

रेल दावा अधिकरण, नागपुर पीठ, नागपुर
BEFORE 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/44/2020

Date of filing - 28.09.2020.
Date of Judgement - 25.10.2023.

APPLICANT: 1. Gajesh s/o Sukhdev Marathe
Aged- 29 years, Occu. – Labour.
Aadhar no.-458612745276
Mob. No. 07798225183

R/o- At Kargaon, Tal.- Chalisgaon,
Dist- Jalgaon (M.S.) - 424101

V/s

RESPONDENT : Union of India
Through its General Manager
Central Railway,
C.S.T., Mumbai.

VALUE OF CLAIM: Rs. 8,00,000/-

Applicant by Advocate S. Chaudhari

Respondent by Advocate P. Opai

JUDGEMENT

This claim application is filed by the injured applicant Gajesh Sukdev Marathe claiming a sum of Rs. 8,00,000/- along with interest as compensation from the respondent-railways on account of injury sustained by him in an untoward incident alleged to have occurred on 27.09.2019.

The facts of the case, as alleged in the claim application are that the injured applicant one day prior to the day of incident the injured went to Nasik to pay his installment of his financed car Mahindra Supro, after paying the installment injured went to meet his sister who is residing at Nasik and he stayed that day at Nasik. On next day i.e. on 27.09.2019 he had to go back to his home town at Chalidgaon, Dist-Jalgaon (M.S.) and accordingly he purchased a valid general class railway ticket Ex. Nasik to Chalisgaon for train no. 11093 Mahanagari Express for Rs.60/-. After purchasing the ticket he kept the ticket in the back cover of his mobile of Samsung J2 and he kept his phone in the upper pocket of his shirt and boarded in the said train. It is also contended by the applicant that there was heavy rush in the train. When Chalisgaon station arrived the rush in the train increased and due to heavy rush the applicant tried to get down at the station but while doing so the train suddenly started to move and because of the sudden jerk he lost his balance and fell down from the running train in between railway KM no. 326-327 on Dhule railway line at touching point of Dhule and Jalgaon track, Dist-Jalgaon and sustained serious injuries because of which his left leg was amputated below knee.

The respondent railway opposed the claim application and filed its written statement denying all the contention of the claimants. It is specifically 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. The applicant was negligent while he was trying to deboard the train and during this process he fell down from the running train. 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.

Based on the pleadings of the parties following issues were framed: -

1. Whether applicant was a bonafide 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 the Railways Act, 1989?
3. To what order/relief?

The applicant Gajesh Sukdev Marathe was examined as AW-1 and documents Exh.A-1 to A-11 were marked on behalf of the applicant. From the side of respondent, Shri Bhalchandra Ramchandra Wadnere, Dy.S.S./Chalisgaon Rly. Stn. was examined as RW-1 and Shri Vilas Ziparu Saindane, Trackman/Dhulia Rly. Stn. was examined as RW-2. The respondent railway placed on record Statutory Investigation Report along with a number of documents as prepared during the course of such enquiry. The respondent railway has filed the DRM report (Exh.R-1) along with written statement.

Discussion on the issues with reasoning:

ISSUE No. 1 & 2:

Both these issues being inter-connected are being taken up together for discussion and decision.

The case of the applicant is that while travelling from Nasik to Chalisgaon by train no. 11093 he accidentally fell down from the running train in between Rly. KM. No. 326 to 327 on Dhule railway line at touching

point of Dhule and Jalgaon track and sustained serious injuries due to which his left leg was amputated.

The inquest proceedings in this case were started by GRP/Chalisgaon Police Station on receipt of Memo (Exh.A-1) issued by Dy. S.M., Chalisgaon Rly. Stn. on 27.09.2019 at 06.05 am wherein it is mentioned that as per the information received from Pointsman Shri Vilas Zipru through P & T phone, at Km No. 327 to 35 a leg is cut of an unknown person aged about 25 to 27 years.

During the course of inquest proceedings, Injured Spot Panchnama (Exh.A-3) is prepared by the Police authority. In this document, there is no mention of recovery of any journey ticket or railway pass from the injured. It is contended by the injured in claim application that the he had purchased a valid journey ticket from Nasik to Chalisgaon which was purchased by him and kept in the back cover of his mobile phone and the mobile phone was kept by him in the upper pocket of his shirt. But the said journey ticket was lost in the incident. It is further contended that the applicant was a bonafide passenger and sustained injuries in an untoward incident hence the applicant is entitled to get compensation.

Per contra, it is contended by respondent-railway that the alleged journey ticket was not recovered/seized either at the time of preparing of spot panchnama from the injured applicant. Nothing is mentioned by the investigating authority in the panchnama regarding the finding of journey ticket. Nothing was seized by the investigating authority. The factum of non-recovery of the railway ticket, in itself, goes to prove that the injured was not having any journey ticket in his possession otherwise the same would have been recovered.

