that learned Member has failed to record any finding on issue No.1. The evidence and undisputed facts are sufficient to conclude that the injured was a *bona fide* passenger.

10. The next important issue is whether the injuries sustained by the appellant were in an untoward incident. The injured had boarded the train at LTT Mumbai. The incident occurred at Jalgaon Railway Station. The injured fell from the off-side of the train. If the injured wanted to take a chance to de-board at Jalgaon Railway Station, then he would have made an attempt to alight or de-board the train from the platform side and not from the off-side. The appellant in his evidence has placed on record the first hand account of the incident. He has stated that while washing his hands at the wash basin near Jalgaon Railway Station, due to sudden jerk, he fell from the train and sustained injuries, which resulted in amputation of his left leg below knee. In his cross-examination, he has admitted that the train had no scheduled halt at

Jalgaon Railway Station. He has admitted that the injured fell from off-side of the train. He has denied the suggestion that while the train was passing slowly at Jalgaon Railway Station, he tried to de-board the said train and in the process fell down and sustained injuries. Perusal of his cross-examination would show that the basic premise of his evidence as to the incident has not been shaken. The injured had a valid journey ticket from LTT Mumbai to Bhuwaval. He had no reason, therefore, to alight or de-board the train at Jalgaon Railway Station. If the injured had intended to terminate his journey at Jalgaon Railway Station, then he would not have purchased the ticket up to Bhusaval. In my view this material supports his contention.

11. The next important question is whether accidental falling of a passenger from a moving train, falls within the definition of an untoward incident? Section 123(c)(2) of the Act of 1989 is relevant for this purpose. As per the definition, accidental falling of a passenger from a moving train carrying passengers is an “untoward incident.” If a passenger falls from a moving train carrying passengers accidentally, it falls within the definition of an “untoward incident”. The case of such a passenger would be covered by the first part of Section 124A of the Act of 1989. As per Section 124A, the liability to pay compensation is regardless of any unlawful act or default on the part of Railway Administration. The Railway cannot be held liable to pay

compensation, if the case falls under any of the clauses to Proviso to Section 124-A. The proviso to Section 124A shows that the railway administration would have no liability to pay any compensation in case death or injury to the victim is caused due to any of the reasons enumerated in clauses (a) to (e) of the Proviso to Section 124-A. In this case, admittedly, the Railway has not been able to establish that any clause of the proviso would be applicable.

12. The Railway has raised the defence of negligence or contributory negligence on the part of the appellant. The question is, whether such defence in the claim based on 'strict liability' or 'no fault theory' can be entertained? The Hon'ble Apex Court in ***Union of India .vs. Rina Devi***, reported at ***AIR 2018 SC 2362***, has enunciated the law on this point. Paragraph 16.6 of the decision would be relevant for addressing this issue. It is extracted below :-

"16.6 We are unable to uphold the above view as the concept of 'self inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. We may in this connection refer to judgment of this Court in United India Insurance Co. Ltd. v. Sunil Kumar (2017 (13) SCALE 652) laying down that plea of negligence of the victim cannot be allowed in claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation

and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor.”

13. It is held by the Hon'ble Apex Court that the defence of negligence or contributory negligence is not available to the Railway. The injury sustained due to the negligence of a passenger would not be said to be self-inflicted injury. It is held that the liability in such a claim is based on 'no fault theory'. It is held that death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor. In my view, the law laid down by the Hon'ble Apex Court is an answer to the plea raised by the respondent- Railway. In this case, therefore, learned Member of the Tribunal was not right in holding that the injuries sustained by the appellant were not in an untoward incident.

14. The next important issue is about the nature of the injury. The disability certificate is on record at Exhibit A-8. The photograph of the appellant is also on record at Exhibit A-6. It is stated that the appellant's left leg has been amputated below knee. 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/- (Rupees Four lakhs only). In view of the above, I record my finding on the above points in the affirmative. As such, the appeal deserves to be allowed.

15. Accordingly, the First Appeal is allowed.

i] The judgment and order dated 09.11.2023, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, in Claim Application No. OA(IIu)/NGP/52/2020, is set aside. The claim application is allowed.

ii] The respondent-Railway is directed to pay compensation of Rs.4,00,000/- (Rupees Four lakhs only) to the appellant along with interest @ 6% per annum on the said amount from the date of the incident i.e. 01.01.2020, till realization of the amount.

iii] The amount of compensation be deposited within **four months** from the date of uploading of this judgment.

iv] The amount of compensation be deposited directly in the bank account of the appellant. The appellant is directed to provide his bank account details to the respondent-Railway.

16. The First Appeal stands disposed of in the aforesaid terms. No order as to costs. Decree be drawn up accordingly.

17. In view of disposal of this appeal, pending civil applications, if any, also stand disposed of.

(G. A. SANAP, J.)

Diwale