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

FIRST APPEAL NO. 31 OF 2019

APPELLANTS : Mr. Ashok s/o. Chhotelal Bhalla (Dead) through Legal Representatives:

Amended as per Court's Order dt. 26.02.2020

1. Smt. Aasha wd/o. Ashok Bhalla, Aged 60 Years, Occ. Household, R/o. H.No. 345/3, Ward No. 8, Near Police Chowaki, Post and Tah. Dalatpur, Dist. Sagar (M.P.) 470339.

2. Smt. Reeta Khatri, Aged about 43 Years, Occ. Household, R/o. Post & Tah. Dalatpur, Dist. Sagar (M.P.) 470339.

3. Shri Sateesh S/o. Ashok Bhalla, Aged 32 Years, Occ. Pvt. Work, R/o. Palod Colony, Bhama Ward, Gadarbara, Narsinhpur, Madhya Pradesh – 487551.

4. Smt. Kalpana w/o. Devesh Parashar, Aged about 36 Years, Occ. Household, R/o. Ward No.1, near Badi Nahar, Waraseoni, Balaghat, Madhya Pradesh - 481331.

5. Shri Santosh S/o. Ashok Bhalla, Aged about 34 Years, Occ. Pvt. Work, R/o. Ward No.8, Near Police Chowaki, Dalatpur, Post, Dalatpur, Tah. Shahgarh, Dalatpur, Sagar, Madhya Pradesh – 470339.

6. Smt. Priti w/o. Hitesh Khurana, Aged about 31 Years, Occ. Household, R/o. Ward No. 18, Hallu Colony, Naugaon,

Chattarpur, Nowgong, M. P. - 471201.

//VERSUS//

RESPONDENT : The Union of India, through its General Manager, South East Central Railway, Bilaspur (C.G.) 495004.

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Ms. S.G. Barbate, Advocate for the Appellants.
Mr. N.P. Lambat, Advocate for the Respondent.

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CORAM : G. A. SANAP, J.
RESERVED ON : 22nd APRIL, 2024.
PRONOUNCED ON : 20th JUNE, 2024.

JUDGMENT

. In this appeal, filed under Section 23 of the Railway Claims Tribunal Act, 1987 (for short, "the Act of 1987"), challenge is to the judgment and order dated 4th May, 2018, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim application made under Section 16 of the Act of 1987 by the appellant-claimant for compensation on account of the injuries sustained by him in an untoward incident came to be dismissed.

02] BACKGROUND FACTS:

It is the case of the injured that on 13th August, 2015, he purchased a journey ticket at Gondia Railway Station to go to

Balaghat. After purchasing the journey ticket, he went to platform No.2 and boarded the train. It is stated that after boarding the train, he came to know that, by mistake, he had boarded the Gondia-Ballarshah train instead of Gondia-Balaghat train. By the time, he realized his mistake, the train had started running. It is stated that in order to deboard the said train at the platform, he came near to the gate. The train was moving at a slow speed. There was a sudden jerk to the train, and, therefore, he fell down, and his legs were crushed under the wheel. It is stated that he was a *bona fide* passenger travelling with a valid journey ticket. He boarded the wrong train due to the mistake. He fell from a running train, and as such, the injury sustained by him was in an untoward incident.

03] The respondent-Railways filed the reply and opposed the claim. It is the case of the Railways that the injured was not a *bona fide* passenger. The ticket was not valid for the train on which he had boarded. The injured, without taking proper care, boarded the wrong train, and after realizing his mistake, he jumped from the train. He sustained the injury. The injury sustained by him was due to his criminal negligence. It was a self-inflicted injury.

04] The parties adduced the evidence before the Tribunal. The injured examined himself as a sole witness. The respondent-Railways examined the Guard of the concerned train. Learned Member of the Tribunal, on appreciation of the evidence, found that the claim was without substance and, as such, dismissed the claim. This appeal has been filed by the claimant against the said judgment and order.

05] I have heard Ms. S.G. Barbate, learned advocate for the appellants, and Mr. N.P. Lambat, learned advocate for the respondent-Railways. Perused the record and proceedings.

