

(2022) 10 BOM CK 0013
In the Bombay High Court
Case No : First Appeal No. 184 Of 2022.

Laxman

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 04-10-2022

Acts Referred:

Railways Act, 1989 — Section 123(c)(2), 124A, 124A(b)
Motor Vehicles Act, 1988 — Section 163A

Citation : (2022) 10 BOM CK 0013

Hon'ble Judges : Abhay Ahuja, J

Bench : Single Bench

Advocate : Sumesha Chaudhari, Neerja Chaubey

Final Decision : Allowed

Judgement

Abhay Ahuja, J

1. This is an appeal filed by a Passenger/Appellant, who is aggrieved by the judgment and order dated 08.02.2018, passed by the Railway Claims Tribunal, Nagpur (the "Tribunal") in Claim Application No.OA (IIu)/NGP/2015/2007, rejecting his application under the Railways Act 1989 (the "Railways Act").

2. The Appellant Laxman Ganesh Kanhojia was travelling on 14.02.2018 by Train No.11040 Up Maharashtra Express from Bhandara to Nagpur. On the fateful day, it is claimed by him that he was standing near the lavatory of the compartment, at the time when due to a sudden jerk near D-Cabin, Mominpura area at Nagpur Railway Station, he fell down from the running train and suffered injuries, resulting which his leg got severed. He was admitted to Mayo Hospital Nagpur, where he was diagnosed as having railway track injury below the knee amputation, however, the closure was done above the knee on 08.03.2014. It is not in dispute that the Appellant was a bona fide passenger holding a valid journey ticket, which was verified from the Chief Booking Clerk.

3. Soon after the incident, a statement dated 14.02.2014 (A-31 of the Record

and Proceedings) was given by the Appellant to the Railway Government Police ("GRP"), where he has stated that he alighted from the running train, but he fell down and his right leg came under the wheels of the train due to which his leg was severed from below the knee. However, in the claim made by him, the Appellant/Claimant has stated that he was standing near the lavatory and because of the sudden jerk, he fell down as he could not balance himself and his right leg came under the wheels of the train near Mominpura area, and thereafter, he was admitted to Mayo Hospital and during his treatment, his right leg was amputated above the knee. The Appellant has stated this in his affidavit dated 29.11.2016 before the Tribunal.

4. The Tribunal rejected the claim of the Appellant mainly on the basis of his statement made to the Government GRP on 14.02.2014 that he alighted from the running train near D-Cabin, but fell down and his right leg came under the wheels of the train near Mominpura area due to which his leg below the knee got severed. The Tribunal also relied upon the depositions of the Deputy Station Superintendent, Nagpur D-Cabin (RW-1) and Guard of the said train (RW-2) that there was no jerk in the train while travelling between Bhandara to Nagpur (RW-1) and that it was not true that the Appellant was travelling by the said train and fell down due to jerk in the train nor that there is any message about any dash or runover of any person (RW-2). The Tribunal also relied upon the conclusion of the DRM's Report that the claimant fell down and came under the train while alighting from the moving train at D-Cabin, Nagpur Railway Station, resulting which his leg got severed. As no other evidence was brought on record, the Tribunal has held that the allegation of sudden jerk in the train is not established. The Tribunal observed that the inquiry reveals that there was negligence on the part of the Claimant as he tried to alight from the running train hurriedly and that there is a confession of the Appellant to that effect.

5. The Tribunal has observed that the nature of the incident does not fall in the category of an untoward incident of "fallen down" from the train. That the Applicant has been injured due to his carelessness and negligence, and therefore, he is not entitled to any compensation as the same is a self inflicted injury. The Tribunal has elaborated on this and observed that such self inflicted injury could be irrespective of the intention acting with total recklessness and throwing all norms of caution to the wind regardless of his age, circumstances and acted to his detriment. The Tribunal has also observed that all the facts and circumstances establish that the act of the Appellant was with full knowledge of the imminent possibility of endangering his life or limb, and therefore, it is squarely covered within the term "self inflicted injury" as defined in Section 124-A proviso (b) of the Railways Act. That it was not a case of accidental fall as it was unsuccessful attempt to alight from a running train at a place where there was no scheduled stoppage of the train; that such a conduct is not expected of a passenger and the same amounts to an act of rashness and criminal negligence. According to the Tribunal, the incident is not an untoward incident, and therefore, the Appellant not entitled to the compensation under Section 124-A of the

Railways Act.

