

BEFORE THE RAILWAY CLAIMS TRIBUNAL
(BENGALURU BENCH AT BENGALURU)

CLAIM APPLICATION No.OA (II U)/SBC/0010/2023

DATED THIS MONDAY THE 30TH DAY OF SEPTEMBER, 2024

CORAM:

1. Mrs. IVY CHARLES D'CRUZ,
Hon'ble Member (Judicial).
2. Mr. RAVI NANDKEOLYAR,
Hon'ble Member (Technical).

BETWEEN

Sri H.M. Pandu Naik S/o. Mohan Naik,
Aged about 30 Years,
Occ: Coolie,
R/o. H No.17, Kallahalli,
Hosapete Taluk,
Ballari District,
Karnataka,
Mob No.8970238365.

:: Applicant

A N D

The Union of India
Represented by its General Manager,
South Western Railway,
HUBLI.

:: Respondent

Ld., Counsel appeared:

For Applicants	:: Shri H.R.V. Reddy & Shri D.S.R. Reddy
For Respondent	:: Shri Ananda Murthy

Application under Section 16 of Railway Claims Tribunal Act, 1987 read with Section 123(c) (2) and 124-A of Railways Act, 1989.

Vale of Claim Rs.8,00,000/= plus interest @ 12% per annum

J U D G M E N T

RAVI NANDKEOLYAR,
MEMBER (TECHNICAL).

1. H.M. Pandu Naik S/o. M. Mohan Naik in present OA filed under Section 16 of the Railway Claims Tribunal Act 1987 read with Sections 123 (c)(2), 124-A and 125 of the Railways Act, 1989 seeks award of compensation to the tune of Rs. 8 lakhs (Rupees Eight Lakhs) along with interest @ 12% p.a. from the date of filing application till its realization with costs.

2. Facts leading to filing of present case are that on receiving information from the mestri, Shri H.M. Pandu Naik S/o. Shri M. Mohan Naik (hereinafter called and referred to as 'injured applicant' for brevity), in order to cut sugarcane at Mysore, on 20.12.2017 at 5.30 PM, he left from his village and proceeded to Hosapete Railway Station after having purchased journey ticket No.UOA-26030344 dated 20.12.2017, Ex-Hosapete to Mysore Railway Station, valid for an adult and while boarding Hampi Express, had an accidental fall from a running train, tripped between platform and the moving train and the wheels of train ran over his legs and consequently both the legs were amputated. Immediately, he was transferred to 100 Bed Hospital, Hosapete. Thereafter, he was shifted to VIMS Hospital, Ballari for higher treatment, where he has undergone treatment as inpatient from 21.12.2017 to 01.03.2018. MLC Intimation from Chief Medical Officer, VIMS to Sub-Inspector of Police, Cowl Bazaar Police Station dated 21.12.2017, Original Discharge Summary issued by Vijayanagara Institute of Medical Sciences dated 01.03.2018 were placed on record.

3. Proof affidavit dated 13.10.2022 was filed, whereby aforesaid aspects were reiterated. He was examined and cross examined as AW-1 on 20.02.2024.

4. In the above backdrop, learned counsel for the applicant contended that as the MLC issued by Government General Hospital, Hosapete to the Sub-Inspector of Police, Extension Police Station dated 21.12.2017, Discharge summary issued by Vijayanagara Institute of Medical Sciences dated 01.03.2018 and other police documents clearly noticed that - (1)Crush Injury to Right Lower Limbs and (2) Crush Injury to Left Lower Limbs and captioned as Decapitation, he is entitled to compensation under the rules in vogue. It was further highlighted that though he was admitted on 21.12.2017 at Vijayanagara Institute of Medical Sciences, Bellary, 'Bilateral Wound Debridement was done on 03.01.2018 and was discharged only on 01.03.2018. Thus, he was hospitalized for almost two months. Incident in question was accidental fall within meaning of Section 123(c)(2) of the Railways Act, 1989.

5. By filing reply, the respondent has contested the claim laid stating that applicant was not a bona fide passenger. His fall from train was also denied. It was submitted that enquiry revealed that the alleged incident took never place due to the criminal negligence on the part of the respondent. The

respondent is not responsible for the alleged incident. The incident took place while the injured was under the influence of alcohol and trespassed the Railway track. The alleged incident cannot be termed as accidental fall from the train, to bring it within the definition of “untoward incident”.

6. By filing DRM’s report, based on statement made by the injured applicant and investigation carried by Police and also based on analysis of evidence, it was concluded that: “1) Based on the Ticket particulars issued by CBSR, HPT and Sr.DCM, UBL, the injured person has a valid ticket from HPT to MYS on 20.12.2017. 2) Based on the statement given by Shri H.M. Naik, the injured person at the time of incident (Train run over), he was under the influence of alcohol and was also trespassing the Railway track from Road No.5 to Road No.4 i.e., yard, which is an unauthorized activity and an offence as per Railway Act.

7. Based on pleadings raised; the issues were framed vide order dated, which read as under:

1. Whether the injured applicant was a bonafide passenger?
2. Whether the injuries sustained by the injured applicant was due an untoward incident as is defined under the provisions of Section 123©(2) of the Railways Act, 1989?
3. Whether the injured applicant is entitled for any relief and interest as prayed for in the application?

