

रेल दावा अधिकरण, नागपुर पीठ, नागपुर
THE RAILWAY CLAIMS TRIBUNAL: NAGPUR BENCH, NAGPUR

QUORAM : HON'BLE MISS R. SATHYABAMA, MEMBER (JUDICIAL)/RCT/NGP
HON'BLE SHRI SYED NISHAT ALI, MEMBER (TECHNICAL)/RCT/NGP

Case No.: OA (Ilu)/NGP/11/2022

Date of filing - 22.02.2022
Date of Judgement - 23.10.2023

APPLICANT's : Krushana s/o Prabhakar Mhaskar
Age 34 years, Occu. – Nil
R/o Salegaon, Post Sindhi Kalegaon,
Jalna - 431213

V/s.

RESPONDENT : Union of India
Through General Manager
South Central Railway, Secunderabad

VALUE OF CLAIM: Rs. 4,00,000/-

Applicant by Advocate N.R. Mankar
Respondent by Advocate S. Mendiretta

JUDGEMENT

1. The applicant Krushana s/o Prabhakar Mhaskar have filed this claim application under Sec. 16 of the Railway Claims Tribunal Act, 1987 seeking compensation for an amount of Rs.4,00,000/- along with interest for the injury sustained by him in an untoward incident which occurred allegedly on 22.09.2021. The facts of the case, as alleged in the claim application are that on 21.09.2021, the applicant was travelling by Hyderabad-Aurangabad Special Train from Hyderabad to Jalna along with his friends after purchasing of journey ticket. On 22.09.2021 the applicant was standing near the door of the compartment of train for alighting at Jalna Railway Station and at that time due to sudden jerk to the said running train, the applicant was untowardly and accidentally fallen down from the running train at Jalna Railway Station. The left leg below knee of the applicant caught under the wheels of the running train and amputated. With the help of railway police and co-passengers, the applicant brought to Govt. Medical College, Aurangabad. The applicant was also admitted at Deepak Hospital, Jalna

from 05.10.2021 to 21.10.2021. It is further contended that the alleged incident is an untoward incident and the applicant was a bona fide passenger at the time of incident. Hence the applicant is entitled for compensation from the respondent railway.

2. The respondent railway opposed the claim application and filed its written statement denying the contention of the claimants. It is denied by the respondent that the applicant was a bona fide passenger of the train. It is averred by the respondent railway that the alleged contention of the applicant does not come within the purview and meaning of untoward incident. It is contended by the respondent that when the alleged Train No.07049 was arriving on PF No.1 of Jalna Railway Station, the victim/injured went outside the door of opposite side (offside) of platform No. 1 and by hanging himself, he was trying to take photo from his mobile and during this, he was hit by water pipeline and fell down and sustained injuries. It is contended by the respondent that the applicant suffered injuries due to self inflicted injuries and his own criminal negligent act. The applicant himself is responsible for the incident and the Railway is in no way responsible for the injuries sustained by the applicant and claim for compensation from Railway administration does not arise in this application.

3. Based on the pleadings of the parties following issues were framed-

1. Whether applicant was a bona fide passenger of the alleged train on the relevant day, with valid journey ticket ?
2. Whether the applicant proves that on the relevant day he sustained injuries in the train, in an untoward incident in terms of Section 123(c) of Railways Act, 1989 ?
3. What relief ? What order ?

4. To prove his case, the applicant Krushana s/o Prabhakar Mhaskar has affirmed an affidavit and produced himself as witness AW-1. On behalf of the applicant certain documents are furnished which are marked from Exh.A-1 to A-13.

5. On the other hand the respondent railway has examined Shri Shantanu s/o Sundarrao Kavishwar, Deputy Station Manager/Jalna who produced the originals of documents and filed extract of TSR, extract of Station Master Diary, Extract of Control Message Book, Memo issued by Guard, Memo issued by Dy. Station Manager and Form No.1 which are marked from Exh.R-2 to Exh.R-6. Respondent railway also filed DRM Report along with Annexures as R-1.

Discussion on the issues with reasoning:

ISSUE No. 1:

6.1 The case of the applicant is that on 21.09.2021, the applicant was travelling by Hyderabad-Aurangabad Special Train No.07049 from Hyderabad to Jalna along with his friends after purchasing of journey ticket No.UPF 00176865, Hederabad to Jalna, dated 21.09.2021, time 18:55, for 4 adults, fare Rs.660/-. The original journey ticket is filed by the applicant on record at Exh.A-1. The applicant have also placed on record his statement dated 07.10.2021 as Exh.A-6 wherein it is stated by him that after taking ticket he was travelling from Hyderabad to Jalna. The statements of friends and co-passengers of applicant namely Karbhari Babasaheb Mhaske, Mahendra Hiranman Mhaske and Anil Manikrao Mhaske dated 22.09.2021 are also placed on record by the applicant from Exh.A-7 to A-9 wherein they all have stated that after taking the journey ticket, they were travelling from Hyderabad to Jalna. On verification by the respondent, the particulars of above ticket is found correct and genuine.

