



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

FIRST APPEAL NO. 884 OF 2019

Hari s/o Daulat Chauhan,
 age about 50 years, Occ: Nil,
 R/o at Post Mehun Bare,
 Tahsil Chalisgaon, Dist. Jalgaon (Mah.)

.. Appellant
 (deceased)

1(i) Sumanbai wd/o Hari Chauhan
 age : 69 years, Occ : Nil

1(ii) Dynehwar s/o Hari Chauhan
 age : 37 years, Occ : Service

1(iii) Rajendra s/o Hari Chauhan
 age : 29 years, Occ : Service

All R/o Near Police Line, Dhamangaon Road,
 Mehunbare, District : Jalgaon – 424106

} Legal heirs of Appellant

Versus

Union of India,
 Through the General Manager,
 Central Railway, C.S.T. Mumbai

} **.. Respondent**

 Mr. R.G.Bagul, Advocate for appellants.

Ms.Neerja Chaubey, Advocate for the respondent.

CORAM : ABHAY J. MANTRI, J.

DATED : AUGUST 22, 2025

ORAL JUDGMENT

(1) Heard finally with the consent of the learned counsel appearing
 for the parties.

(2) Original applicant Hari Daulat Chauhan has challenged the judgment and order dated 24/11/2015, passed by learned Member (Technical) and Member (Judicial) of Railway Claims Tribunal, Nagpur Bench, Nagpur (hereinafter referred to as '**the Tribunal**'), whereby his application for compensation was dismissed. Hence, the original applicant/appellant has preferred this appeal.

(3) The facts of the case are that – on 23/03/2011, the applicant had been to the Chalisgaon Railway Station, he had purchased the railway journey ticket bearing No.K89310292 and was standing on platform No.2 and waiting for the Mumbai – Bhusawal passenger train. At about 7.45 a.m., the goods Train was passing through platform No.2, and part of the railway's hand brake broke off and flew away from the cabin and striking the left leg of the applicant. Due to the said incident, his left leg was fractured and operated on; therefore, he preferred the claim application against the respondent railways for compensation.

(4) The respondent railway authorities had filed a Written Statement and denied the contents of the claim application in toto. It is categorically contended that the statutory authority has conducted an investigation, and it is revealed that no such ticket was found with the injured. Similarly, it is averred that the injured was careless and negligent and, as a result, he invited the incident for himself and caused self-inflicted injury, which is an exception under the provisions of Section 124A of the Indian Railways Act, 1989 (hereinafter referred to as '**The Act**') and therefore, the applicant is not entitled to get any compensation from the respondent. Lastly, it is contended that said incident cannot be termed as an

‘untoward incident’ as contemplated under Section 123(c)(2) of the Act and therefore, urged for dismissal of the claim.

(5) Based on the rival pleadings of the parties, the learned Tribunal framed issues. Pursuant to the issues, the applicant examined himself and produced and proved the documents. On the other hand, respondent authorities did not enter into the witness box, nor adduced any evidence in support of their defence.

(6) After considering the material on record, the learned Tribunal dismissed the application, holding that the incident would not come within the purview of an ‘**untoward incident**’ as contemplated under Section 123(c)(2) of the Act, and therefore, the applicant is not entitled to get compensation. Similarly, the applicant failed to prove that he was a bona fide passenger. Learned Tribunal further held that the story put forth by the applicant is false, fabricated and concocted, as the applicant has nowhere stated that he has purchased tickets for two persons; therefore, being aggrieved by the same, the applicant has preferred this appeal.

(7) It further appears from the record that during the pendency of the appeal on 13/09/2022 original applicant, Hari Daulat Chauhan, died and therefore, his legal heirs were brought on record as appellants.

(8) Heard, learned counsel for appellants/legal heirs and respondent. Perused the impugned judgment, evidence, as well as record and proceedings.

Having considered the rival submissions of the parties, the following points arise for determination:-

1. *Whether the applicant proves that on the relevant date and time, he sustained injuries on account of the 'untoward incident' that occurred as contemplated under Section 123(c)(2) of the Indian Railways Act, 1989 ?*
2. *Whether the impugned judgment and award is just and proper?*
3. *Whether any interference is required in the impugned judgment and award?*
4. *What order?*

(9) Having heard the learned counsel for the parties as well as gone through the entire record as pointed out by the learned counsel for the parties, so also went through the judgment relied upon by the appellants in **Sri D.Srinivasa vs. Union of India, AIR 1995 Karnataka 223**, the following short, but crucial point arises for determination:-

"1. Whether injury sustained by the applicant can be said to have occurred due to an 'untoward incident'."

(10) It is pertinent to note that the respondent did not dispute that on the day of the incident, the applicant was standing on the platform, but raised objections that he was not holding a valid journey ticket, he was negligent, and as a result, he had sustained injury and therefore, said the injury to be termed as self-inflicted injury.