6. Ms Sumesha Chaudhari, learned counsel appearing for the Appellant would submit that the Appellant was in military service earlier and was coming from Bhandara to Nagpur for official work with a valid train ticket. She submits that the entire basis of the Tribunal's decision is on the statement made by the Appellant on 14.02.2014 to the GRP that he alighted from running train. Learned counsel would submit that this is the only basis on which the Tribunal has gone ahead and held this to be a case of self inflicted injury. Learned counsel would firstly submit that the statement was made by the appellant at the time when he had just met with an accident. He was in a state of shock, when he gave the statement. He may have been confused and he would not have understood the difference between alighting from a moving train or falling down from a moving train. That the statement was not in his own handwriting. These aspects, she submits have not been kept in mind by the Tribunal, while rejecting the claim of the Appellant. Learned counsel would submit that therefore the statement made by the injured person soon after the incident was a statement which was an unverified statement made in a state of shock and anguish.

7. Learned counsel would secondly submit that even otherwise the concept of self inflicted injury as propounded by the Tribunal would not hold good in view of the decision of the Hon'ble Supreme Court in the case of Union of India ..Vrs.. Rina Devi, AIR 2018 SC 2362, pursuant to which, the concept of 'self inflicted injury' requires intention to inflict such injury. She relies upon paragraph 16.6 of the said decision to submit that this is a case of injury in the course of de-boarding a train which the Hon'ble Supreme Court has held to be an untoward incident entitling the victim to a compensation not falling in the proviso to Section 124-A of the Railways Act. Learned counsel also draws the attention of this Court to a decision of this Court in the case of Vaibhav s/o Sopan Bharambe ..Vrs.. Union of India, (First Appeal No. 118 of 2022, decided on 10.08.2022), in support of her contention.

8. Ms Neerja Chaubey, learned counsel appearing for the Respondent/Railway relies upon the statement made by the Appellant on 14.02.2014 as well as on the deposition of RW-1, the Deputy Station Superintendent, Nagpur Railway Station as well as on the finding of the Tribunal to oppose the contentions made by the learned counsel for the Appellant.

9. She submits that the case of the Appellant as made in the claim, contradicts the confession, he had made soon after the incident. His testimony cannot be relied upon. Therefore, his claim that he fell down from the train due to a sudden jerk, deserves to be rejected. Even otherwise, she would submit that it clear from the DRM report as well as the deposition of RW-1 that there was no jerk let alone a sudden one. Learned counsel submits that the DRM Report as well as enquiry clearly reveal that the Appellant/Claimant fell down while alighting from the moving train near D-Cabin as the speed of the said train was less than 10 Km/hour as recorded in the deposition of RW-2 the Guard of the said train. She

submits that the sudden jerk allegation is not established. She also submits that the evidence clearly indicates that because of the slow speed of the train, the injured took a chance of getting down from the running train in the vicinity of Mominpura area and came under the wheels of the train resulting in the amputation of his right leg. That the Tribunal has correctly held that the incident is not an untoward incident of falling down from the train. She supports the finding of self inflicted injury as held by the Tribunal. She submits that the Appellant fully well knew of the consequences, and therefore, the Appellant should not be entitled to any compensation as his acts are clearly covered in proviso (b) to Section 124-A of the Railways Act. Learned counsel also draws the attention of this Court to paragraph 16.5 of the decision of the Hon'ble Supreme Court in the case of Union of India ..Vrs.. Rina Devi (supra), to submit that as observed by the Tribunal, this is a clear case of a criminal negligence and is therefore self inflicted injury dis-entitling the Appellant to compensation under Section 124-A of the Railways Act.

10. I have heard Ms Sumesha Chaudhari, learned counsel for Appellant and Ms Neerja Chaubey, learned counsel for Respondent/Railway and with their able assistance, I have perused the papers and proceedings of the appeal.

11. Section 123(c)(2) of the Railways Act defines

"untoward incident" as under :

"(c) "untoward incident" means-

xxxxxx

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

12. Section 124-A of the Railways Act is also usefully quoted as under :

124-A. Compensation on account of untoward incidents.-

When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident :

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to -

a) suicide or attempted suicide by him;

b) self-inflicted injury;

- c) his own criminal act;
- d) any act committed by him in a state of intoxication or insanity;
- e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation.- For the purposes of this section, "passenger" includes-

- i) a railway servant on duty; and
- ii) 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.