6.2 We have gone through the pleadings, document and evidence available on record. We have also considered the argument on the behalf of both the counsels. The journey ticket placed on record by the applicant is verified by the respondent. The applicant and co-passengers have also stated that they obtained the journey ticket for the travelling from Hyderabad to Jalna. Original journey ticket is also placed on record by the applicant. Therefore, on the ground of above facts, it is held that the applicant was bona fide passenger of the train at the time of occurrence. The issue, therefore, decided accordingly in favour of the applicant.

ISSUE No. 2:

7. So far as the factum of occurrence of untoward incident is concerned, it is argued by the counsel of applicant that the applicant was travelling by Hyderabad-Aurangabad Special Train from Hyderabad to Jalna along with his friends. The applicant was standing near the door of the compartment of train for alighting at Jalna Railway Station and at that time due to sudden jerk to the said running train, the applicant was untowardly and accidentally fallen down from the running train at Jalna Railway Station and the left leg of the applicant caught under the wheels of the running train and amputated below knee. It was also argued that the applicant sustained injuries on account of an untoward incident, hence the applicant is entitled for the compensation from respondent railway.

7.1 On the other hand, the counsel for respondents vehemently opposed the contention of the counsel of applicant and argued that the applicant sustained injuries when the alleged Train No.07049 was arriving on PF No.1 of Jalna Railway Station, the victim/injured went outside the door of opposite side (offside) to platform No. 1 and by hanging himself, he was trying to take photo from his mobile and he was hit with water pipeline and fell down and sustained injuries. It is contended by the respondent that the injuries suffered by the applicant is self inflicted injuries and due to his own criminal negligent act. The applicant himself is responsible for the incident and the Railway is in no way responsible for the injuries sustained by the applicant and claim for compensation from Railway administration does not arise in this application.

7.2 In support of his contention, the respondent railway examined Shri Shantanu s/o Sundarrao Kavishwar, Deputy Station Manager/Jalna as RW-1. In his affidavit, it is deposed by him that he was on duty on 22.09.2021 at Jalna Railway Station. His duty hours were from 11:00 hours to 21:00 hours. During his duty hours at 11:40 hrs., Guard of Train No.07049 Arvind Kumar came at his office at Jalna Railway Station and handed over him one written memo wherein it was stated that one unknown person suddenly fallen down from Train No.07049 and got injured after being hit by water pipeline which was installed at the off side of platform when the train was entering/arriving at Jalna Railway Station. He immediately issued memo to concerned RPF and GRP and also issued Form-I in

favour of RPF on 22.09.2021. He made relevant entries about alleged incident in TSR, Station Master Diary and Control Message Book on 22.09.2021. No passenger had untowardly and accidentally fallen down from running train at Jalna Railway Station from train No.07049 or from any other train. The above facts are also stated by Shri Shantanu s/o Sundarrao Kavishwar, Deputy Station Manager/Jalna in his statement dated 16.04.2022 recorded by RPF and placed on record by the respondent railway at Page No. 99 with DRM Report as Exh.R-7.

7.3 The statement of Guard of alleged Train No.07049 Hyderabad-Aurangab Passenger was also placed on record by the respondent at Page No.94 along with DRM Report wherein it is stated by him that “*ड्यूटी के दौरान गाड़ी जालना रेलवे स्टेशन पर लगभग 11:40 बजे प्रवेश करने लगी व 2-3 कोच स्टेशन पर प्रवेश होते ही किसी अज्ञात व्यक्ति ने एसीपी कर दिया और गाड़ी प्लेटफार्म से 02 कोच बार रुक गयी व इसके बाद कुछ व्यक्ति मेरे पास आए और एक व्यक्ति के घायल होने बाबत बताया। उन्होंने बताया कि.मी. सं.176/3-4 पर एक अज्ञात व्यक्ति जालना रेलवे स्टेशन के प्लेटफार्म 01 की ऑफ साइड पर लगे पानी के पाइन लाइन से टकराकर गाड़ी से नीचे गिर गया है और जखमी हो गया।*” In his memo dated 22.09.2021 at 11/55 hrs. it is also informed by him to SCOR/Nanded that one unknown person suddenly fallen after hitting by water pipeline from the off side of Station platform No.1.

