

**Before Railway Claims Tribunal, Ahmedabad Bench,
Ahmedabad**

Coram : Shri Vinay Goel, Member (Judicial)
Shri Rajkumar Manocha, Member (Technical)

CASE No. OA (Ilu)/ADI/2019/0216

Date of Institution: 14.10.2019

Date of Decision: 17.04.2024

Kaushik Punambhai Rohit
Aged 21 years.

..... APPLICANT

Residing at:

3768, Indira Nagari, Bharoda Road,
Ode, Anand, Gujarat-388210.

-VERSUS-

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

RESPONDENT

Appearance: Mr. N.R. Kapde, Ld. Counsel for the Applicant.
Ms. K.P. Vyas, Ld. Counsel for the Respondent (through
Virtual Mode).

CLAIM FOR Rs. 6,00,000/-
JUDGEMENT

Case in hand has been preferred before this Tribunal by the applicant Shri Kaushik Punambhai Rohit, under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 124-A and 125 of the Railways Act, 1989 seeking compensation of Rs. 6,00,000/- together with interest on account of injuries suffered by him during the alleged journey in an alleged untoward incident.

**1. Basic details relating to accident as contained and as alleged in the
Application:-**

- a) **Date of accident:** 17.10.2018
- b) **Person Injured:** Kaushik Punambhai Rohit
- c) **Relationship of the Applicant with the injured:** Self (injured/applicant).
- d) **Train involved and transit details:** Travel by unknown train from Bharuch to Surat railway station with Railway Ticket.

e) **Untoward incident narrated:** On 17.10.2018, the injured/applicant was travelling by train from Bharuch to Surat Railway station. When the said train was running from KM. No.316/19, near Ankleshwar Railway station, he accidentally fell down from the running train and due to this incident he sustained serious injuries on his body and his both feet were amputated. Ticket had been lost during incident.

f) **Jurisdiction:** Place of incident was near Ankleshwar railway station, this Bench of the Tribunal has territorial jurisdiction, to entertain and adjudicate this case.

2. Salient features of reply:

a) **Averments in reply:** The Respondent denied specifically bonafide passenger status in its written statement and Respondent also denied occurrence of Untoward Incident and its liabilities to pay compensation on the ground of negligence on the part of injured. As per Para 7 of written statement *“No railway travel ticket or pass has been received from the occupation of the injured person. It is not admitted, in absence of any documentary evidence, the injured has purchased the ticket and travelled as a bonafide passenger of the train. Therefore, it is clear that the applicant was not bonafide passenger of the train as there is no evidence is on record. It is not admitted, in absence of any documentary evidence, there was heavy rush and because of push of the passengers, injured was fell down from the running train. Actually, the applicant got injured, due to his own self-inflicted-negligent-careless-hasty action. The applicant try to board train No.12966 from yard, which has no schedule stoppage at Ankleshwar railway station. The same is admitted by applicant while recording his statement. Had he not board train from the yard, the incident would have been avoided. It is shows that the act of injured was in most negligent & carelessness manner, which is also a punishable offence, under section-147 of the Rly. Act-1989. Hence, the present case is not within the definition of an accidental falling of a Passenger, from the train carrying Passengers, under Section-123 (c) (2) of the Railway Act-1989 and the same is requested, to be dismissed, with cost. It is further submitted that no compensation is payable, by respondent, in case of self-inflicted injuries, as defined in section-124-A (b) of Rly. Act-1989.”*

b) **Crux of DRM Report:** “ — ,

”

3. From the pleadings, the following issues were framed on 21.08.2020.

1. *Whether injured was travelling on a valid Railway journey ticket and was a bonafide passenger of the train in question at the relevant time?*
2. *Whether the injured met with an untoward incident due to fall from the 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?*
3. *What is the nature and extent of the injuries sustained by the injured?*
4. *Relief?*

4. Applicants Evidence and Respondent Evidence: Applicant has filled his affidavit as AW/1 and he was cross-examined by Counsel for the Respondent on 07.10.2021.

5. Description of the documents filed by Applicants certified copies are as under.

Vardhi - Exh.A/1, Panchnama of place of incident - Exh.A/2, Panchnama of physical condition - Exh.A/3, Saving Pass Book of applicant-Exh.A/4, Discharge card of applicant-Exh.A/5, Aadhar Card of the applicant-Exh.A/6, Photograph of the applicant-Exh.A/7 and Exh.A/8.

6. Respondent Railway administration has filed examination-in-chief on affidavit of Shri Udaibhan s/o Shri Shivpal Kushwaha, Assistant Sub-Inspector-RPF/Ankleshwar as RW/1. The deponent was cross-examined by Counsel for the applicant on 30.03.2023. The Respondent also filed DRM investigation report in this case as evidence.

7. Ld. Counsel for the parties at the time of final arguments argued as under:

“Counsel for the applicants submitted that the injured/applicant was travelling on a valid ticket and during the course of journey he accidentally fell down and lost his both lower limbs. He further submitted that ticket was lost during the incident. He further submitted that against the direction of this Tribunal Respondent has called some other person as RW-1 and Respondent has failed to produce GRP personnel despite the specific direction of this

Tribunal. He further referred order dated 04.01.2023. He further submitted that Guard of the train lodged FIR regarding Alarm Chain Pulling.