(11) It is worth noting that the railway authorities have not disputed the fact that part of the railway's hand brake broke off and flew away from the cabin

and striking the left leg of the applicant. Therefore, it is necessary to appreciate and consider whether the injured/original applicant was holding a valid journey ticket or not and whether said incident can be termed as an '*untoward incident*' or not.

(12) The applicant, in the application as well as in his testimony, has categorically stated and deposed that he purchased the journey ticket on the date of the incident, and he also produced the same on record. However, during his cross-examination, no suggestion was given to him that he did not purchase a ticket or that he did not possess a ticket, and therefore, the testimony of the applicant remained unchallenged on the said point. There is no reason to disbelieve his testimony. Apart from the above, the DRM report dated 09/04/2012 (page A-15) indicates that the applicant was holding a valid journey ticket and was standing on platform No.2 waiting for the arrival of the train.

(13) *Moreover*, the respondent failed to examine any witness to demonstrate that the injured did not possess a valid journey ticket, in support of their defence, and therefore, failed to prove the said fact. The non-examination of any witness by the respondent leads to draw an adverse inference against them.

(14) It also appears from the record that the injured had produced a journey ticket on record, which is marked as article 'A'. It was the only contention of the learned counsel for the respondent that the ticket was purchased for two adult persons, but nowhere applicant state who was accompanied by him. Even assuming that the applicant did not state who was accompanied by him, it does

not mean that the injured had not purchased a valid journey ticket, and therefore, I do not find substance in the contention of the respondent that the injured did not have a valid journey ticket on the day of the incident.

(15) It is pertinent to note that the applicant by filing an affidavit has categorically deposed that he was having a valid ticket, thereby, discharged his burden and therefore the burden was shifted on the respondent railways to prove that the applicant was not having a valid journey ticket, however, respondent failed to discharge the said burden and therefore, in view of the mandate laid down in ***Union of India vs. Rina Devi, AIR 2018 SC 2362***, I have no hesitation to hold that the applicant was having a valid journey ticket as he was within the railway premises and as such it has to be presumed to be a *bona fide* passenger.

(16) The next objection raised by the learned counsel for the respondent is that applicant was not travelling in the train and he was standing on the platform and due to his negligence, he had sustained the injury and therefore, it could not come within the purview of an '*untoward incident*' as contemplated in Section 123(c)(2) of the Act, therefore, it would be proper to deal with the said controversy based on the material available on record. It is pertinent to note that I have already hold that original applicant was holding a valid journey ticket and he was waiting for arrival of the train on platform No.2. Similarly, the respondent does not dispute that on that day part of the railway's hand brake broke off and flew away from the cabin and struck to the left leg of the original applicant and he had sustained injury, but their only contention is that said incident does not come within the ambit of definition of '*untoward incident*' as contemplated in Section

123(c)(2) of the Act.

(17) It is to be noted that it is not the case of the applicant that he was travelling in the train carrying passengers, but his case was specific that he was on the platform No.2 waiting for the arrival of the train. The railway authorities also did not dispute that he was present within the precincts of a railway station when the incident occurred. While dealing with the said controversy, I would like to reproduce Section 123(c)(1) and (2), which reads as under :-

“123. Definition.-In this Chapter, unless the context otherwise requires,-

(a)

(b)

(c) "untoward incident" means -

(1) (i) the commission of a terrorist act within the meaning of sub-section (1) of Section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

*(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloakroom or reservation or booking office or **on any platform or in any other place within the precincts of a railway station; or***

(2) the accidental falling of any passenger from a train carrying passengers.]”

(18) A bare perusal of Section 123(c)(1), it appears that if any incident occurred on any platform, **such as** a terrorist attack, violent attack of the mob or commission of robbery, dacoity, rioting, shoot-out, or arson of any person, **then it can be termed as an ‘untoward incident’**. It is not in dispute that the said incident

occurred within the '*railway precincts*' and arising out of the moving goods train and on that day part of the railway's hand brake broke off and flew away from the cabin and struck to the left leg of the original applicant and caused injury, therefore, in my opinion, said incident comes within the purview of an '*untoward incident*', as the moving railway is involved in it and said incident has occurred within precincts of railway station. Part of the railway's hand brake broke off and struck to left leg of the applicant, resulting in fracture injury to him; therefore, in my view, the incident arising out of the moving train and within the precincts of the railway station means an '*untoward incident*' as contemplated under Section 123(c)(1) of the Act.

(19) Apart from this, the Hon'ble Apex Court in ***Shi D.Srinivasa*** (supra) has dealt with the similar issue wherein it was held that the application under old Act under Section 82-A of the Act (i.e. Section 124 of the New Act), the application is maintainable for compensation and the accident that occurred in the said matter that one heavy iron girder was fell on the person while he was boarding in the train was termed as an '*untoward incident*'.