7.4 The statements dated 28.04.2022 of alleged co-passengers namely Karbhari Babasaheb Mhaske, Anil Manikrao Mhaske and Mahendra Hiranman Mhaske are also placed on record by the respondent along with DRM Report from Page No. 87 to 92 wherein all the alleged co-passengers have categorically stated that “*गाड़ी जालना रेलवे स्टेशन पर आगमन होते समय हमारा एक साथी श्री कृष्णा प्रभाकर म्हस्कर, उम्र 27 साल, निवासी – सालेगांव ता. जि. जालना जो कि प्लेटफार्म की विरुद्ध दिशा के दरवाजे में बाहर लटककर मोबाइल द्वारा फोटो (सेल्फी) के प्रयास में वाटरिंग के पोल से टकरा गया और चलती गाड़ी के नीचे आकर उसका एक पैर कट कर घायल हो गया।*” It is also stated by them that there was no jerk in the train while entering at Jalna Railway Station.

7.5 It is also concluded in DRM enquiry report filed by the Respondent railway that all the 3 co-passengers have stated in their statement that the applicant went outside the door of opposite side (offside) to platform No. 1 and by hanging

himself he was trying to take photo (Selfie) from his mobile and during this, he was hit with water pipeline and fell down and sustained injuries. It is also admitted by the applicant AW-1 Krushana s/o Prabhakar Mhaskar during cross-examination that it is true that the train was arrived at Platform No.1 of Jalna Railway Station in a very slow motion. It is argued by the respondent counsel that the map of incident spot (Page No.124 of DRM Report) also shows that the incident occurred at offside of platform No.1. In the Col. No.6 of Nature of the untoward incident in Form-I (Exh.R-3) at Page No.123 of DRM Report, it is also mentioned that one male person aged nearly 25 years fallen down after hitting the water pipeline off side at Jalna Platform No.1. It is also mentioned in Col. No.30 of Report of Untoward incident of RPF, Jalna dated 22.09.2021 that *“चलती गाड़ी से बाहर लटककर मोबाईल से फोटो ले रहा था तभी वाटरिंग पोल से टकराकर गाड़ी के नीचे आने से एक पैर कटकर घायल हो गया।”* The Joint Report of GRP and RPF also says that *“घायल व्यक्ति प्लेटफार्म के विरुद्ध दिशा में दरवाजे से बाहर लटककर मोबाईल से फोटो खींचने के दौरान वाटरिंग के पोल को टकराकर चलती गाड़ी से नीचे गिर गया तथा गाड़ी के नीचे आने के कारण एक पैर कटकर जखमी हुआ।”*

7.6 It is argued by the respondent counsel that it is pleaded by the applicant in claim application that he was fallen down from the running train at Jalna Railway Station due to sudden jerk of the train but in the light of above facts and statements of co-passengers and the Guard of the alleged train, it is clearly established that the applicant sustained injuries while he was taking photos and selfies from the off-side door of the coach opposite to the platform No.1 of Jalna Railway Station and during this he was hit by water pole and the applicant fell down from the train. The applicant invited disaster for himself and the alleged act of the applicant comes under the proviso of self inflicted injuries and criminal act and the incident is not an untoward incident and come under the ambit and scope of exception to section 124 (A) of the Railways Act. Therefore, railway administration is not liable to pay compensation. It is further argued by the counsel for the respondent that the act of the applicant was with full knowledge of the imminent possibility of endangering his life or limb and therefore, it comes within the term ‘self inflicted injury’ defined in section 124-A proviso (b) of the Act. Moreover, he was not a bona fide passenger of the train at the time of occurrence. Hence the applicant is not entitled for compensation.

7.7 On perusal of the evidence placed on record, oral and documentary evidence by both side, it is a clear case of fall while taking photos from off side door of the coach opposite to platform side. It is not a case where the applicant had accidentally fell down from the train during the course of travel nor it is a case of accidental fall while trying to disembark the train which is halted at the station. The circumstances leading to the act clearly indicate that there was a willful negligence on the part of the person and that remained the originating and precipitating cause of this fall. We find force in the arguments of respondent and can be held that the act of the applicant was totally imprudent, irrational, callous and unmindful for the consequences.

7.8 The fact that applicant Krushana s/o Prabhakar Mhaskar sustained injuries on account of an untoward incident, must be proved by the applicant in order to claim compensation under Section 124-A of the Railways Act. The applicant has not been able to discharge his burden in this respect along with the circumstantial consequence. On the other hand respondent has a force of argument that the applicant sustained self-inflicted injuries and fall under the proviso of Section 124 A (b) of the Railway Act, according to which no compensation shall be payable by the railway administration. The burden to prove that the applicant sustained injuries in an untoward incident being a bona fide passenger is not discharged by the applicant.

