



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

FIRST APPEAL NO. 1030 OF 2023

Mr. Khemendra s/o Dilip Chilhaghot,
Age 19 years, Occupation – Student,
R/o Brahmni, Tahsil and District Gondia.

.... **APPELLANT**

VERSUS

The Union of India,
through its General Manager,
Central Railway, Chhatrapati Shivaji
Terminal, Mumbai.

.... **RESPONDENT**

Ms. S.G. Barbate, Advocate for the appellant,
Ms. N.G. Chaubey, Advocate for the respondent.

CORAM : ABHAY J. MANTRI, J.

DATE : 27-06-2025

ORAL JUDGMENT :

Heard. **Admit.** With the consent of the learned Counsel for the parties, the appeal is taken up for final hearing forthwith.

2. The appellant/original claimant, being aggrieved by the judgment and order dated 07-01-2019 passed by the learned Member, Railway Claims Tribunal, Nagpur Bench, Nagpur (hereinafter referred

to as the “*Tribunal*”) in CP No. OA II(u)/NGP/0008/2018, whereby the claim of the claimant was partly allowed, has preferred this appeal.

3. On 19-01-2017, the claimant had purchased a valid railway ticket from Nagpur to Gondia and was travelling as a *bona fide* passenger. However, the claimant boarded the wrong train in the general compartment and was standing in the compartment near the door. When the train was in motion, at that time, due to heavy rush and sudden jerk, the claimant fell from the running train near RPF Cabin, Matamandir, signal No.16-18 and suffered injuries to both legs. Due to the accident, his right leg above the knee and three toes of his left leg were amputated. Therefore, he had filed the claim petition before the Tribunal for compensation.

4. The respondent filed a reply, denying all the contents of the petition and contending that the claimant had negligently jumped from the train. Therefore, the railway authorities are not responsible for paying compensation to the claimant.

5. After going through the pleadings and hearing the parties, the Tribunal framed the issues. Pursuant to the said issues, the claimant examined himself and produced and proved the documents. On the contrary, the respondent examined one witness and closed their

evidence. After considering the evidence on record, the Tribunal held that the claimant was a *bona fide* passenger and had suffered injuries in the accident. It was further held that due to the amputation of the right leg, the claimant was entitled for compensation as per Clause 19 of Part-III of the Schedule of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 (for short, the “**Rules**”) and, therefore, partly allowed the claim petition and granted compensation of Rs.4,80,000/- to the claimant. Being aggrieved by the same, the claimant has preferred this appeal.

6. Heard Ms. S.G. Barbate, learned Advocate for the appellant/claimant and Ms. N.G. Chaubey, learned Advocate for the respondent. During the argument, the learned Advocate for the appellant submitted that the claimant had not produced the Medical Report dated 17-03-2025 and the Certificate about the amputation of three toes of the left leg, which the claimant wants to produce on record. As such, the learned Advocate for the appellant has prayed for remand of the matter, for which the learned Advocate for the respondent has not objected. Perused the record and saw the photograph on record as well as the Medical Report dated 17-03-2025 produced before the Court.

7. Having considered the same, the following point arises for determination :

- (i) Whether the matter is required to be remanded back to the Tribunal for fresh consideration?

Point No.(i) :

8. Ms. S.G. Barbate, learned Advocate for the appellant, has pointed out the Medical Report dated 17-03-2025 issued by the Chairman of the Department of Disabilities, Government Medical College, Gondia. She further showed the photograph of the claimant and submitted that three toes of the left leg of the claimant were amputated; however, the claimant failed to produce any medical certificate or document in that regard before the Tribunal, which the claimant wants to produce on record for the determination of the just and fair compensation.

a) She further argued that the Tribunal erred in granting compensation under Clause 19 of Part III of the Schedule instead of Clause 17 of the Rules, as the amputation of the right leg is below the hip not exceeding 5” in length from the greater trochanter; therefore, the said judgment and order is liable to be interfered on the said point. Furthermore, she fairly submitted that the claimant failed to produce the Medical Certificate/Report dated 17-03-2025 before the Tribunal. This indicates that the claimant is entitled to compensation under Clause 17 of Part III of the Schedule of the Rules. Therefore, she urged

that the matter be remanded to the Tribunal for consideration and determination of the facts above afresh.

9. Ms. N.G. Chaubey, learned Advocate for the respondent, does not dispute the above facts and submissions of the learned Advocate for the appellant. She submitted that the respondent has not preferred any appeal or cross-objection against the impugned judgment and order. She argued that the claimant had not produced the Medical Report dated 17-03-2025 before the Tribunal, so the respondent could not have had an opportunity to challenge it. However, she fairly submitted that it would be proper to remand the matter back to the Tribunal for fresh determination of the claim.

10. Both the learned Advocates also submitted that the respondent has deposited the compensation amount as per the impugned judgment and order, which the claimant/appellant withdrew. This appeal is filed solely on the ground that the Tribunal erred in granting compensation under Clause 19 of Part III of the Schedule of the Rules, rather than under Clause 17, as the claim falls under that Clause/provision.

11. I have perused the Medical Report dated 17-03-2025, filed along with the pursis on record. Undoubtedly, the said report was not produced before the Tribunal. Also, after looking at the photographs of

the claimant on record *prima facie*, it is noticed that the right leg above the knee was amputated, and three toes of the left leg were also amputated. However, the claimant failed to produce any certificate regarding the removal of three toes before the Tribunal.

12. Having considered the above facts and submissions of the learned Advocate for both the parties, as well as the fact that the Railways Act is a beneficial and welfare legislation that seeks to provide compensations as per the schedule of the rules based on the injuries suffered by the victim in the untoward incidents, however the claimant failed to produce the relevant Medical certificate/s before the Tribunal for grant of just and fair compensations based on the said injuries. That being so, in my view, it would be proper to give opportunity to the claimant to produce the Medical certificate/s in that regard before the Tribunal and for that purpose the matter is required to remand the Tribunal for consideration of these injuries, and determination of the claim of compensation afresh based on certificate/s/material, if any, produced by the claimant before it. Consequently, the impugned judgment and order is required to be set aside. Accordingly, I answer the point in the affirmative.

13. Hence, I pass the following order :

- (i) The impugned judgment and award dated 07-01-2019 passed by the Tribunal in CP No. OA II(u)/NGP/0008/2018 is hereby quashed and set aside. The matter is remanded back to the Tribunal for fresh consideration.
- (ii) The claimant is permitted to produce the Medical Report dated 17-03-2025 in respect of amputation of the right leg before the Tribunal, as well as a certificate in respect of the amputation of three toes of the left leg, if any, before the Tribunal.
- (iii) The Tribunal is directed to consider the said evidence/Medical certificate/s, if any, produced by the claimant, by giving opportunity to the respondent, and determine the claim of the claimant afresh.
- (iv) It is also made clear that if the Tribunal comes to the conclusion that the claimant is entitled to an enhanced amount of compensation, if any, then the awarded amount under the impugned judgment and award, which the claimant has withdrawn, shall be adjusted.

14. The appeal is disposed of accordingly.

15. The registry is to take the necessary steps accordingly.

(ABHAY J. MANTRI, J.)

