

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/2022/0042

Date of Institution: 19.07.2022

Date of Decision: 06.10.2023

Aakash s/o Nareshbhai Shimpi
Aged 22 years.

..... APPLICANT

Residing at:

96, Shantinagar, Nilgiri, Ghodadara,
Didoli, Surat, Taluka-Surat, District-Surat,
Gujarat-394210.

-VERSUS-

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

..... RESPONDENT

Appearance: Mr. K.M. Shah, Ld. Counsel for the Applicant.
Mr. G.J. Dave, Ld. Counsel for the Respondent.

CLAIM FOR Rs. 8,00,000/-
JUDGMENT

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 Aakash s/o Nareshbhai Shimpi (then after referred as injured/applicant) in an alleged untoward incident.

2. In brief, it has been averred in the claim application that, on 19.02.2022, the applicant was travelling from Ankleshwar to Surat by train No.12930 Vadodara-Valsad Intercity SF Express. He purchased legal and valid Railway ticket for the said journey and the same was lost in the incident. On that day there was heavy rush and therefore, when he was boarding the said train from platform No.2 of Ankleshwar Railway station the train suddenly started moving with jerk and jolt and due to this jerk and jolt, heavy rush and push of the passengers, he lost his balance and accidentally fallen down. Due to this incident he sustained serious injuries on his body and his right leg was

amputated from above knee portion. He took from the place of incident to Jayaben Mody Hospital-Ankleshwar and then on 20.02.2022, he was shifted to Kiran Hospital-Surat for further treatment.

3. To establish his claim, the applicant has placed on record certified copies of Memo, Request Report from GRP to register Janva Jog Entry, Body Condition Panchnama, Panchnama of Place of Incident, Medico legal Certificate, Discharge Summary, Injury cum Disability Certificate, Photograph of the injured, Election Card-Aadhar Card & PAN Card of the injured and Bank Details 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 denied all the averments made in the claim application. It has been pleaded on behalf of the Respondent that the injured was not a bonafide passenger as no any travelling ticket or authority was recovered in possession of him and the injured fell down while he was trying to board the running train hence, the incident the alleged incident is covered under clause (c) to the proviso to Section 124-A of Railways Act, 1989. On the basis of these and other pleas, dismissal of the claim application has been sought by the respondent.

5. Based upon the pleadings of the parties and material made available on record, the following issues were framed:

ISSUES

1. *Whether the 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 passenger carrying 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. *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/11. Counsel for the Respondent had cross-examined the deponent on 23.12.2022.

7. Respondent railway administration has not adduced any evidence in this case except filing of DRM report.

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 deposed by applicant in the claim application that, on 19.02.2022, the applicant was travelling from Ankleshwar to Surat by train No.12930 Vadodara-Valsad Intercity SF Express. He purchased legal and valid Railway ticket for the said journey and the same was lost in the incident. To prove his testimony, copies of relevant documents have been filed as exhibit A/1 to A/11.

10. Per contra counsel for the Respondent has vehemently argued that injured was not a bonafide passenger of the train defined under section 2(29) read with 124 A of Railways Act, 1989, as no ticket was recovered from his possession at the time of preparing the panchnama.

11. It is true that no ticket has been produced on behalf of the applicant but non-production of ticket does not establish the fact that the injured, at the material time was an unauthorized passenger of the train in question. Moreover, the applicant stated in his affidavit in para No.3 that “On 19/02/2022, after purchasing the railway travelling ticket, I was waiting at the platform no.2 of Ankleshwar Railway Station for the arrival of the train bearing no.12930 named Vadodara-Valsad Intercity SF Express for returning to Surat.” The applicant also mentioned at the time of cross examination that “मैंने टिकिट शाम को 6-6:15 के लगभग रु. 45/- की खरीदी थी, किस खिड़की से खरीदी मुझे आज याद नहीं है । मैंने टिकिट प्लेटफॉर्म न. 4 से खरीदी थी”।

Thus, the law is settled, initial burden had to be on the claimants however, once applicant had discharged the burden by filing of affidavit the onus shifted on the Railways to disprove the claim of the applicant, which is not done by the Respondent Railway administration.

