

रेल दावा अधिकरण, अहमदाबाद पीठ, अहमदाबाद के समक्ष
Coram : Shri Vijayant Singh, Hon'ble Member (Judicial)
Shri Raj Kumar Manocha, Hon'ble Member (Technical)

CASE No. OA (IIu)/ADI/2023/0017

Date of Institution: 17.03.2023

Date of Decision: 13.10.2023

Sonu s/o Shiv Nath
Aged 31 years.

APPLICANT

Residing at:

Gram Duroli, Chapartheta, Kanpur,
Dehat, State:Uttar Pradesh-209208.

-VERSUS-

Union of India Through General Manager, ...
Western Railway, Church Gate, Mumbai-400020.

RESPONDENT

Appearance: Mr. A.M. Joshiyara, Ld. Counsel for the Applicant.
Ms. Ruchita Jain, Ld. Counsel for the Respondent.

CLAIM FOR Rs. 8,00,000/-

JUDGMENT

AHMEDABAD BENCH

Shri Raj Kumar Manocha, Hon'ble Member (Technical)

Case in hand has been preferred before this Tribunal by the applicant under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 125 of the Railways Act, 1989 seeking compensation of Rs. 8,00,000/- together with interest on account of injuries suffered by Sonu s/o Shiv Nath (then after referred as injured/applicant) in an alleged untoward incident.

2. In brief, it has been averred in the claim application that, on 26.03.2016, applicant was travelling from Ankleshwar to Vadodara Railway station, by passenger train, holding valid & proper ticket bearing No. K 0142 0101. It has further been averred in the claim application that, on that day, due to heavy rush he could not get seat therefore, he was standing near the door of the compartment. When the said train was running between KM. No.386/07 to 386/08, near Down Line, near LC Gate No.227, near Makarpura Railway station, at that time, due to push of the passengers, he lost his balance and accidentally fallen from the said running train. Due to this untoward incident, he sustained serious injuries on his body i.e. traumatic mid foot amputation right

with OG-II fracture 1st & 2nd Metatarsal with OG-II fracture 1st & 2nd left foot phalanges with traumatic amputation of distal phalanges 3rd & 4th toe left without NVD right leg with left injury and sustained other injuries on his body. He took first Aid medical treatment by 108 ambulance to the SSG Hospital-Vadodara.

3. To establish his claim, the applicant has placed on record certified copies of Vardhi, Panchnama of Body Condition, Panchnama of Place of Occurrence, Railway ticket, Injury Certificate, Aadhar Card of the applicant, PAN Card of the applicant, Photograph of the injured, Bank Pass Book of applicant, Disability Certificate of the injured.

4. On receipt of notice, the respondent railway administration filed its written statement along with the original DRM's Report in which the Respondent pleads that the injured was travelling by standing on the door of the compartment of the running train, therefore, the present case is not covered under Section 123 (c) (2) of the Railway Act, 1989, hence, the Respondent Railway Administration is absolved from its liability to pay compensation. On the basis of these and other pleas, dismissal of the claim application has been sought by the Respondent.

5. At the very outset it is worthwhile mentioning here that since it has specifically been admitted in the original DRM's Report filed on behalf of Respondent that the injured was in possession of a valid reservation ticket at the relevant time as such no issue was framed with regard to the same and accordingly it is held that, on the fateful day, the injured was a bonafide passenger of the train in question as stipulated under Section 2 (29) read with Section 124 A of the Railways Act 1989. Based upon the pleadings of the parties and material made available on record, the following issues were framed:

ISSUES

1. *Whether the applicant met with an untoward incident due to fall from passenger carrying running train, suffered injuries as a result thereof and the present case is covered under the definition of Section 123(c) (2) of the Railways Act, 1989?*
2. *What is the nature and extent of injuries sustained by the injured?*
3. *To what Relief?*

6. So as to lead evidence, applicant has filed his own examination-in-chief on affidavit as AW-1 and got the documents exhibited as A/1 to A/10. Counsel for the Respondent had cross-examined the deponent on 21.08.2023.
7. The Respondent also filed DRM investigation report in this case as evidence.

FINDINGS

8. We have carefully gone through the pleadings of the parties, material made available on record evidence adduced on behalf of applicant and heard the arguments advanced on behalf of rival parties by their counsel. Our findings on the aforesaid issues are as under:-

Issue No.1

9. It has been averred by applicant in the claim application that, on 26.03.2016, applicant was travelling from Ankleshwar to Vadodara Railway station, by passenger train, holding valid & proper ticket bearing No. K 0142 0101. It has further been averred in the claim application that, on that day, due to heavy rush he could not get seat therefore, he was standing near the door of the compartment. When the said train was running between KM. No.386/07 to 386/08, near Down Line, near LC Gate No.227, near Makarpura Railway station, at that time, due to push of the passengers, he lost his balance and accidentally fallen from the said running train. Due to this untoward incident, he sustained serious injuries on his body i.e. traumatic mid foot amputation right with OG-II fracture 1st & 2nd Metatarsal with OG-II fracture 1st & 2nd left foot phalanges with traumatic amputation of distal phalanges 3rd & 4th toe left without NVD right leg with left injury and sustained other injuries on his body. He took first Aid medical treatment by 108 ambulance to the SSG Hospital-Vadodara. To substantiate his claim, the applicant has placed on record medical certificate and certain documents relating to the incident which are exhibited as A/1 to A/10.