(20) Besides, it cannot be ignored the fact that the provisions for compensation in the Railways are a beneficial piece of legislation and therefore, while dealing with the provisions in the Act should adopt a liberal and wider interpretation and not a narrow or technical one. As a consequence of the above, in my opinion, in view of the mandate of the beneficial legislation and considering the object and intent of the statute, it would be proper to provide compensation to the victim of the '*untoward incident*' by giving a liberal approach. Consequently, I

hold that as the incident occurred within the 'railway *precincts*' with the involvement of the moving train can be termed as an 'untoward incident' as contemplated under Section 123(c) of the Act. Accordingly, ***I answer point No.1 in the affirmative.***

As to points No.2 and 3 :-

(21) As discussed above, I have already held that applicant proved that he was a bona fide passenger and he was on platform No.2 waiting for the arrival of the train and part of the railway's hand brake of goods moving train broke off and flew away from the cabin and struck to the left leg of the original applicant and resulting in fracture injury to him, is comes within the purview of an '*untoward incident*'. However, the learned Tribunal, while passing the impugned judgment, has not considered the evidence on record in its proper perspective and erred in holding that the incident of the broken off part of the hand brake and striking the left leg of the applicant cannot come within the purview of Section 123(c)(2) of the Act. Thus, the finding arrived at by the learned Tribunal is contrary to the evidence on record, as well as the interpretation of Section 123(c) of the Act.

(22) It further reveals that the learned Tribunal has not considered the provisions of Section 123(c) while dealing with the application. It is also evident that it was not the case of the applicant that his case falls under Section 123(c)(2), as he did not sustain injury while travelling in the train carrying passengers, therefore, question of application of Section 123(c)(2) does not arise at all, but

incident comes within the purview of Section 123(c)(1) of the Act, therefore, the findings recorded by the learned Tribunal cannot be sustained in the eyes of law and liable to be set aside in the appellate jurisdiction. As a consequence, in my view, the judgment and order passed by the learned Tribunal is unjust and improper and therefore, interference is required in it in the appellate jurisdiction. Hence, ***I answer point No.2 in the negative and point No.3 in the affirmative.***

(23) Lastly, learned counsel for the appellant submitted that due to the injury sustained by the original applicant, he was not in a position to do any labour work in future; therefore, the applicant is entitled to get compensation of Rs. 8 Lakhs; however, he failed to point out under which part of the schedule he has claimed the said amount of compensation. *Moreover*, the applicant has not adduced any cogent and reliable evidence on the record to show that due to the injury sustained by him, he was not able to perform any type of labour work in future. On perusal of the injury certificate/permanent disability certificate, the same was issued by one Medical Officer, Rural Hospital, but the same would not have been issued by the competent Medical Board. Even on perusal of the said certificate, it does not appear that the Doctor had advised/certified that he was not able to do work in future. Nothing has been suggested from the medical document that the applicant was unable to do labour work in future. It only appears that the applicant was suffering from malunion of the tibia and fibula of the left leg, which were fractured and were operated on and reunite. The Doctor nowhere mentioned that the injured/original applicant was permanently disabled. On perusal of the certificate, it does not indicate that the injured had sustained permanent disability.

(24) *Furthermore*, on perusal of the evidence of the applicant, it reveals that the applicant has not deposed about how much disability he sustained. He vaguely deposed that due to the injury, he suffered permanent disability, but the percentage of the disability has not been deposed, nor has any medical certificate or any other document been produced on record. Apart from this, the applicant also failed to examine the Medical Officer in support of his contention. Therefore, I do not find substance in the contention of the learned counsel for the applicant that the applicant is entitled to get compensation of Rs. 8 Lakh. On perusal of the evidence on record, in my view, the case of the applicant is covered under Clause (30) of Part III of the Schedule of Rule 3 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. As per Clause (30) Fracture of Major Bone – Femur, Tibia, both limbs, the legal heirs of the original applicant are entitled to get compensation of Rs. 1,60,000/- only.

(25) As a result, the appeal is partly allowed. The impugned judgment and order dated 24/11/2015, passed by the learned Tribunal, is hereby quashed and set aside. The application filed by the applicant is allowed in terms of Clause (30) of Part III of the Schedule of Rule 3 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 and the applicant is entitled to get compensation of Rs. 1,60,000/-.

(26) During the pendency of the application, the applicant died and therefore, his legal heirs, i.e. widow and two major earning sons, were brought on record. Therefore, in my view, the widow is entitled to a compensation amount of Rs.1,00,000/- and applicants No.2 and 3, i.e. sons, are entitled to a compensation

amount of Rs. 30,000/- each.

(27) The respondent is directed to pay the aforesaid amount to the applicants by 30/11/2025 as mentioned above; failing which, the amount shall carry interest @6.00%p.a. from the date of application till its realisation.

[ABHAY J. MANTRI, J.]

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