06] The following points fall for my determination:

(a) *Whether the injured was a bona fide passenger travelling with a valid journey ticket at the time of the incident?*

(b) *Whether the injured sustained injuries in an untoward incident as understood by Section 123(c)(2) of the Railways Act, 1989 (for short, "the Act of 1989")?*

07] Learned advocate for the appellants submitted that the spot of the incident is at the platform. Learned advocate submitted that when the injured realized his mistake, he wanted to deboard the

train at the platform. Learned advocate submitted that at that time, the train was moving at a slow speed. Learned advocate submitted that, due to a sudden jerk to the train, before leaving the platform, the injured lost his balance and fell down, and sustained the injury. Learned advocate submitted that the act of the injured boarding a wrong train due to sheer mistake and then an attempt to get down at the platform from the slow moving the train could not be said to be a criminal act at the instance of the injured. Learned advocate submitted that the injury sustained by the injured could not be said to be a self-inflicted injury. Learned advocate submitted that the injury sustained by the claimant was due to an accidental fall from the moving train, and as such, it was an untoward incident. Learned advocate further submitted that the injured could not be said to be a passenger without a ticket merely because of the fact that he had boarded the wrong train due to a sheer mistake. Learned advocate submitted that the injured was a *bona fide* passenger travelling with a valid journey ticket. Learned advocate submitted that learned Member of the Tribunal has failed to properly appreciate the evidence as well as the provisions of the law.

08] Learned advocate for the respondent-Railways, in short, supported the judgment and order passed by the Tribunal. Learned advocate submitted that deboarding a moving train and the injury sustained in such an incident was a self-inflicted injury. Learned advocate submitted that, on the basis of the evidence of the Guard of the concerned train, it has been proved that the injured jumped from the train after realizing his mistake. Learned advocate submitted that the decision to jump from a moving train was a criminal act, which resulted into injury. Learned advocate submitted that boarding the wrong train even with a valid ticket for another train would not be sufficient to conclude that the injured was a *bona fide* passenger.

09] In order to appreciate the rival submissions, I have gone through the record and proceedings. The undisputed facts having bearing with the issues involved in this appeal need to be stated at the outset. The injured had boarded the wrong train with a valid journey ticket. The injury sustained by him is undisputed. The ticket has been placed on record. On the basis of said ticket, the injured was about to commence his journey from Gondia to Balaghat. The injured, at the time of the incident, was 64 years old. One more

ticket has been placed on record for a journey undertaken by the injured from Nagpur to Gondia. The injured, during the course of the statutory inquiry as well as at, the time of his evidence before the Tribunal, consistently stated that he sustained injury due to an accidental fall from a moving train at platform No.2 of the Gondia Railway Station.

10] Section 2 Clause 29 of the Act of 1989 defines the passenger. As per this definition, "passenger" means a person travelling with a valid pass or ticket. This definition has to be read together with the provisions of Section 124A of the Act of 1989. The explanation to Section 124A states that the "passenger" includes - a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident. The above definition of a passenger nowhere stipulate that to be a passenger, one has to hold a ticket only for any particular train on which the person is supposed to travel. The section primarily requires a valid ticket for travelling by a train carrying passengers on any date. This definition cannot be subjected to narrow interpretation. The passenger holding a valid

journey ticket of general compartment, due to a sheer mistake, can board the wrong train. What is required to be seen in such a situation is whether the passenger was travelling without a ticket with the intention to avoid paying for the journey. The injured had purchased the ticket to go to Balaghat from Gondia. Due to a sheer mistake, he boarded the wrong train. Even if it is assumed for the sake of argument that the train in question was proceeding in the opposite direction, in the backdrop of the above definition, it could not be said that the injured was a passenger of the said train without a ticket.

11] In the above context, it would be appropriate to consider the law laid down by the Hon'ble Apex Court in the case of ***Union of India Vs. Prabhakaran Vijaya Kumar and Ors. [(2008) 9 SCC 527]***. In this case, it is held that Section 124A of the Act of 1989 is a beneficial piece of legislation, and the provisions have to be interpreted in a liberal and purposive manner so that the benefits of the provisions of Section 124A of the Act of 1989 are received by the claimant and not in a literal or strict manner. The injured had boarded the train with a valid journey ticket. He was a *bona fide*

passenger of train carrying passengers on the given date with a valid journey ticket. He fell from a train in an attempt to get down from the said train. In my view, in the facts and circumstances, the injured could not be said to be a passenger without a valid journey ticket. The evidence on record is sufficient to conclude that the injured was a *bona fide* passenger travelling with a valid journey ticket.