Counsel for the Respondent submitted that the applicant has not mentioned the train number in which he was travelling and he was not a bonafide passenger. She relied on statements as exhibit R/1 & R/2.”

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 is the case of applicant that he was travelling on a valid ticket and during the course of journey he accidentally fell down and he lost his ticket in the incident. Whereas, Counsel for the Respondent vehemently argued that the applicant was not a bonafide passenger and she referred statement exhibited as R/1, wherein applicant allegedly admitted that he had not purchased ticket and his journey pass has expired 2-3 days prior to the incident.

10. We have heard both the parties and also gone through the records. Although Counsel for the Respondent has referred to exhibit R/1 and to some extent Railway can take benefit out of said statement but Railway has washed off its defence during course of cross examination of AW-1. Relevant portion of cross examination of AW-1 is reproduced as under :

“It is true that I have purchased the ticket before boarding in the train. Yes I have filed the pass with my claim application, but I am saying no now. The said ticket of the journey which I have purchased is lost. The said traveling ticket of superfast train from Bharuch to Surat of day of incident is lost. The said ticket cost was of 50-55 rupees. It is not true that I was going to Surat by Sayagi express train but I fell down while boarding from Udaipur Bandra express.”

11. Once during the course of cross examination Railways itself put positive suggestion regarding ticket, Railway would not be able to take any benefit of statement recorded by RPF person of the applicant while he was in hospital. There is no material on record that applicant was medically fit to give statement. Even otherwise applicant has denied such statement on the pretext that police took his signature on blank paper. Though the applicant has sustained injuries

on both of his lower limbs, possibility of lose of ticket cannot be ruled out particularly when Respondent has come with positive suggestion during cross examination. So, we find no legal impediment that applicant was travelling on a valid ticket and he lost the ticket during incident or while shifting to the hospital. Accordingly, issue No.1 is decided in favour of applicant and against the Respondent.

Issue Nos. 2:

12. Respondent has admitted accidental fall and there is evidence on record that Railway authorities shifted the applicant to Hospital from place of incident. So, even if the applicant has not mentioned specific train number in their pleadings that would not affect the merits of the case. Likewise, we find no force in the arguments of applicant that Respondent has failed to produce GRP personnel because once fall is admitted and it is not the case of applicant that ticket was recovered but not referred in Panchnama. Non production of GRP personnel would not affect merits of the case. Accidental fall is admitted in Railway documents but railway has failed to prove on record any element of criminal negligence on the part of applicant which may push this case to the exception of Section 124-A (ii). Accordingly, issue No.2 is decided in favour of applicant and against the Respondent.

Issue Nos. 3 & 4:

13. 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 both of his lower limbs. The documents placed on record as exhibit A/5, A/7 and A/8. From the perusal of the same, it is amply clear that the applicant sustained traumatic amputation of all toes of his both feet and sustained other injuries on his body.

14. Amputation of all toes of both feet is prescribed under Item No.13 (For loss of all toes of both feet through the metatarso-phalangeal joint) 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.3,20,000/- (Rs. Three Lakh Twenty Thousand only) is prescribed vide notification of Govt. of India dated 22.12.2016 w.e.f. 01.01.2017.

15. Thus, the injured applicant is held entitled to get a sum of Rs.3,20,000/- (Rs. Three Lakh Twenty Thousand only) as compensation from the respondent railway administration on account of injuries suffered by him in an untoward incident.

16. These issues are decided accordingly.

17. We pass the following order :-

ORDER

18. The application is allowed. The Respondent shall pay to the applicant in a sum of Rs.3,20,000/- (Rs. Three Lakh Twenty Thousand only) as compensation as per apportionment given below within 30 days from the date of this order. The awarded sum will carry simple interest @ 9% per annum from the date of the incident i.e. 17.10.2018, till 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 the incident i.e. 17.10.2018, till the date of realization.

19. 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.

20. Registry is directed that out of the total compensation amount payable to the injured applicant Rs.40,000/- (Rs. Forty 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.

21. Further, to safe guard the interest of the claimant, we deem it proper to direct the Registry to keep the remaining amount of Rs.2,80,000/- (Rs. Two Lakh Eighty Thousand only) in 28 FDRs of Rs.10,000/- in the name of the claimant for a period of 01st month to 28th 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.

22. The Applicant(s) is/are hereby directed to furnish the particulars of his/her/their savings bank account of a Nationalized 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.

23. 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.

24. 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.

25. 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).

26. 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.

27. 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.

28. 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)

(Vinay Goel)
Member (Judicial)

Judgment pronounced, signed and sealed in open Court today i.e. on 17.04.2024.

(R.K. Manocha)
Member (Technical)

(Vinay Goel)
Member (Judicial)

Date : 17.04.2024
Place: Ahmedabad