It is an admitted position in this case that as per Request Report of GRP Ankleshwar Out Post-Bharuch, the injured was came under the train due to accidentally fallen down from the train while boarding the train bearing no. 12930 Vadodara-Valsad intercity Express near K.M. No.316/7 of the platform no.2 of Ankleshwar Railway station and his right leg from knee to foot portion os cut off and crushed and hence, the injured person is admitted in Jayaben Modi Hospital at Ankleshwar for the treatment. In this circumstance, the possibility of losing a ticket, in our considered view, cannot be ruled out. As such, there is no reason to disbelieve the testimony of the applicant.

12. Moreover, the Respondent has not produced any cogent or reliable evidence to establish that the injured was not a bonafide passenger at the time of the incident or was penalized for travelling without proper rail journey ticket. Hence, the conclusion arrived at, in the original DRM's Report that applicant was not a bonafide passenger at the material time is not accepted for want of sufficient evidence.

13. The principle laid down in the judgment of the Hon'ble Supreme Court in the case of Union of India V/S Rina Devi, 2018 AIR (SC) 2362 in para No.17.4 held that *"However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can decided on the facts shown or the attending circumstances."*

14. Further, the principle laid down in the judgment of the Hon'ble Supreme Court in the case of Kamukayi & others V/S Union of India, Civil Application No.-3799 of 2023, in para No.18 held that-

"...the initial burden that the deceased passenger was having a valid ticket has been discharged shifting onus on the Railway Administration to disprove the said fact. Nothing has been placed before Claims Tribunal or brought on record during the course of hearing that the Railway Administration has discharged the burden of not having the valid railway ticket with the deceased passenger, except to say that during recovery ticket was not found. In absence of any cogent evidence, notwithstanding anything contained in any other law, the Railway Administration shall be liable to pay compensation as prescribed."

15. In view of the above, it can safely be concluded that the applicant was a bonafide passenger of the alleged train as defined under Section 2 (29) read with Section 124A of the Railway Act, 1989 and accordingly this issue is decided in favour of the applicant and against the Respondent.

Issue No.2

16. It has been averred by applicant in the claim application that, on 19.02.2022, the applicant was travelling from Ankleshwar to Surat by train No.12930 Vadodara-Valsad Intercity SF Express. On that day there was heavy rush and therefore, when he was boarding the said train from platform No.2 of Ankleshwar Railway station the train suddenly started moving with jerk and jolt and due to this jerk and jolt, heavy rush and push of the passengers, he lost his balance and accidentally fallen down. Due to this incident he sustained serious injuries on his body and his right leg was amputated from above knee portion. He was taken from the place of incident to Jayaben Mody Hospital-Ankleshwar and then on 20.02.2022, he was shifted to Kiran Hospital-Surat for further treatment. 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/11.

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

As per Memo dated 19.02.2022 (Exhibit A/1) “One unknown person fell down while boarding running train No. 12930 up M/E @ AKV platform No.2, near KM. 316/07, up line.” Charge Book of Ankleshwar Railway station is also confirms the above facts.

As per Request Report of GRP Ankleshwar Out Post-Bharuch (Exhibit A/2), “one passenger named Aakashbhai Nareshbhai by caste Shimpi, aged 22 years, Occupation-Service, Resident of 96, Shantinagar, Nilgiri, Ghodadara, Surat came under the train due to accidentally fallen down from the train while boarding the train bearing no. 12930 Vadodara-Valsad intercity Express near K.M. No.316/7 of the platform no.2 of Ankleshwar Railway station and his right leg from knee to foot portion is cut off and crushed and hence, the injured person is admitted in Jayaben Modi Hospital at Ankleshwar for the treatment.”

As per Panchnama of Body condition “while looking to his body, on his chest, stomach portion abrasion marks due to hitting of metals are seen. On his back, abrasion marks due to hitting of metals are seen. WHILE LOOKING TO HIS WAIST PORTION, HE HAS WORN CREAM COLOUR PENT WHICH ISTORN. His right leg from knee to foot portion is crushed and skin came out and bones and fleshes are seen. LOOKING TO HIS LEFT LEG, PENT IS TORN AT HIS KNEE PORTION and skin of knee portion is scratched and at the ankle portion of leg, injury marks are observed.”