10. Although, it has been argued on behalf of the respondent that the injured fell down while he was travelling by standing near of the door of the compartment of running train and the present case is covered under clause (c) of proviso to section 124A.

As per conclusion of DRM Report “घायल व्यक्ति ने अपने बयान में स्वीकार किया है कि वह सवारी गाड़ी के दरवाजे पर खड़े होकर यात्रा कर रहा

था जो इस ओर इंगित करता है कि घायल व्यक्ति रेल अधिनियम की धारा 156 का स्पष्ट उल्लंघन करते हुए स्वयं की लापरवाही एवं उपेक्षापूर्वक कृत्य के कारण घायल हुआ है जिसके लिए वह स्वयं जिम्मेदार है। इसमें रेल प्रशासन की कोई भी गलती नहीं है”।

Respondent in the written statement has contested that the incident under reference is a self-inflicted injury in terms of proviso of section 124 A of Railways Act, 1989. However, as per laid down law by the higher courts, one essential ingredient to prove a case of self-inflicted injury in the intention to hurt one self. In the instant case Respondent has not adduced any cogent evidence to prove intent the hurt on the part of injured/applicant.

11. We are of the considered view that falling down from the running train, while travelling by standing near the door of the compartment is very common on Indian trains. It is not the same thing as a criminal act mentioned in clause (c) to the proviso to Section 124A. A criminal act envisaged under clause (c) must have an element of malicious intent or mens rea. In the present case, respondents have failed to prove any malicious intent or mens rea of injured. Moreover, falling down from train has been admitted on behalf of Railway respondent by way of DRM report relating to the alleged incident. In view of the above facts, when evaluated holistically, we are of the considered view that the falling down of the deceased was accidental.

12. As regards act of negligence as brought out in oral arguments by the counsel for the Respondent that, it is pertinent to refer to judgment Apex Court: The Hon’ble Apex Court in the case of Union of India V/S Prabhakaran Vijaya Kumar & others reported in 2008 ACJ 1895, has held that :

“Section 124 A of the Railways Act, 1989 casts strict liability on the Railway even the deceased died due to his own fault. Then also, Railway is liable to pay amount of compensation.”

13. In the case of Union of India V/S Rina Devi reported in 2018 AIR (SC) 2362, the Hon’ble Apex Court has held that :

“Victim will be entitled to compensation and will not fall under proviso to Section 124A merely on plea of negligence of victim as contributing factor.”

14. In view of the above judgments and under the facts and circumstances of this particular case, it is held that the injured met with an untoward incident due

to an accidental fall from the passenger carrying train, suffered injuries and the present case is well within the definition of Section 123 (c) (2) read with Section 124-A of the Railways Act, 1989. Accordingly, issue No.1 is decided in favour of the applicant and against the Respondent.

Issue Nos. 2 & 3:

15. Case in hand has been filed before this Tribunal by the applicant on account of injuries suffered by him in an untoward incident. The applicant has deposed that due to said untoward incident, he sustained serious injuries on his body. The documents placed on record as exhibit A/5 and A/10. From the perusal of the same, it is amply clear that the applicant sustained traumatic mid foot amputation right with OG-II fracture 1st & 2nd Metatarsal with OG-II fracture 1st & 2nd left foot phalanges with traumatic amputation of distal phalanges 3rd & 4th toe left without NVD right leg with left injury and sustained other injuries on his body. At the time of cross examination the injuries are examined by the Tribunal and it is clear that “दायाँ पैर (right foot), एड़ी (ankle) से कटा है जोकि schedule injury के part-III के serial number 24 में आता है । बायाँ पैर (left foot) के पंजे का अंगूठा व उसके बाद की तीन उँगलियाँ कट गयी है जोकि schedule injury में नहीं आता है”।

16. Amputation of one foot is prescribed under Item No.24 (For amputation of one foot resulting in end-bearing) of Part-III of the Schedule appended to Rule 3 of the Railway Accidents and Untoward incidents (Compensation) Rules 1990 as amended on 22.12.2016, for which an amount of Rs.2,40,000/- (Rs. Two Lakh Forty Thousand only) is prescribed vide notification of Govt. of India dated 22.12.2016 w.e.f. 01.01.2017.

17. From the perusal of the medical papers, it is amply clear that the other injuries sustained by the applicant are admittedly non-scheduled in the nature. Considering the nature of injuries besides other circumstances of the case, the applicant must have surely under gone pain and agony as a result of serious injuries. Therefore, taking into consideration the evidence as well as medical records, we deem it just and reasonable to award a compensation of Rs.1,50,000/- (Rs. One Lakh Fifty Thousand only) for the said injuries.

