

**BEFORE THE RAILWAY CLAIMS TRIBUNAL,
MUMBAI BENCH, MUMBAI**

Claim Application No: OA (II U) / MCC / 0106 / 2020

Mr. Jitendra Shripat Gamare
Age: 39 years,

R/at: Room No. 2, New
Jaya Apartment, Karnik Road,
Near Masoba Mandir,
Chickenghar, Kalyan (West),
Dist. Thane - 421301.

... APPLICANT

Versus

Union Of India,
Through the General Manager,
Central Railway, CSMT,
Mumbai.

... RESPONDENT

Appearances:

Mr. D. S. Kulkarni	: Advocate for Claimant
Ms. Rupali Nayak	: Advocate for Respondent:

Date of Institution: 30-12-2019

Date of Judgement: 16.10.2024

CORAM: Shri.K.K. Sonawane, Vice Chairman (J)

JUDGEMENT

1. The Claim Application has been filed by the Applicant under Sec. 16 of the Railway Claims Tribunal Act, 1987 read with Sec. 123 (c) (2) & Sec. 124-A of the Railways Act, 1989, for compensation

rising out of an alleged untoward incident, occurred during the course of working a Railway, involving injuries sustained to him i.e. Mr. Jitendra Shripat Gamare being passenger.

The factual matrix of the matter in nut-shell is as below:

2. It is contended that Mr. Jitendra Shripat Gamare (herein after referred as injured), resident of Kalyan was an AC coach Attendant. On 16.11.2019, the Applicant was travelling by LTT to Lucknow by Lucknow Express as A. C. Coach Attendant and when the Express reached at Kalyan Station, he alighted to purchase water bottle. After purchasing the water bottle, he boarded the Express Train but at the same time the Train started proceeding further and due to jerk, and jostling by the passengers, he lost control and fell down from running train in between the gap of train and platform. He sustained grievous injuries. He was escorted to Rukminibai Hospital, Kalyan and later on shifted to L. T. M. G. Hospital, Sion, Mumbai for better medical treatment. It is further submitted by the injured that he was in possession of valid Identity Card issued by M/s. Piyush Traders.

3. In response to notice, Respondent – Railway Authority appeared and opposed the claim application. The respondent filed Written statement and also produced on record the DRM report pertains to investigation conducted by IPF/RPF/Kalyan, accompanied with other relevant police papers marked as “R-1”. It has been contented that on 16.11.2019, SM/Kalyan issued a memo to GRP/KYN, that information was received on telephone from an unknown passenger that, when train no. 22121 LTT-Lucknow AC

Express departed from Kalyan station PF no. 04, an unknown person aged about 42 years fell down from A-1 coach no. CR17068 and came under the moving train and sustained injuries to his both legs. After receiving memo, the GRP attended the spot of incident and took the victim to Rukminibai Hospital Kalyan for medical treatment. The concerned doctor examined and referred him to Sion hospital for better medical treatment. In the statement recorded by GRP/KALYAN, the injured stated that on 16.11.2019, he was on duty as Coach Attendant in HA-1 coach of train no. 22121 LTT-Lucknow AC Express which departed from LTT station on 16.11.2019 at about 13.40 hrs. When the train arrived at Kalyan station, he alighted on the platform to fetch water. But meantime he noticed that the train started proceeding further, therefore, he tried to board the running train. However, he lost his balance in the attempt and fell in the gap between the train and the platform. He came under the wheel of moving train and got injured. The Railway Police took him to Municipal Rukminibai Hospital, Kalyan for medical treatment. The memo of SM/KALYAN revealed that, the victim had fallen down from Train no. 22121 LTT-Lucknow Express while boarding a running train. The incident took place due to victim's own negligence. As such the applicant cannot be compensated.

4. In view of pleading of both parties, and relevant documents produced on record, this Tribunal framed the following issues on 01-07-2021, for just and proper adjudication of Claim Application on merit within ambit of law.