As per Form No.1, Para No. 6 (A) attached with DRM Report-“Accident Fall – While boarding running train.” Form No.2 is also affirms the same contention.

As per conclusion of DRM Report “उपरोक्त घटना में घायल व्यक्ति प्लेटफॉर्म नंबर 03 पर खड़ी मालगाड़ी के ऊपर से क्रॉस करके आया था जो उसकी स्वयं की लापरवाही है तथा चलती ट्रेन में चढ़ने के प्रयास के कारण उक्त घटना घटित हुई है। उक्त घटना में पीड़ित स्वयं जिम्मेदार है।” Thus Respondent has admitted that the injured had an accidental fall while boarding the train.

18. We are of the considered view that falling down from the running train, while trying to board the running train 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 mensrea. In the present case, respondents have failed to prove any malicious intent or mensrea 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.

19. As regards act of negligence as brought out in oral arguments by the counsel for the Respondent and in conclusion of DRM Report 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.”

20. 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 :

“Death or injury in course of boarding or de-boarding train will be untoward incident. 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.”

21. The Respondent filed a CD of CCTV footage of the incident but not filed certificate under section 65-B of Indian Evidence Act, 1972. Compliance of sec. 65-B has not been fulfilled by the Respondent. However, the CCTV footage is perused just for the decision. On perusal of the footage, it was seen that the deceased was trying to board the running train only, no such fact was recorded against the Applicants.

22. 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.2 is decided in favour of the applicant and against the Respondent.

Issue Nos. 3 & 4:

23. 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 document placed on record as exhibit A/5, A/6 and A/7. From the perusal of the same, it is amply clear that the applicant sustained amputation of right lower limb above knee portion and also sustained other serious injuries on his body. At the time of cross examination the injuries are examined by the Tribunal and it is clear that “कूल्हे के जोड़ से 12” इंच स्टम्प शेष है, जोकि sch. Inj. 19 में आता है ।

24. Amputation of one leg above knee is prescribed under Item No.19 (For amputation below middle thigh to 3 ½” below knee) 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.4,80,000/- (Rs. Four Lakh Eighty Thousand only) is prescribed vide notification of Govt. of India dated 22.12.2016 w.e.f. 01.01.2017.

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 undergone 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 compensation of Rs.1,20,000/- (Rs. One Lakh Twenty Thousand only) for the said injuries.

25. Thus, the injured applicant is held entitled to get a sum of Rs.6,00,000/- (Rs. Six Lakh only) as compensation from the respondent railway administration on account of injuries suffered by him in an untoward incident.

26. These issues are decided accordingly.

27. We pass the following order :-

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ORDER

28. The application is partly allowed. The Respondent shall pay to the applicant in a sum of Rs.6,00,000/- (Rs. Six Lakh 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. 19.02.2022, 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. 19.02.2022, till the date of realization.

29. 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.

30. Registry is directed that out of the total compensation amount payable to the injured applicant Rs.1,00,000/- (Rs. One Lakh only) along with whole interest, 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.

31. Further, to safe guard the interest of the claimant, we deem it proper to direct the Registry to keep the remaining amount of Rs.5,00,000/- (Rs. Five Lakh only) in 50 FDRs of Rs.10,000/- in the name of the claimant for a period of 01st month to 50th 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.

32. 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.

33. 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.

34. 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.

35. 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).

36. 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.

37. 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.

38. 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.

RAILWAY CLAIMS TRIBUNAL
AHMEDABAD BENCH

(R.K. Manocha)
Member (Technical)

(Vijayant Singh)
Member (Judicial)

Judgment pronounced, signed and sealed in open Court today i.e. on 06.10.2023.

(R.K. Manocha)
Member (Technical)

(Vijayant Singh)
Member (Judicial)

Date : 06.10.2023
Place: Ahmedabad