(Emphasis supplied)

13. In this case, evidently, the Appellant was a bona fide passenger and providentially there is no dispute on this issue. Further, it has been settled that the death or injury in the course of boarding or de-boarding a train is to be treated to be an untoward incident entitling the victim to compensation not falling under the proviso to Section 124-A of the Railways Act. Also, the concept of self inflicted injury would require intention to inflict such injury and mere negligence of any particular degree would not do. Paragraphs 16.5 and 16.6 of the decision of the Hon'ble Apex Court in the case of Union of India ..Vrs.. Rina Devi (supra) are usefully quoted as under :

"16.5 In Shyam Narayan (20174 AAC 1833 (Del.)) (supra), same view was taken which is as follows :

"6(ii) I cannot agree with the arguments urged on behalf of the appellants/applicants in the facts of the present case because there is a difference between an untoward incident and an act of criminal negligence. Whereas negligence will not disentitle grant of compensation under the Railways Act, however, once the negligence becomes a criminal negligence and self-inflicted injury then compensation cannot be granted. This is specifically provided in the first proviso to Section 124-A of the Railways Act which provides that compensation will not be payable in case the death takes place on account of suicide or attempted suicide, self inflicted injury, bona fide passenger's own criminal act or an act committed by the deceased in the state of intoxication or insanity."

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 Kumar³⁴ 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.”

(Emphasis supplied)

14. A bare perusal of the above quoted paragraph 16.5 clearly indicates that the contention of the counsel for Respondent/Railway that criminal negligence amounts to self inflicted injury may not be correct. What is stated therein is that once negligence becomes criminal negligence and self inflicted injury, then compensation cannot be granted. Moreover, paragraph 16.6 clearly requires an intention to self inflict. Mere negligence will not do. In the facts of the present case, the Appellant did travel by the Maharashtra Express from Bhandara to Nagpur and then as found by the Tribunal, fell down while alighting from the running train and his right leg came under the wheels of the train resulting in the severing of his leg below the knee. The discharge card clearly indicates that he was admitted to Mayo Hospital on 14.02.2014 and discharged on 20.03.2014, where he underwent amputation and closure above the knee on 08.03.2014. It is not in dispute that he has suffered the disability by amputation of his right leg. It is quite possible as contended by the learned counsel for Appellant that at the time of giving statement, he may have been in a state of shock, and therefore, may not have recollected the correct facts. However, the entire body of evidence suggests that he alighted from the train and fell down. The deposition of the Deputy Station Superintendent and Guard indicate that there was no jerk due to which somebody could have fallen down particularly when the train was at the speed less than 10 Km/hour near D-cabin. The Appellant in his deposition has stated that his statement dated 14.02.2014 is recorded by the GRP and he had not filed it on record. He has also denied that he alighted the running train though there is no positive statement that he had fallen down. But then there is also no eye witness to the incident. The Appellant has also denied that the incident occurred due to his own fault or negligence. The deposition of RW-1, the Deputy Station Superintendent also denies that the Appellant fell down while travelling from Bhandara to Nagpur due to a sudden jerk near D-cabin. The deposition of RW-2 Guard of the said train states that it is not true to suggest that the Applicant was travelling by the train and fell down due to jerk in the train. He states that there is no message about dash or runover of any person. The Tribunal has given a finding of fact that the Appellant fell down while alighting from the running train near D-cabin, Mominpura area, Nagpur Railway Station and met with an accident, though the same cannot be said to be conclusive in the absence of any eye witness and the Appellant's affidavit dated 29.11.2016 before the Tribunal.

