



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

**FIRST APPEAL NO. 48 OF 2024**

**APPELLANT** : Irshad Mohd. S/o Dilshad Mohd.,  
Aged 55 years, Occu. Nil,  
R/o Uttam Nagar, Bhivandi,  
Thane, Maharashtra – 421 302.

**VERSUS**

**RESPONDENT** : Union of India,  
through General Manager,  
Central Railway, C.S.T.  
Mumbai.

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Mr. D. S. Lambat, Advocate for the appellants  
Ms. N. G. Choube, Advocate for the respondent.  
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**CORAM : G. A. SANAP, J.**  
**DATED : MARCH 18, 2024.**

**ORAL JUDGMENT**

1. Heard.
2. **ADMIT.** Taken up for final disposal forthwith by consent of the learned advocates for the parties.
3. 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 25.10.2023 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.

4. BACKGROUND FACTS :-

The appellant, on 30.05.2019, was travelling by train No. 12168 LTT superfast express from Prayagraj to Kalyan with a valid journey ticket. He commenced his journey on 29.05.2019. The incident occurred near Kilometer No.347/04-06 at Kajgaon Railway Station. The appellant state that there was heavy rush in the train. He could not get seat in the compartment. He was standing at the door. It is stated that due to sudden jerk, he lost his balance and fell from a moving train. He fell on the track and he was run over by a train coming from opposite direction. He sustained injury to his left leg. His left leg above knee has been amputated. The journey ticket was lost in the accident. He was a *bona fide* passenger.

5. The respondent-Railway opposed the claim by filing written statement. According to the Railway, the appellant got down from a moving train to pick up his mobile phone, which had fallen on the track. In this

process he was run over by a train coming from opposite direction. The injury sustained was self-inflicted injury. The appellant was negligent. The ticket was not recovered. He was not a *bona fide* passenger.

6. The appellant examined himself as sole witness in support of his claim. The respondent- Railway has examined Loco Pilot of Train No. 51181 - Devlali-Bhusaval passenger. Learned Members 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 against the said judgment and order.

7. 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.

8. 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 injury in an untoward incident within the meaning of Section 123 of the Railways Act, 1989 ?*

9. Mr. Lambat, learned advocate for the appellant submitted that the appellant, on the date of the incident, was travelling from Prayagraj to Kalyan by the train in question. Learned advocate submitted that a person of ordinary prudence will not take a risk of travelling such a long distance from Prayagraj to Kalyan, without a journey ticket. Learned advocate submitted that if the appellant was travelling without a journey ticket, then he would have been caught by the Ticket Checker. Learned advocate submitted that the panchanama of the spot of the incident was drawn on 28.02.2020, whereas the incident occurred on 30.05.2019. Learned advocate submitted that the first hand account in this regard narrated by the appellant is sufficient to discharge the initial burden. Learned advocate submitted that the defence of the Railway that mobile phone of the appellant had fallen down and to collect the phone, he got down from the moving train and in this process, he was run over, cannot be accepted. Learned advocate submitted that the railway officials are silent about the whereabouts of the mobile phone of the appellant. Learned advocate submitted that the evidence of the appellant is sufficient to prove that due to rush and sudden jerk to the train, he fell from the moving train and sustained injury. Learned advocate submitted that the train in question was moving at a high speed at Kajgaon Railway Station and therefore, the appellant could not have easily got down from the said train, as sought to be contended by the respondent. Learned advocate submitted that accidental falling of a passenger

from a moving train is an untoward incident. Learned advocate submitted that defence of negligence or contributory negligence, as sought to be set out, is not available to the Railway in such claim, which is based on no fault theory.

10. Learned advocate for the respondent, in short, supported the judgment and order passed by the Tribunal. Learned advocate submitted that the evidence of the appellant is not sufficient to prove the loss of ticket as sought to be contended by him. Learned advocate submitted that if the ticket was lost on the spot, then the same would have been recovered. Learned advocate submitted that evidence of RW1, who was Loco Pilot of Train No. 51181, coming from opposite direction, is sufficient to establish that the injured was walking on the track and while boarding the train in question, he fell down and was run over by his train. Learned advocate submitted that the injury sustained by the appellant was a self-inflicted injury.

11. I have gone through the record and proceeding. The appellant was travelling on the given date from Prayagraj to Kalyan by Train No. 12168. The said train had no scheduled halt at Kajgaon Railway Station. The injured had travelled a distance of about 1200 kilometers from Prayagraj by the said train. A person travelling such a long distance, would not take a risk of travelling without ticket. It is a common knowledge that the passengers

travelling without ticket are generally caught by the Ticket Checkers. Ticket checking by the Railway officials is a routine phenomena. It is not the case of the Railway that the ticket checking operation was not undertaken on this train. It needs to be stated that if the injured had travelled such a long distance without ticket, then he would have been caught and penalized. There are number of other circumstances, which are in favour of the contention of the appellant that the ticket was lost in the accident. It is undisputed that when the deceased fell from a moving train, he was run over by a train coming from opposite direction. He sustained serious injury. The train by which he was travelling did not stop at the spot. From the spot, the deceased was carried by the railway officials to the government hospital at Dhule. He was treated at the government hospital, Dhule and from there, he was shifted to a private hospital at Bhiwandi (Thane). The appellant had sustained serious injury to his left leg. His left leg has been amputated. The mobile phone, which had allegedly fallen on the track, was not recovered from the spot. It is shocking that the spot panchanama of the spot of the incident was drawn on 20.02.2020. The incident occurred on 30.05.2019. It is not the case of the Railway that the spot of the incident was immediately examined or inspected. The possibility of loss of ticket on the spot cannot be ruled out in such an incident. This is the second circumstance in favour of the appellant.