12] The next important question is whether the injury sustained by the injured was in an untoward incident or not. The untoward incident has been defined in Section 123(c)(2) of the Act of 1989. As per this definition, accidental falling of a passenger from a running train is an untoward incident. It is the basic contention of the respondent-Railways that the injured jumped from the train at the platform and, in this process, came under the wheel of the train and sustained the injury. In short, it is submitted that the injury was a self-inflicted injury, inasmuch as this act would be a criminal act. Before proceeding to appreciate the evidence, at this stage, it would be appropriate to refer to the decision of the Hon'ble Apex Court in the case of ***Union of India Vs. Rina Devi [AIR 2018 SC 2362]***. Paragraph 16.6 is useful for the purpose of 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 [AIR 2017 SC 5710] 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] In this case, the Hon'ble Apex Court has held that the death or injury in the course of boarding or deboarding a train will be an 'untoward incident'. The victim will be entitled 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. It is further held that the concept of 'self-inflicted injury' requires intention to inflict such injury and not mere negligence of any particular degree. It is held that the defence of negligence is not available, inasmuch as the liability is based on 'no fault theory'.

14] The primary question that needs to be addressed is whether the injury sustained by the injured was merely because of his negligence or it was a self-inflicted injury, as contended by the respondent-Railways. It needs to be stated that under Section 124A of the Act of 1989, the liability to pay the compensation is regardless of any wrongful act, neglect, or default on the part of the Railway Administration. The Railway Administration cannot be held liable to pay compensation in case the death of a passenger or injury to a passenger is caused due to any of the reasons enumerated in Clauses (a) to (e) of the proviso to Section 124A of the Act of 1989.

15] The injured died during the pendency of the appeal. The present appellants are his legal heirs. In his evidence, the injured has placed on record the first-hand account of the incident. He has stated that after purchasing the railway ticket, he went to platform No.2 of the Gondia Railway Station and boarded the train. He has stated that after some time, he came to know that, by mistake, he has boarded the wrong train proceeding to Ballarshah. He has stated that in an attempt to deboard the said train, due to a sudden jerk, he fell from a moving train and sustained the injury. He was cross-

examined. It was not suggested to him in the cross-examination that he jumped from the train moving at high speed, and in the said incident, he sustained the said injury. Assuming, for the sake of argument, that such suggestions were there, the same would not have been accepted. The spot panchanama is part of the record. The sketch of the spot of the incident is part of the record. The sketch would show that the injured tried to deboard the train at the platform itself. Therefore, it cannot be said that the injured tried to deboard a train after the train had gained some speed.

16] In this context, it would be necessary to peruse the evidence of the Guard of the train. In his evidence, he has categorically stated that while the train was proceeding at slow speed towards Ballarshah, one passenger jumped from the running train, and therefore, he informed the Loco Pilot and stopped the train. RW-1 has admitted the occurrence of the incident. However, the manner of the incident is different from the one narrated by the injured. It is the case of the respondent-Railways that immediately after the incident, RW-1 had informed the Station Master, Gondia Railway Station about it. The said information was recorded by the

Station Master. It is at Exh.A-2. It is not the case of the Railways that the occurrence of the incident as narrated by RW-1 in his evidence was reported to the Station Master, but the Station master, for some reason or the other, failed to record the same as it is.

17] In this background, it would be necessary to peruse the document at Exh.A-2. Perusal of this document would show that information was received about the falling of the passenger from the train and the injury to the said passenger. This document would show that RW-1 did not inform the Station master that one passenger jumped from the train and sustained the injury. In my view, this is a very vital piece of evidence. This documentary evidence needs to be borne in mind while appreciating the evidence of RW-1. The fact that a passenger jumped from a running train at the spot of the incident is conspicuously missing from this information. This fact was stated by him at the time of his statement recorded during the course of statutory inquiry. In my view, the document prepared first in point of time is required to be given weightage. RW-1 has admitted in his cross-examination that he did not write in a Guard Memo Book that one passenger had jumped

from the moving train. The Guard Memo Book is part of the record at Exh.R-1. In my view, this is the second vital circumstance to discard the evidence of RW-1 as to the actual manner of the incident.