Issues		Answers
1.	Whether the Applicant was a bonafide passenger of the alleged train on the relevant day?	Yes
2.	Whether the Applicant proves that on the relevant day, he sustained injuries, in an untoward incident in terms of section 123 (c) of the Railways Act, 1989?	Yes
3.	What Order/Relief?	Application allowed

5. That, in order to establish the claim, the injured Mr. Jitendra Shripat Gamare, stepped into the witness-box and filed his Affidavit in lieu of his examination-in-chief on record. He produced the relevant documents comprising:

SN	Documents	Exhibit
1.	SM Memo	A-1
2.	Police Report	A-2
3.	Statement of Jitendra	A-3
4.	Discharge Card	A-4
5.	Company ID card	A-5
6.	Aadhar Card	A-6
7.	Transfer letter to Rukminibai hospital	A-7
8.	Medical Papers	A-8
9.	PAN Card of Jitendra	A-9
10.	Photograph of Jitendra	A-10

6. The Applicant Mr. Jitendra Shripat Gamare (AW-1), in his affidavit by way of examination-in-chief deposed that, on 16.11.2019, he was travelling by LTT to Lucknow by Lucknow

Express as A. C. Coach Attendant and when the Express reached at Kalyan Station, he alighted for fetching the water bottle. After purchasing the water bottle, he was about to board the Express Train but at the same time the Express Train started proceeding further and due to severe jerk, and heavy rush of passengers, he lost the balance and fell down from running train in between the gap of train and platform. He sustained grievous injuries. He was escorted to Rukminibai Hospital, Kalyan and later -on shifted to L. T. M. G. Hospital, Sion, Mumbai for better medical treatment. It is further submitted by the injured that he was in possession of Valid Identity Card issued by M/s. Piyush Traders.

7. In the cross-examination of injured Applicant Mr. Jitendra Shripat Gamare (AW-1), It was suggested on behalf of Respondent - Railway, that he sustained injuries due to his own negligence and he was not a bonafide passenger at the time of the incident. But, the AW-1 Mr. Jitendra Shripat Gamare turned-down all these allegations put forth on behalf of Respondent.

8. In contrast, the Ld. Counsel for the Respondent submitted that, the alleged incident occurred due to victim's own negligence and carelessness, while attempting to board a running train, for which Railway Administration is not responsible to compensate the claimant. Hence, the application be rejected.

9. I have heard the Ld. Counsels appearing for the Applicants and Respondent. I have also gone through the entire documents produced on record. It is not put into controversy that the victim sustained injuries in a railway accident. Before embarking into the

merits of the matter, it would be profitable to set-forth the relevant provisions of the Railway Act 1989 as below:

Sec. 2 (29) defines "passenger" as under:

"passenger" means a person travelling with a valid pass or ticket".

Sec. 123 (c)(2) defines "untoward incident" as under:

"(c) "untoward incident" means-

xxxxx

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

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 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.*

In the backdrop of aforesaid legal provisions, I proceed to scrutinize the evidence produce on record. It is also imperative

to bear in mind that the provisions of Evidence Act as well as Procedural law are not strictly applicable to the proceeding before this Tribunal.

Issue No. 1 & 2

10. Both these issues being interconnected are taken up together for better appreciation of evidence adduced on record.

I have carefully perused the SM/KALYAN 's memo wherein, it is mentioned that, message was received from unknown passenger on telephone that one male aged about 42 years had fallen down from train no. 22121. The Police Report reflects that as per the memo of the SM, one unknown person lying in injured condition under A1 coach of train no. 22121 LTT Lucknow Express. I have also perused the statement of injured recorded by police on 16-11-2019. He divulged that on 16.11.2019, he was on duty as Coach Attendant in HA-1 coach of train no. 22121 LTT-Lucknow AC Express which departed from LTT station on 16.11.2019 at about 13.40 hrs. When the train arrived at Kalyan station, he alighted on the platform to fetch water. Meanwhile, he noticed that the train started proceeding further, hence he was attempting to board the running train, but he lost his balance and fell in the gap between the train and the platform, he came under the wheel of moving train and got injured. The Railway Police took him to Municipal Rukminibai Hospital, Kalyan for treatment. He sustained injuries to his both legs. The DRM's report filed by Respondent demonstrate that the victim had fallen down from a running local train, due to his own negligence and carelessness, while trying to board running train no. 22121. Therefore,

the Railway Administration is not responsible for the loss caused to him.

11. In the case of *Union of India vs. Prabhakaran Vijaya Kumar* (2008) 9 SCC 527, the Hon'ble Supreme court has held that "It will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In either case it amounts to an 'accidental falling of a passenger from a train carrying passengers. Hence it is an 'untoward incident' as defined in Sec 123(c) of the Railways Act, 1989. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence the interpretation i.e. the one which advances the object of the statute and serves its purpose should be preferred."

12. In the case of *Jameela & Ors vs. Union of India* reported 2020 (12) SCC 3705, the Hon'ble Apex court has held that the "manner in which the accident is sought to be reconstructed by the Railways, that the deceased was standing at the open door of the train compartment from where he fell down, is called by the Railways itself as negligence. Now negligence of this kind which is not very uncommon on Indian trains is not the same thing as a criminal act mentioned in clause (c) to the proviso to Sec. 124 - A. A criminal act envisaged under clause (c) must have an element of malicious intent or mens-rea. Bare act of standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act.