12. It is true that the initial burden to prove that he/she was a *bona fide* passenger lies on the injured or claimant. The question in such a situation is whether the evidence on record is sufficient to discharge the initial burden or not ? 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 17.4 of the decision would be relevant for addressing this issue. It is extracted below :-

*“17.4. We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”*

13. The Hon'ble Supreme Court has held that mere presence of body on the railway premises will not be conclusive to hold that the injured or deceased was a *bona fide* passenger. It is further held that mere absence of ticket with such injured or deceased will not negative the claim that he was a *bona fide* passenger. It is held that the initial burden on the claimant can be discharged by filing an affidavit of relevant facts and the burden will then shift to the railways, and the issue can be decided on the basis of the facts shown or

the attending circumstances. It is held that this will have to be dealt with from case to case on the basis of the facts found. In my view, the case of the appellant is fully covered by the law laid down in *Rina Devi* (supra).

14. In this case, the appellant has filed his affidavit. In his affidavit of examination-in-chief, he has placed on record the first hand account of the incident. He has stated that due to heavy rush and due to sudden jerk to the train, he fell down and sustained injuries. He has stated that the journey ticket was lost in the incident. He was thoroughly cross-examined. As far as this aspect is concerned, no material has been elicited in his cross-examination to discard his statement that the ticket was lost in the incident. In my view, this evidence is sufficient to discharge the initial burden. The evidence of the appellant on this point is supported by the above stated to vital circumstances. Learned Members of the Tribunal have failed to properly appreciate this material on record as well as the settled legal position. As such, I conclude that the evidence on record is sufficient to prove that the injured was a *bona fide* passenger travelling with a valid journey ticket.

15. The next important point is whether the injury was sustained in an untoward incident ? An accidental falling of a passenger from a moving train carrying passengers, is an “untoward incident”, as provided under Section



123(c)(2) of the Railways Act, 1989 (hereinafter referred to as “the Act of 1989”). Under section 124-A of the Act of 1989, the liability to pay compensation is regardless of any wrongful act, neglect or default on the part of the Railway Administration. The Railway cannot be held liable to pay compensation, in case the death or injury to a passenger was caused due to any of the reasons enumerated in clauses (a) to (e) of the Proviso to Section 124A of the Act of 1989. It is a settled legal position that the defence of negligence or contributory negligence is not available to the Railway to deny compensation under Section 124A. It is further pertinent to note that falling of a passenger from a moving train and death or injury due to one’s own negligence, does not come within any exception enumerated in Section 124A proviso to deny compensation. In absence of malicious intent or *mens rea*, such negligence can neither be held as criminal act under Section 124A proviso (c). In this context, a useful reference can be made to the decisions in *Rina Devi* (supra) and in *Jameela and others .vs. Union of India*, reported at (2010) 12 SCC 443.

16. The question is whether the injury sustained by the injured was in an untoward incident or not ? The train by which the appellant/injured was travelling was running at high speed. It was, therefore, not possible for him to alight from the said train easily, as sought to be made out by RW1. It is

contended by the Railway that the mobile phone of the injured fell on the track and therefore, to pick up his mobile phone, the appellant alighted from the fast moving train and in this process, he was run over by a train coming from the opposite direction. It is the case of the appellant that there was heavy rush in the train and due to sudden jerk while standing at the door, he lost his balance and fell down and run over by the train coming from opposite direction. In my view, the evidence of the appellant placed on record deserves acceptance. It is supported by the circumstances. An accidental falling of a passenger from a moving train in this manner is covered under the definition of “untoward incident”. The evidence adduced by the Railway, therefore, cannot be believed and accepted to deny the claim of the appellant.

17. Learned Members of the Tribunal have failed to consider all these aspects properly and as such came to a wrong conclusion. In my view, the injury sustained by the appellant was in an untoward incident. As such, on both the points, the findings of fact arrived at by the Tribunal, cannot be sustained.

18. The left leg of the appellant has been amputated above knee. The photograph is on record at Exhibit A-11. The disability certificate is also on record at Exhibit A-13. Considering the nature of amputation, in my view, the

case of the appellant would be covered by Clause 19 of Part III of the Schedule to Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. Clause 19 provides for compensation for amputation below middle thigh to 3½” below knee. It is seen that amputation in this case is below middle thigh. It is exceeding 5” in length from tip of great trochanter. In my view, therefore, the case of the appellant would fall under clause 19 of Part III of the Schedule appended to the Rules of 1990. Under this clause, the compensation provided for such an injury, is Rs.4,80,000/-. In this case, therefore, the appellant is entitled to get compensation of Rs.4,80,000/- (Rupees Four lakhs Eighty thousand 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.

19. Accordingly, the First Appeal is allowed.

i] The judgment and order dated 25.10.2023, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, in Claim Application No. OA(IIu)/NGP/50/2021, is set aside. The claim application is allowed.

ii] The respondent-Railway is directed to pay compensation of Rs.4,80,000/- (Rupees Four lakhs Eighty thousand only) to the appellant along with interest @ 6% per annum on the said amount from the date of the incident i.e. 30.05.2019, 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.

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

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

( G. A. SANAP, J. )

*Diwale*