



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.2761 OF 2024**

Nilavati S/o. Akhil Thorat,
Age: 32 years, Occu: Nil,
R/o Pimpalgaon Mahadev,
Tal. Ardhapur, Dist: Nanded

..Appellant
(Orig. Claimant)

Versus

Union of India,
Through General Manager,
South Central Railways,
Secundrabad (Telengana)

..Respondent

...
Mr. P. S. Agarwal, Advocate for the Appellant.
Mrs. Sudha S. Chintamani, Advocate for Respondent.

...
CORAM : S. G. CHAPALGAONKAR, J.
DATED : 27th MARCH, 2025.

JUDGMENT:-

1. Heard. Admit. By consent of parties, taken up for final hearing.
2. The appellant impugns judgment and order dated 22.04.2022 passed by Railway Claims Tribunal, Nagpur in Case No.OA (IIu)/NGP/214/2019.
3. The appellant/original claimant raised claim for compensation towards personal injury suffered by her from respondent/Railway, contending that she suffered amputation of left hand from shoulder in an untoward incident occurred on 16.07.2018. The applicant contends that on 16.07.2018, she was traveling from Nanded to Mudkhed by Train No.17642 Narkher-

Kacheguda Intercity Express. Her cousin Rajesh had purchased railway ticket for her travel. She boarded in train, however, due to heavy rush, she was stuck at the door of compartment. While train was running at KM No.362/9 within at Mugat Railway Station, due to sudden jerk she fell down from running train, causing serious injury to her left hand shoulder. She was shifted to Adhar Hospital, Nanded, where her left hand amputated from shoulder.

4. The respondent/Railway opposed claim firstly on the ground that applicant was not bonafide passenger. Secondly, she suffered injury while she was alighting from running train, hence, it is a case of self-inflicted injury.

5. The Tribunal framed issues, recorded evidence and dismissed claim holding that claimant suffered self-inflicted injuries, which falls in exceptions under Section 124-A (b) of Railways Act, 1989 (for short 'the Act') and that she was not bonafide passenger.

6. Mr. Agarwal, learned Advocate appearing for the appellant vehemently submits that Tribunal misconceived the fact and legal position while deciding claim application. According to him, absence of ticket itself would not be sufficient to hold that applicant was not bonafide passenger. The applicant has tendered sufficient explanation for her inability to produce railway ticket. He would further submit that issue of negligence or contributory negligence

is not germane to the proceeding under Section 124-A of the Act, which is in the nature of strict liability. In support of his contentions he relies upon observations of Supreme Court of India in case of *Union of India Vs. Rina Devi*¹, judgment of this Court in case of *Mira Jangannath Vibhute Vs. Union of India*² and observations of Division Bench of High Court of Madhya Pradesh in case of *Raj Kumari and Anr. Vs. Union of India (UOI)*³.

7. Per contra, Ms. Chintamani, learned Advocate appearing for respondent supports impugned judgment of Tribunal contending that Tribunal has delved into relevant aspects of the facts and law and rendered its decision supported by adequate reasons, which does not require interference in this Appeal.

8. Having considered submissions advanced by learned Advocate appearing for respective parties and on perusal of record and proceeding, it can be observed that there is no dispute that appellant fell from running train and suffered injury to her left shoulder leading to amputation of left hand from shoulder. The issue poses for consideration in this Appeal is as to whether applicant can be termed as bonafide passenger within meaning of Section 2(29) of the Act, as elaborated under Section 124-A and whether she was victim of untoward incident as defined under

¹ AIR 2018 SC 2362.

² AIROnline 2019 Bom 940.

³ 1993 ACJ 846.

Section 123(c) of the Act, resulting into schedule injury specified in Rule 3 of Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 (for short 'the Rules').

9. The applicant has specifically pleaded that her cousin brother Rajesh obtained railway ticket for traveling from Nanded to Mudkhed. She possessed said ticket, however, it was misplaced when she met with an accident. She filed affidavit in support of her contentions. The Tribunal discarded her evidence only for the reason that applicant failed to examine her cousin brother Rajesh, who had purchased ticket for her. In this background, reference can be given to the observations of Supreme Court of India in case of ***Rina Devi*** (supra), particularly paragraph no.17.4, which reads thus:

"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."