Section 124-A of The Railways Act, 1989 (for short, 'the Act') entitles a 'passenger' to claim compensation, who has been injured or the dependants of the deceased, who has been killed in an untoward incident as defined under Section 123 (c) of the Act *ibid*. The word 'passenger' has been defined under Section 2(29) of the Act as a person travelling with a valid pass or ticket. As per Section 124 (A) "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. It is only when the fact of the injured or the deceased being a bona fide passenger of the train is established, the question of payment of compensation arises in case the incident is held to be an untoward incident. Therefore, if a person has purchased a valid ticket, then only he/she is a bona fide passenger of the train.

We have gone through the pleadings, documents and evidences available on record. We have also considered the argument advanced by both the sides. Admittedly, no journey ticket was recovered at the time of panchnama. The initial burden to prove that the injured was a bona fide passenger is not discharged by the applicants. It is also held in case of Union of India V/s Rina Devi (CA No.4945 of 2018 arising out of SLP (C) No.10223) that ***"mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained."*** In these circumstances, it cannot be believed that the injured was a bona fide passenger of any train. So the inference can be drawn that the injured was not a bona fide passenger. We find momentum of force in the contention of the respondent that the injured was not a bona fide passenger as he had no valid journey ticket at the time of occurrence and also there are no reasons to accept it otherwise. In DRM report also, a conclusion has been drawn that the injured was not a bonafide passenger. Therefore, it is held

that the applicant (injured) was not having valid railway journey ticket and as such, he was not a bona fide passenger of the alleged train.

So far as the manner and circumstances leading to the injury is concerned, it is seen that nobody had witnessed the injured boarding in the alleged train no. 11093 Mahanagari Express. Nobody also had seen him falling from the said train. The applicant has not adduced any evidence or witness in the instant case who could prove that he had boarded in the alleged train and while alighting he fell down from the running train due to which he sustained injuries. Nothing on record to say that the injured was travelling by any train and fell down in an untoward incident. Also, no journey ticket was found during the investigation by Police authority. There is nothing on record to show that the injured was a bonafide passenger. There is also nothing on record to even remotely suggest that the injuries sustained by the applicant was due to fall from the alleged train no. 11093 so as to bring it within the meaning of untoward incident as required u/s 124-A of the Railways Act.

The respondent has adduced the evidence of RW-1, Shri Bhalchandra Ramchandra Wadnere, presently Dy. S.S./Chalisgaon Rly. Stn. In his affidavit RW-1 has deposed that on 27.09.2019 he was working as on duty Dy. S.S at Chalisgaon station from 00.00 hrs to 08.00 hrs. During his duty hours RW-1 received an information from patrolman Vilas Ziparu Saindane at about 6.00 am on P & T phone regarding the lying of an unknown person in injured condition whose one leg was amputated and accordingly he issued a written memo to on duty GRP & RPF at 06.05 hrs. He had also deposed that on 27.09.2019 the alleged train no. 11093 Mahanagari Express arrived at Chalisgaon railway station at 06.56 hrs and departed at 06.58 hrs. The respondent counsel argued that after perusing it is observed that it is a specific pleading of the applicant that he was

travelling by Mahanagari Express train No. 11093 on the date of incident. It is seen supra that on the day of incident the alleged train arrived at the spot of incident i.e. Chalisgaon station at 06.56 hrs and departed at 06.58 hrs. which means, if the injured was travelling by the said train & assumingly but not admitting that he fell down from this train then it is only possible for the applicant to fall down from the said running train only after 06.58 hrs on 27.09.2019. However, it is observed that the information of the lying of the injured applicant was received by RW-1 at around 06.00 am on 27.09.2019 which creates doubt and suspicion about the story narrated by the applicant because travelling backward in time happens only science fiction. A clear inference can be drawn that since the applicant was found lying on the said spot before the alleged train No. 11093 Mahanagari Express passed through the said spot, there could be no untoward incident of falling down from Mahanagari Express at Chalisgaon station as alleged by the applicant. This also casts shadow on the story narrated by the applicant.

The respondent has also led the evidence of RW-2, Shri Vilas Ziparu Saindane/presently Trackman at Dhulia Rly. Stn. In his affidavit RW-2 has deposed that on 27.09.2019 when he was on duty at about 06.00 hrs he saw one unknown person lying in injured condition and his one leg was amputated, he immediately informed about the same to Dy.S.S through P and T phone. He also deposed that the spot where he found the injured is at Dhulia line, he also stated that the said spot is having two parallel lines one is main line, which goes towards Bhusawal Rly. Stn. and the another one goes towards Dhulia Rly. Stn. RW-1 & RW-2 in their affidavit have deposed that on the day of incident no one reported them about any untoward incident of Accidental fell down of any passenger. Admittedly, there is no eye witness to the incident. The applicant has not been able to prove his case of fallen down under Section 123(c)(2) of the Railways Act.