18. The incident pertains to year 2016, thus, the injured applicant is held entitled to get a sum of Rs.3,90,000/- (Rs. Three Lakh Ninety Thousand only) as

compensation from the respondent railway administration on account of injuries suffered by him in an untoward incident.

19. These issue are decided accordingly.

20. We pass the following order :-

ORDER

21. The application is allowed. The Respondent shall pay to the applicants in a sum of Rs.3,90,000/- (Rs. Three Lakh Ninety Thousand only) as compensation as per apportionment given below within 30 days from the date of this order. If the Respondent Railway fails to pay the amount within above stipulated time (30 days), the awarded sum will carry simple interest @ 9% per annum from the date of this order, till the date of realization.

22. The Respondent Railway Administration is directed to deposit the whole amount along with interest with the Registry of RCT/Ahmedabad within a period of 30 days from the date of this order. Further the Respondent is directed to place the proof of awarded amount on record with up to date interest along with the calculation sheet.

23. Registry is directed that out of the total compensation amount payable to the injured applicant Rs.90,000/- (Rs. Ninety Thousand only) alongwith whole interest, if any, shall be paid to him through ECS/NEFT/RTGS towards litigation expenses and substantial expenses incurred by him for medical treatment, once the applicant gives all the banking details including photo copy of the pass book to the Registry.

24. Further, to safe guard the interest of the claimant, we deem it proper to direct the Registry to keep the remaining amount of Rs.3,00,000/- (Rs. Three Lakh only) in 30 FDRs of Rs.10,000/- in the name of the claimant for a period of 01st month to 30th month respectively with cumulative interest. The maturity amount of the FDRs be credited by ECS/NEFT/RTGS in the Savings Bank account of the claimant near to the place of his permanent residence each month.

25. The Applicant(s) is/are hereby directed to furnish the particulars of his/her/their savings bank account of a Nationalized/Scheduled bank *near to his/her/their permanent place of residence* along with a copy of Aadhar Card, PAN card, two photographs, specimen signature and pass book of the bank with necessary endorsement of the bank that no debit card/Cheque book has been issued, with the Registry of this Bench. The Applicant(s) is/are directed to

produce the copy of the order passed by the Tribunal before the concerned bank whereupon the bank is directed to make an endorsement on the passbook.

26. The Applicant(s) is/are further directed to submit Form 15G of Form 15H (for senior citizen) to the Presenting Officer of the Railway (as applicable under sub-section (2) of section 19 of the Railway Claims Tribunal Act, 1987) within 30 days of this order otherwise, the Railway Administration will deduct the applicable TDS as per the provisions of the income tax act.

27. The Registry is directed to defer the disbursement of award amount till passbook of saving bank account of the claimant(s) in a bank near the place of his/her/their permanent residence is not produced along with necessary endorsement.

28. The Registry is further directed to ensure that the statement containing FDR number/FDR amount/date of maturity and maturity amount shall be furnished by the Bank to the claimant(s).

29. Further, we deem it proper to direct the concerned bank that :

- (a) The Bank shall not permit any joint name to be added in the savings bank account or fixed deposit amount of the claimant(s) i.e. savings bank account of the claimant(s) shall be an individual bank account and not joint account.
- (b) The bank shall not issue any Cheque book and debit card to the claimant(s). However, in case the debit card or Cheque has already been issued, bank shall cancel the same before the disbursement of the awarded amount.
- (c) No loan, advance, withdrawal or premature discharge is allowed on fixed deposit without the permission of the court.
- (d) The bank shall make an endorsement on the pass book of the claimant(s) to the effect that no Cheque book and/or debit card have been issued.
- (e) The statement containing FDR number/FDR amount/date of maturity and maturity amount shall be furnished to the claimant(s).
- (f) The Bank is directed not to permit any debit to Saving Bank of Applicant(s) from any electronic channel or e-payment platform and to permit the claimant(s) to withdraw money from his/her/their savings Bank Account by means of a withdrawal form only.

30. The Registry is directed to send a free certified copy of this judgment directly to the Respondent and the Applicant(s) at his/her/their postal address mentioned in the claim application by Register A.D. in view of Rule 34(3) of the Railway Claims Tribunal (Procedure) Rules, 1989.

31. In terms of the above, the present claim application is disposed of. Let this case file be consigned to the Records Room. No order as to costs.

(R.K. Manocha)
Member (Technical)

(Vijayant Singh)
Member (Judicial)

Judgment pronounced, signed and sealed in open Court today i.e. on 13.10.2023.

(R.K. Manocha)
Member (Technical)

(Vijayant Singh)
Member (Judicial)

Date : 13.10.2023
Place: Ahmedabad



RAILWAY CLAIMS TRIBUNAL

AHMEDABAD BENCH