Thus, the case of the Railways must fail even after assuming everything in its favour."

13. It is settled proposition that provisions of section 124-A are based on the principle of strict liability or no-fault liability and it is mandated that the railway administration is bound to pay the compensation regardless of any wrongful act, negligence or default on the part of the railway administration. The Railways can be exempted from the liability to pay the compensation only when the alleged incident causing injury to Applicant comes within the exception clauses (a) to (e) of the proviso to Section 124-A of the Railways Act, 1989.

14. In this case, the Ld. Counsel for the Respondent did not lead any evidence to distort the evidence the act of the injured, about the cause for his injuries. It cannot be considered as a result of any exception clauses under Section 124-A of Railway Act, 1989, which are reproduced below.

- 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.

15. It is evident from above Judicial precedent that in order to bring the case under the proviso (b) of sec. 124-A, for "self-inflicted injury", it is imperative for the respondent to produce the material on record that the victim was intending to inflict injury to himself intentionally and purposely. But such intention cannot be inferred

bare from his own action or act of negligence. The proviso (b) of sec. 124-A is apparently rest on the principle of “no fault theory”.

16. In the present case, if I consider that the injured was trying to board a running train, even though these circumstance itself are not sufficient to draw the inference that he was intending to inflict self-injury. It cannot be ignored that the injured was on duty as A.C. coach Attendant and therefore he was travelling by a train. He had a Valid Identity Card issued by M/s. Piyush Traders being Coach attendant. Had there been any intention on his part for self-inflicting injury, he would have committed such self-destructive act by other means.

17. In the above premises, I have no doubt that the injured, during the course of travelling by train no. 22121, had accidentally fallen down from the train, sustained serious injuries. It is a clear case of an accidental falling down from train and sustained injuries in an untoward incident as defined in sec. 123 (c) (2) of Railway Act. 1989 and Respondent would not be exempted from the liability to pay compensation under section 124 A of Railways Act, 1989.

18. Since fallen down of the injured from a train has been established and Respondent failed to bring on record the circumstances that the injured was not a bonafide passenger at the time of incidence, the reasonable inference can be drawn that the Applicant discharged his burden in regard to possession of a valid document to travel at the time of incident. Therefore, considering the factual aspect in this case there is no impediment to arrive at

the conclusion that the injured was a bonafide passenger at the time of incidence.

19. In view of facts and circumstances of this case and preponderance of evidence adduced on record, I have no hesitation to conclude that the injured Mr. Jitendra Shripat Gamare, on 16-11-2019, while travelling as a bonafide passenger of train no. 22121 from LTT to Lucknow Railway Station, accidentally fell down from the moving train on PF no. 4 of Kalyan Railway station and sustained serious injuries to his both legs. Accordingly, the incident is covered under "untoward incident" as defined under Section 123 (c) (2) read with Section 124-A of the Railways Act, 1989. Hence, I answer the Issue No. 1 & 2 in affirmative and in favour of the Applicant.

ISSUE NO. 3

20. The Applicant has filed medical papers of Sion, Hospital, wherein, he was diagnosed with Amputation of right leg below knee which falls under item No. 22 of Part III "For amputation below knee with stump exceeding 5" of Railway Accident and Untoward incidents (Compensation) Rules 1990 amendment 2016. As per Railway Accident and Untoward Incidents (Compensation) Rules, 1990 as stipulated in 1997, the Applicant is entitled to receive an amount of Rs. 1,60,000/- (Rupees One Lakh Sixty Thousand only) plus simple interest @ 6% per annum as compensation for the schedule injuries. But as per Railway Accident and Untoward Incidents (Compensation) Rules, 1990, amended in 2016, applicant is entitled to receive an amount of Rs. 3,20,000/-

(Rupees Three Lakh Twenty Thousand only) as compensation for the said schedule injuries. Regarding, other injuries i.e Loss of three toes of left leg is a non-Scheduled injury which do not fall in either Part II or Part III Schedule to Rule 3 of the aforesaid Rules. The quantum of compensation is, therefore to be decided by taking into account the principles stated in Rule 3(3) of the aforesaid Rules. Looking into applicant's hospitalization, nature of injuries, his pain and suffering, the applicant had undergone, I am inclined to grant Rs. 60,000/- (Rupees Sixty Thousand only) as compensation for the said non-scheduled injury. Therefore, I preferred to pay Rs.3,20,000/- (Rs. Three Lakh Twenty Thousand only) for scheduled injuries and Rs. 60,000/- for non-scheduled injuries (Rs. 3,20,000/- + Rs.60,000/- = Rs.3,80,000/-) to the injured. Accordingly, the Applicant is entitled for a total compensation amount of Rs. 3,80,000/- (Rupees Three Lakh Eighty Thousand only) as compensation for the said injuries sustained by her in an untoward incident.