15. Even assuming that the Appellant had fallen down while alighting from the train and whether or not the injury occurred while alighting from or de-boarding the train on the station or just before the station, it emerges that he fell down as he could not keep his balance, while alighting. The Hon'ble Supreme Court in the

case of Union of India ..Vrs.. Rina Devi (supra), clearly holds that the death or injury in the course of boarding or de-boarding a train will be an untoward incident. There does not appear to be any distinction between alighting and de-boarding nor has such a case been canvassed before me. One thing is clear that he did fall down and there was no intention of the Appellant to inflict upon himself, the injury leading to his stated disability as erroneously found by the Tribunal. No one would be happy wanting his right leg amputated. In my view, this is not a case of criminal negligence or a case of self inflicted injury. In the case of self inflicted injury as noted by the Hon'ble Apex Court, there has to be an intention to inflict such injury and not a mere negligence of any particular degree. Even assuming that the Appellant may have been negligent or rather irresponsible and careless towards himself while alighting from a running train, that cannot be concluded to mean that he self inflicted upon himself the injury or that he had the intention to have his right leg amputated. There is therefore no doubt in my mind that this is a case of an untoward incident as defined in Section 123(c)(2) of the Railways Act, as admittedly there has been a falling down while alighting or de-boarding the train and which in the absence of any contrary evidence would be nothing, but accidental. The Railways Act is a beneficial legislation and the provisions should be given a wide and liberal interpretation and not literal interpretation. An accident or accidental fall may not always happen because there was a jerk in the train. More so in the context of the provisions of Section 124-A of the Railways Act, which clearly emphasize no fault strict liability on the Railway Administration to compensate injured on account of an untoward incident except in the case of five instances cited in the proviso to Section 124-A cited above, which would positively need to be proved by the Railway Administration. It has already been held herein that this is not a case of self inflicted injury nor has the Administration claimed or proved any other exception. Therefore, the findings of the Tribunal that there is no untoward incident has to be rejected as erroneous.

16. In this context, decision of the Hon'ble Apex Court in the case of Union of India ..Vrs.. Prabhakaran Vijaya Kumar and others, 2008 (2) T.A.C. 777 (SC) , is apt where the Hon'ble Court has observed that Section 124-A of the Railways Act lays down strict liability or no fault liability in the case of railway accidents. Therefore, once a case comes within the purview of Section 124-A, it is wholly irrelevant as to who was at fault. The said decision lays down the principle that unless the accident occurs due to reasons mentioned in Clauses (a) to (e) of the proviso to Section 124-A of the Railways Act, the case would be covered by the main body of Section 124-A and not its proviso. It is also settled law that the exceptions have to be proved by the Railway Administration. In the case at hand, the only exception that was attempted to be relied upon, was the exception as contained in proviso (b) relating to self inflicted injury, which has already been rejected. Paragraphs 16 and 17 of the said decision are relevant and are quoted as under :

"16. The accident in which Smt. Abja died is clearly not covered by the proviso to

Section 124-A. The accident did not occur because of any of the reasons mentioned in clauses (a) to (e) of the proviso to Section 124-A. Hence, in our opinion, the present case is clearly covered by the main body of Section 124-A of the Railways Act, and not its proviso.

17. Section 124-A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124-A it is wholly irrelevant as to who was at fault.”

17. This Court in the case of Vaibhav s/o Sopan Bharambe ..Vrs.. Union of India (supra), has also considered a case, where the Appellant sustained injury, while he was alighting from a running train when passing through in slow speed from the remote control cabin of Bhusawal yard. The Tribunal had rejected the claim of the Appellant holding that the same was due to the gross negligence on the part of the Appellant. This Court, after considering the evidence and holding that the evidence of the railways was not an eye witness account and citing paragraph 16.6 of the decision of the Hon’ble Supreme Court in the case of Union of India ..Vrs.. Rina Devi (supra), set aside the order of the Tribunal and allowed the appeal and the claim by the Appellant therein.

18. In view of the above elucidation holding that this is a case of an untoward incident and that this not a case of self inflicted injury or any other exception as contained in the proviso to Section 124-A, the Appellant would be entitled to compensation under Section 124-A of the Railways Act. The impugned judgment dated 08.02.2018, is therefore, liable to be set aside.

19. The judgment and order dated 08.02.2018, passed by the Railway Claims Tribunal, Nagpur, in Claim Application No.OA (Iiu)/NGP/2015/2007, is hereby set aside.

20. In view of paragraph 15.4 of the decision of the Apex Court in the case of Union of India ..Vrs.. Rina Devi (supra), the Respondent Union of India/Railways is directed to pay the Appellant sum of Rs.5,60,000/- by depositing the said amount in the savings bank account of Appellant/Claimant within a period of six weeks after due verification.

21. The appeal stands allowed in the above terms. No costs.