10. In present case, applicant has tendered her evidence affidavit in support of her contention that she was bonafide passenger having valid ticket and also explained facts that she misplaced ticket when she met with an accident. Therefore, certainly, burden was shifted upon respondent to prove that she undertook journey

without ticket. On the basis of some confused statement in cross-examination, she cannot be unsuited. The respondent has failed to bring sufficient material to dislodge claim of applicant that she was bonafide passenger. The observations of Tribunal drawing adverse inference against applicant cannot be countenanced in facts of present case. This Court, therefore, hold that applicant was bonafide passenger at the time of incident.

11. The second aspect of the matter is as to whether it was a case of untoward incident as defined under Section 123(c) of the Act or applicant suffered self-inflicted injuries as per proviso of Section 124-A (b) of the Act. The respondent relied upon report of guard stating that "unknown female passenger aged about 45 years run over by 17642 at MGC (Mugat) platform", which is supported by statement of Loco Pilot, which states that "unknown female fell while alighting from train". The respondent relied upon evidence of Ram Sonkar (RW-1) and Nitesh Kumar (RW-2). It is accordingly contended that applicant suffered injuries while she was alighting from running train. They contend that act of applicant was with full knowledge of imminent possibilities of endangering her life or limb. Therefore, it shall be termed as self-inflicted injury as defined under proviso (b) of Section 124-A of the Act.

12. It is trite that, Section 124 and Section 124-A provides compensation whether or not there has been any wrongful act,

neglect or default on the part of the railway administration, in case of accident or in case of untoward incident. The provision is based on principle of strict liability with exceptions as provided under proviso to Section 124-A of the Act. Apparently, defence of negligence on the part of victim would not be available. The negligence or contributory negligence on the part of victim cannot be equated with term self-inflicted injury. The Supreme Court of India in case of ***Jameela & Ors. Vs. Union of India***⁴ after taking survey of earlier pronouncements in subject matter observed as under:

“Therefore, the two limbs of the Proviso should be construed to have two different objectives to be achieved. We can understand the meaning of the term "self-inflicted injury" not only from the sources provided by the dictionaries, but also from the context in which it is used in the statute. The term "self-inflicted injury" used in the statute can be deduced as one which a person suffers on account of one's own action, which is something more than a rash or negligent act But it shall not be an intentional act of attempted suicide. While there may be cases where there is intention to inflict oneself with injury amounting to self-inflicted injury, which falls short of an attempt to commit suicide, there can also be cases where, irrespective of intention, a person may act with total recklessness, in that, he may throw all norms of caution to the wind and regardless to his age, circumstances, etc. act to his detriment.”

13. In facts of the present case when claimant has specifically contended that because of rush she could not get entry in train and stuck at the door and then due to jerk she fell from train, there is nothing to discern that her act was reckless and unmindful to bring

⁴ AIR 2010 SC 3705.

it within the purview of self-inflicted injury. The reading of evidence as recorded by respondent shows that she fell from train while alighting. However, this appears to be inference based on report made by guard. No direct evidence is placed into service to indicate special features of incident, by which inference of reckless act on the part of claimant can be drawn. The respondents failed to bring material to support their defence. The Tribunal misconstrued facts and legal position while drawing inference based on assumption and presumption and surmises while rejecting claim.

14. It is not in dispute that applicant suffered amputation of her left hand from shoulder. The injury suffered by her will fall in Clause (3) of Part III of schedule under Rule 3 of the Rules. The claimant would be, therefore, entitled for compensation of Rs.5,60,000/- as per schedule brought into force from 1st day of January 2017. The claimant is, therefore, entitled for compensation of Rs.5,60,000/- alongwith interest @ 6% per annum from the date of application till award as per law laid down by Supreme Court in case of *Thazhathe Purayil Sarabi & Ors Vs. Uoi & Anr*⁵. Hence following order:

ORDER

a. First Appeal is allowed.

b. The judgment and award dated 22.04.2022 passed by Railway Claims Tribunal, Nagpur in Case No.OA (Iiu)/NGP/214/2019 is hereby quashed and set aside. The claim stands allowed.

c. The respondent is directed to pay compensation of Rs.5,60,000/- together with interest @ 6% per annum to appellant from the date of application till date of realization of amount.

d. The respondent shall pay cost of Rs.10,000/- to appellant.

e. On deposit of amount, same be disbursed to claimant.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/March-2025