Hence, I pass the following order.

ORDER

- a) The Claim Application filed under section 16 of Railway claims Tribunal Act 1987, is hereby allowed.
- b) The Respondent shall pay Rs.3,80,000/- (Rupees Three Lakh Eighty Thousand only) to the Applicant with interest @ 9%, from the date of incident till the date of this order.

- c) The Respondent shall deposit entire amount of award in the office of Additional Registrar, RCT Mumbai within 30 days from the date of receipt of this order.
- d) In case of default in payment within the stipulated period of 30 days as referred above, the Respondent shall pay the further interest @9% per annum from the date of receipt of this order till the date of deposit of payment in RCT.
- e) As per the guidelines delineated by the Ministry of Railways (Railway Board) vide notification dated 3rd June, 2020 under GSR 347 (E) which came into effect from 1st day of January, 2020, after considering the status of the Applicants and to protect the amount from being frittered away, the amount of Rs. 3,60,000/- (Three Lakh Sixty Thousand only) plus accrued interest shall be disbursed in the following manner:
 - i) Applicant Mr. Jitendra Shripat Gamare shall be permitted to withdraw an amount of Rs. 80,000/- (Rupees Eighty Thousand only) from his Saving Bank Account through NEFT/RTGS, from the total awarded compensation amount of Rs. 3,80,000/- (Rupees Three Lakh Eighty Thousand only).
 - ii) The balance amount of Rs 3,00,000/- (Rupees Three Lakh only) plus interest if any accrued till date, be kept in the name of Applicant in FDR account for a period of 3 years in any nationalised Bank located nearer to the permanent residential address of Applicant, in the manner described below.

Applicant's name.	Amount to be disbursed in favour of Applicant(s) by NEFT/RTGS	Amount to be invested in FDR account in Nationalized Bank and annuity scheme
Mr. Jitendra Shripat Gamare	Rs 80,000/- (Rupees Eighty Thousand only)	Rs. 3,00,000/- (Rs. Three Lakh only) plus accrued pro rata interest. This amount will be kept in the form of Fixed Deposit for a period of 3 years.

iii. The Claimant is directed to open an individual Savings Bank Accounts in any Nationalized Bank located nearer to the place of permanent residence of Applicant.

iv. The Bank is hereby directed not to permit any joint name(s) to be added in the Savings Bank Accounts or Fixed Deposit Accounts of the Applicants i.e. the Savings Bank Accounts of the Applicant shall be an individual Savings Bank Account and not a Joint Account. The concerned Bank is further directed not to issue any Cheque Book and/or Debit Card in the name of Applicant for the above referred S.B. account. If the same are issued, the concerned Bank authority is directed to take step to cancel/revoke the same before making any payment of awarded amount to the Applicant. Moreover, the concerned Bank shall take care for not issuing any Debit Card relating to above referred S.B. account of the Applicant by any other branch of the Bank. The Bank shall put an endorsement on the Passbook issued in favour of Applicant to the effect that no Cheque Book and/or Debit Card shall be issued to the Claimant without the permission of this Tribunal.

v. The concerned Bank of the Claimant is directed to permit the Claimant to withdraw money from his Savings Bank Accounts by means of a withdrawal form only. The Claimant is directed to produce the copy of this order before the concerned Bank for requisite endorsement in the Passbooks.

vi. The Bank shall not grant any loan, advance, withdrawal or pre-mature discharge on the Annuity Deposits without permission of this Railway Claims Tribunal.

vii. The Claimant is directed to produce the original Bank Passbook with the necessary endorsement as well as Aadhaar Card and PAN Card before the Additional Registrar, RCT, Mumbai. The ADR shall take the following documents on record from the Claimants before releasing the awarded amount for disbursement as mentioned above.

- a) Details of the Bank Accounts of the Claimant near to the place of permanent residence with necessary endorsement.
- b) Aadhaar Card and PAN Card or any other appropriate ID card; and
- c) Two sets of photographs and specimen signatures of the Claimant.

viii. There shall be no order as to cost.

ix. The certified copy of this judgement be given to Applicant free of cost.

x. Accordingly, the application stands disposed off in above terms.

(Kishor K. Sonawane)
Vice Chairman (Judicial)