18] The evidence adduced by the Railways is not sufficient to accept its contention that the injured jumped from the train. The injured has stated that, due to a sheer mistake, he boarded the wrong train with a valid ticket. In my view, the act of deboarding the train in such a situation could not be said to be a criminal act, and the injury sustained in such an act could not be said to be a self-inflicted injury. At the most, such an act could be termed as a rash and negligent act. The option of pulling the chain to stop the train was available to the injured. The injured, instead of pulling the chain, made an attempt to deboard the train at the platform. The Guard of the train has categorically stated that, at the time of the incident, the train was moving at a slow speed. It is necessary to state that the passenger in the factual situation of this case, after realizing his mistake, is bound to suffer anxious moments. The boarding of the wrong train and that too proceeding in the opposite direction is

bound to make the said passenger to suffer a sudden shock. The passenger in such a situation, if the train is moving at a slow speed, will try to deboard the said train at the platform. The passenger is expected to pull the chain to stop the train. Failure to pull the chain to stop the train and an attempt to deboard the train at the platform could not be said to be a criminal act. It needs to be stated that in such a factual scenario, the passenger, undergoing an anxious moment, can commit a mistake. Such a mistake could be said to be a mere error of judgment. Similarly, the injury sustained in such an act could not be said to be a self-inflicted injury. The liability is based on 'no fault theory'. The rash and negligent act cannot be equated with a criminal act or an act resulting into a self-inflicted injury. In my view, therefore, learned Member of the Tribunal was not right in rejecting the claim. Learned Member has failed to properly appreciate the evidence. The injury sustained by the injured has been proved to be in an untoward incident, as understood by Section 123(c)(2) of the Act of 1989.

19] The next issue is about the quantum of compensation. The photograph of the injured is on record. It is evident on perusal

of the photograph that both legs of the injured were amputated. The amount of compensation payable in respect of death or injury has been provided in the Schedule to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. Rule 3 of Part II of the Schedule provides for compensation for double amputation through leg or thigh or amputation through leg or thigh on one side and loss of other foot. In this case, there is amputation of the legs of the injured. Therefore, the compensation payable would be under Clause 3 of Part II of the Schedule. In view of the above, I record my finding on both the points in the affirmative.

20] In this case, the accident occurred on 13.08.2015. Learned advocate for the appellants/claimants submitted that after issuance of Notification dated 22.12.2016 by the Ministry of Railways (Railway Board), the compensation payable under the various entries of the Schedule to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, has been revised with effect from 01.01.2017. In view of the amendment of the Schedule, in case of double amputation through leg or thigh or amputation through leg or thigh on one side and loss of other foot, the claimant/s is/are

entitled to get compensation of Rs.8,00,000/- (Rupees Eight lakhs only). However, in view of the decision of the Hon'ble Apex Court in the case of ***Union of India Vs. Radha Yadav [(2019) 3 SCC 410]***, in case of old claim, after this notification, the claimants/appellants would be entitled to get compensation of Rs.8,00,000/-, without interest, if the compensation provided earlier with interest is less than Rs.8,00,000/-. Learned advocate for the claimants submitted that the compensation provided earlier i.e. Rs.4,00,000/- with interest would not be more than Rs.8,00,000/-. Therefore, in this case, the appellants/claimants would be entitled to get Rs.8,00,000/- (Rupees Eight Lakhs only), without interest.

21] Accordingly, the First Appeal is **allowed**.

i] The judgment and order dated 04.05.2018, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Claim No. OA(IIu)/NGP/2015/334, is set aside. The claim petition is allowed.

ii] The respondent-Railways is directed to pay Rs.8,00,000/- (Rupees Eight Lakhs only) towards compensation to the appellants within four months from the date of uploading of this judgment.

iii] Out of total compensation, appellant No.1 is entitled to get 50% amount and balance amount shall be paid in equal shares to appellant Nos.2 to 6.

iv] The amount be deposited directly in the respective bank accounts of the appellants. The appellants shall provide their bank account details to the respondent-Railways.

v] The appellants are not entitled to interest on the amount of compensation to be paid by the respondent. However, the appellants would be entitled to get interest @ 6% per annum from the date of this judgment till realization of the amount, if the amount is not deposited within four months.

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

(G. A. SANAP, J.)

Vijay