7.9 The issue has been upheld in the judgement of Hon'ble High Court of Gujarat at Ahmedabad on 13.08.2018 in R/First Appeal No.2204/2018, Pravinbhai Ishwarbhai Vaghela v/s UOI as it is mentioned in para 22 of the above judgment that ***"Where negligence is not an ordinary negligence, but there is criminal negligence, then the deceased is responsible for his own death and compensation cannot be allowed."***

7.10 In Para 44, it is also mentioned that ***"In the light of the circumstances enumerated in the proviso to Section 124-A that exempt the liability of the Railway Administration to compensate the death or injury suffered by a passenger, it is clear that the legislative intent underlying Chapter XIII of the Act as amended by Act 28/94, in particular Clause (c) of Section 123 and Section***

124-A is not to provide compensation to an injury or death suffered by a passenger regardless of the causative factors. In a measure a "no fault liability" is imposed on the Railways, viz., death or injury caused to a passenger on the occurrence of an untoward incident even absent any wrongful act, neglect or default on the part of the Railway Administration would fasten the Railway Administration with liability to pay compensation. Such no fault liability imposed on the Railways to pay compensation does not appear however to be so wide as to constitute an absolute liability and to render the Railways liable to pay compensation to a passenger who is injured or has died as a consequence of his own imprudent conduct, lack of reasonable care warranted in the circumstance of the train travel, acts of bravado, foolhardiness, carelessness or other such conduct."

7.11 In para 53 of the above judgement, it is mentioned that **"In fact, the act of the claimant should be made a specific offence under the Railway Act 1989. If travelling on roof, step or engine of a train constitutes an offence under Section -156 of the Act, 1989, then the act of a person disembarking a train already boarded by him and then trying to board a passing train, that too in motion and in a railway yard not even on a platform should be an offence. This aspect can be looked into by the legislation in accordance with law"**. In this case also the applicant was taking photos from off side door of the coach opposite to platform No.1 of Jalna Railway Station and during this he was hit by water pole, fell down and sustained injuries. The injured was having knowledge of the eminent possibility of endangering his life at the time of taking of photos by mobile phone from the off-side of platform where the water pipe line was situated.

7.12 Similarly it is well settled that while interpreting statutory provisions, the court should consider each word, phrase, or sentence in as much as each of them has a meaning and purpose and none of them can be treated as redundant or useless.

7.13 On behalf of the claimant it is vehemently contented that an injury or death caused to a passenger even on account of his own gross negligence or carelessness would not exclude the liability of the railway to pay compensation and that the expression "Untoward Incident" occurring in section 124 A and

defined on the accidental falling of a passenger in section 123 (c) (2) should receive a beneficent construction by this court to facilitate payment of compensation even in such cases. This contention on behalf of the claimant does not commend acceptance by this court. Neither the text and tenor of section 123 and 124 A of the act analyzed by us above nor even the statement of object and reasons accompanying the bill that was enacted an Act 28/94 provided any support to justify acceptance of the interpretation that the claimant urge.

7.14 On the above analysis it appears reasonable to conclude that the circumstances enumerated in the proviso to section 124 A are in the nature of “Ex abundant Cantella provision to emphasis the legislative intent already implicated in sub clause (2) of clause (c) of section 123 of the Act and the proviso is intended to make explicit that the expression “Accident falling” in the above sub clause excludes fall of the passengers as a consequence of his fault, carelessness, lack of circumspection or absence of such kind and degree of care warranted in the exigencies and circumstances of travel by a train or on account of absence of prudence and prescience on his part.

7.15 In our view travelling on roof, step or engine of a train constitute an offence under section 156 of the Act 1989, then the act of a person taking photos and selfies in a moving train by hanging himself from the off-side door of the coach that too should be an offence. The point for determination is whether the injury of the person had occurred in an “untoward incident” as defined under Sec. 123 (c)(2) of the Railway Act, 1989.

7.16. The provision of Sec. 123 (c)(2) of the Railway Act 1989 is reproduced below.

“Section 123 (c) untoward incident” means –

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

7.17 As per our view, the instant case does not fall under Sec. 123 (c)(2) of the Railway Act and it falls under the Sec. 124 A (b) which is reproduced below for better appreciation.

“Section 124 A.

(b) self-inflicted injury;”

7.18 Respondent has a force of argument that the applicant sustained self-inflicted injuries and fall under the proviso of Section 124 A (b) of the Railway Act, according to which no compensation shall be payable by the railway administration. It is, therefore, we conclude that the applicant was not involved in any untoward incident as defined in Section 123(c)(2) of the Railways Act and the alleged act of the applicant come under the ambit and scope of exception to section 124 A (b) of the Railways Act, 1989, The issues No.2 decided accordingly against the applicant.

ISSUE No. 3 (Relief)

8. In our considered view and opinion, the findings on issue No. 2 go against the applicant and the applicant is not entitled to any compensation and this issue is answered accordingly.

ORDER

In the result, the claim application is dismissed leaving the parties to bear their own costs.

File be consigned to the record-room.

(Syed Nishat Ali)
Member (Technical)

(Miss R. Sathyabama)
Member(Judicial)

Pronounced in open Court.
Nagpur.

Date : 23.10.2023

/DK/