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**(2013) 09 BOM CK 0045**

**In the Bombay High Court**

**Case No :** First Appeal No. 2644 of 2006 with Cross Objections No. 21074 of 2006

Union of India

APPELLANT

Vs

Mrs. Usha Ramniklal Kamdar

RESPONDENT

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**Date of Decision :** 21-09-2013

**Acts Referred:**

Railways Act, 1989 — Section 129

**Citation :** (2014) 3 ACC 286 : (2014) 1 ALLMR 177 : (2013) 6 BomCR 60 : (2013) 6 MhLj 573

**Hon'ble Judges :** A.P. Bhangale, J

**Bench :** Single Bench

**Advocate :** Suresh Kumar, for the Appellant; S.U. Kamdar instructed by Ms. Usha R. Kamdar, for the Respondent

**Final Decision :** Dismissed

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## Judgement

A.P. Bhangale, J.—By this Appeal, the appellant Railway Administration has challenged validity and legality of the judgment and award dated 17 July 2005 passed by Railway Accident Claims Tribunal in Original Application No. 290 of 2003 whereby the Tribunal awarded sum of Rs. 1,20,000/- to the claimant payable within 60 days from the date of the order failing which liable to pay interest @ 6% per annum from the date of the order till realization. The facts stated briefly are that respondent claimant on the date of incident, was waiting to board the train at Platform No. 4 at Borivali Station for Miyagam-Karjan station. On the platform, there was chaos and over-crowding when the train arrived as passengers proceeded to board the train with their luggage. Due to commotion while boarding the train, claimant fell down between the gap of platform and the train and received serious injuries, as a result of which her two fingers, including index fingers were amputated, and she had to take long medical treatment. According to the claimant, due to over-crowding while she was trying to board the train, she had fallen from the train during the process of entering in the compartment of the train from the footboard of the train. Thus, it

was submitted that it was an untoward incident because of which claimant had not only suffered amputation of middle and index fingers of right hand, but she had suffered other injuries for which she had to take medical treatment for long time, and underwent pains and sufferings. Thus, by way of Cross Objections, respondent claimant submitted that the award in the sum of Rs. 1,20,000/- only was extremely inadequate. It appears that Tribunal went by the Railway Accident and Untoward Incidents (Compensation) Amendment Rules 1997 to award compensation within the meaning of Part-III Entry 9 + Additional compensation in the sum of Rs. 40,000/- for pains and sufferings, and long medical treatment, she had undergone within the meaning of Rule 3(3).

(3) The amount of compensation payable in respect of any injury other than an injury specified in the Schedule or referred to in sub-rule (2) resulting in pain and suffering shall be such as the Claims Tribunal may after taking into consideration medical evidence, besides other circumstances of the case, determine to be reasonable.

2. Having heard submissions at the bar at length, and considering the discretion exercised by the Railway Claim Tribunal within the meaning of Rule 3(3) as stated above, read with Part-III, Entry No. 9 for loss of two fingers of one hand - Rs. 80,000/-. The compensation awarded was well within discretion of the Railway Claim Tribunal. The Rules which were amended in the year 1997 prescribed compensation restricted to the Rules, discretion cannot be exercised so as to award compensation amount beyond the prescribed extent of those Rules. Although it is desirable that Railway Administration and Secretary concerned of the Railway Board may apply their mind to the growing inflation, rising prices of essential commodities and diminishing value of rupee so as to prescribe reasonable, fair and equitable compensation for claimants/victims of untoward incidents arising out of working of the Railway by Railway Administration. In many cases, claimant suffer permanent disability which may incapacitate claimant for doing the work of livelihood with full capacity or with full ability and in cases of death, arising out of untoward incidents, claimants lose their bread earner for family forever. That being so, it is desirable that Secretariat concerned of the Railway Board or Railway Administration may prescribe reasonable and fair amount of compensation considering that the Railway Accident (Compensation) Rules 1990 were introduced u/s 129 of the Railways Act 1989 in the year 1990, and thereafter were amended only once in November with effect from 1st day of November 1997. Since then, more than 15 years have passed without any further amendment as to prescribed quantum of compensation in respect of untoward incident in working of Railway Administration.

3. We hope that authority concerned will do the needful in this regard.

4. With the above observations, since no merit is found in this appeal and award in the sum of Rs. 1,20,000/- was well within the discretion of the Tribunal, it cannot be branded as excessive or unreasonable.

5. Hence, Appeal has no merit.

6. Appeal is dismissed. Cross Objections also stands dismissed.