The respondent, however, proved their case that the injured was noticed at the spot of incident prior to the actual time of passing of train No. 11093 Mahanagari Express through the said spot of incident which falsifies the story narrated by the applicant in the claim application.

During the cross examination of AW-1 he has stated that he boarded a train from Nasik Road railway station at about 03.10-03.15 am but he does not know the name and number of the train by which he was travelling and till date he does not know the name or number of the train by which he was travelling. He also stated that his advocate wrongly drafted that he was travelling in Mahanagari Express on the date of incident but he had preferred to complete his journey by some earlier train and is unaware of the name and number of the train. But contradictorily, in the affidavit of AW-1 in para 4 he has stated that at the time of purchase of the ticket the injured enquired about the availability of the train going toward Chalisgaon and there were two trains available which is having halt at Chalisgaon railway station and at the ticket counter the railway employee told him that his ticket was valid for any train and the person also told the injured that Mahanagari Express is coming and the applicant can board the train. In para 9 of his affidavit he stated that when he filed the claim application and also in his Police statement he had mentioned the name of the train as Mahanagari Express and it is incorrect as he was under the impression that the train which he boarded was Mahanagari Express whereas it was another express train whose name is not known by him. Respondent counsel argued at the time of cross examination that para no. 4 and 9 of the affidavit dated 20.06.2023 is out of pleading, is an afterthought and it was not taken into cognizance of the case. It is also observed that there is no pleading in the claim application about shifting of the injured person from main line to Dhulia line and it is not clear that how the injured came from the main line to Dhulia line. The testimony of AW-1 is contradictory

and does not inspire confidence and the story of the applicant is not convincing.

It is pertinent to mention here that this is the duty of the applicant to prove that the injuries of which compensation is being claimed, had taken place after being involved in an untoward incident. It is also pertinent to mention here that mere finding of a dead body or a person in injured condition on or by the side of the track does not, ipso facto prove that the said person/deceased fell down from the train. The applicant has not been able to prove that he was a bonafide passenger and that he had fallen down from the alleged train or any train carrying passengers. The applicants have not been able to prove their case under section 123(c)(2) of the Railway Act. Thus, apart from the say of the applicant, there is no other support/evidence to show that the injured was travelling by a train and met with an untoward incident. The applicant has not been able to prove that the he had fallen down from any train carrying passengers.

It is pertinent to mention here that mere finding of a dead body or a person in injured condition on or by the side of the track does not, ipso facto, prove that the said person/deceased fell down from the train. The applicant has neither been able to prove that applicant was a bonafide passenger as no valid journey ticket was found from him nor that he had fallen down from the alleged train as the said incident had happened before the passing of the alleged train passed through the spot of incident.

Respondent has a force of argument that the applicant was not involved in any untoward incident. It can, therefore, be concluded that the injured was neither a bonafide passenger nor involved in an untoward incident as defined in Section 123 (c)(2) of the Railways Act. These issues, therefore, decided accordingly against the applicant.

It is also held in case of Union of India V/s Rina Devi (CA No.4945 of 2018 arising out of SLP (C) No.10223) that **“mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained.”** Respondent has a force of argument that injuries of the applicant is self inflicted injury due to his own criminal act which 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. Though untoward incident legislation is a humanitarian legislation in spirit and intends to benefit train travelers in a distressing situation, it cannot be stretched too much to include a deceased person whose authenticity as a bonafide passenger could not be established and whose demise also could not be linked to a fall from a running train. Even as per the judgement of the Hon’ble Apex Court in Rina Devi the initial onus lies with the applicant to show that there is an injury due to untoward incident of a bona fide passenger of course by filling of the affidavit and depending on the facts of a particular case that initial onus can be a light onus which can shift on the Railways, however it is not even the initial onus to prove which has to be discharged is always on the Railways. Here in this particular case though the applicant has filed affidavit, he has failed to corroborate the evidence that the he was a bona fide passenger and died due to an untoward incident as per section 124 (A) of the Railway Act.

It is, therefore, we conclude that the applicant was not a bona fide passenger and was not injured due to an untoward incident as defined in Section 123(c)(2) of the Railways Act. The issues no. 1 & 2 are decided accordingly against the applicant.

Considering all the above facts, we answer both issues against the applicant.

ISSUE No. 3 (Relief)

In our considered view and opinion, the findings on issue no. 1 and 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.

Dictated to the P.S. transcribed by him, corrected and pronounced by us in open Tribunal on 25.10.2023.

File be consigned to the record-room.

(Syed Nishat Ali)
Member (Technical)
Pronounced in open Court.
Nagpur.
Date: 25.10.2023.
/sw/

(R. Sathyabama)
Member (Judicial)