8. Ld., Counsel for the applicant submitted written arguments, which is taken on record. Service permitted.

9. We have heard both sides at length, perused the pleadings and other material placed on record including DRM’s Report along with its annexures. Through DRM’s Report based on analysis of evidence and statement made by the injured applicant, it is concluded that he had consumed liquor. Statement made by him on different dates and thumb impression affixed on the same revealed that applicant after consuming liquor and having dinner came to Hosapete Railway Station to travel upto Mysore and while boarding the train, due to heavy rush, lost his hand grip and fell down. As per his own admission, this in itself ex-facie is an offence under Section 156 of the Railways Act.

ISSUE No.1 and ISSUE No.2

As these two issues are inter-connected and inter-dependent, for the sake of brevity and better appreciation, the same are being dealt together.

10. A person who is not in proper state of mind, rather under influence of alcohol tried to board the moving train and fell down from the running train, no untoward sympathy can be shown by awarding compensation and make railway responsible. Furthermore, a person who in inebriated state of mind tried to board the moving train and that too in the night, put not only his life in danger but also create nuisance to others. Thus, no lenient view can be taken in such a matter. In the given circumstance, it cannot be viewed an accidental fall but has to be treated tantamounting to negligence and criminal act on the part of the injured applicant.

11. During the course of investigation, Sub-Inspector of Police, Bellary has recorded the statement of the injured applicant. Entire text of his statement recorded by the Investigating Authorities in verbatim form are reproduced as under:-

“I, Pandu son of Mohan Naik, aged 27 years, Caste-Lamani, profession, Labour work, resident of Kallahalli Tanda, Hosapete Taluk, Ballari District. My statement told and got written as follows:-

I, my father, mother, wife along with two children are residing at the above mentioned address by working as Driver and labour work and thus we are leading our life. About one month back, I left the Driver job, working as labour. Yesterday on 20.12.2017, Seru Naik, Maistry informed me that there is Sugarcane cutting work at Mysore, go there to work, for that I agreed to go to Mysuru at about 5.30 P.M., I took my luggage and informed In my house, that I am going to Mysuru, came to Hosapete Railway Station. At about 7.00 P.M. night I took (drunk) little Alcohol and took my dinner. I was waiting for the Train of Mysuru at Hosapete Railway Station. The Hampi Express Train came, I tried to board that train in the general coach, there was full of rush, the train started moving and I tried to board, my leg was slipped I fell on the Railway line, the train passed on my legs, my right leg was cut, my left leg was cut near ankle. I was brought and admitted in government VIMS Hospital by some persons for treatment. I was injured due to falling while boarding the train, and nobody is responsible for this, thus my statement was told and got written like this”.

(emphasis supplied)

12. Perusal of Exh A-4 ie., certified copy of C.Mis., Acknowledgment No. PO10751706000038 dated 21.12.2017 in which the Investigation Officer i.e., Sub-Inspector of Police, Government Railway Police, Railway Police Station, Bellary after having thorough investigation has prepared the ‘Gist of the case’, in which he has stated that –

“On date 21.12.2017 during 10.30 PM. M.L.C received from Sub Police Station, Hosapete and from Chowki Police of Government VIMS Hospital, Ballari, on perusing the same, the injured person is one and same in both MLC, the

Government VIMS Hospital M.L.C No.12965 dated 21.12.2017, the injured person of that was Pandu Naik Son of Mohan Naik, aged 27 years, caste: Lamani, Profession: Labour work, resident of Kallahalli Tanda, Hosapete taluk, Ballari District. This person on the night of dated 20.12.2017 he came to Hosapete Railway Station for going to Mysuru, he purchased the general ticket from Hosapete to Mysuru, came to Railway platform, he slept by waiting for the train, again on the same date 20.12.2017 at midnight by raising from sleep, he enquired about the Railway train going towards Mysuru, it was informed that all the trains have gone, at that time he went nature calls towards Railway line, while returning, he struck accidentally in the moving Railway Goods Train, his two legs were cut and fell in unconscious state, afterwards as informed by the public, the Hosapete Railway Police took him in an ambulance to the Hosapete Government Hospital admitted for treatment. He was send to Ballari Government VIMS Hospital for better treatment the medical officers are treating him, and I am recovering, this incident happened accidentally other than that no body are responsible . Thus the statement was given on the basis of this statement, the Station C.Miss No.38/2017, the case was registered as per that and investigation is being conducted.

(emphasis supplied)

13. It is pertinent to mention here that Respondent Railways have conducted a detailed enquiry in this case and produced Statutory Investigation Report. During the course of enquiry, Shri B. Rajashekar Reddy, Sub-Inspector of Police, Railway Protection Force has recorded the statement of the injured applicant on 21.08.2022. In the said statement, he has stated that-

“I am telling the truth that I am residing at the above address along with my family. To gain my livelihood I am working as a Daily wages Labour Work wherever I get. On 20.12.2017 at 19.03 hrs., I came to Hosapete Railway Station for going to Mysuru for Labour work duly purchased General Ticket to travel from Hospet to Mysuru. Later I came to PF 01 at about 19.30 hrs., and waiting for train further to take my dinner and alcohol due to heavy public on PF No.01, I went to PF No.2 and after taking Alcohol and dinner and I slept on PF 02. Later I awoke and on enquiry to one passenger about train bound to Mysuru and learnt that all the trains going to Mysuru have gone. Further I went for nature call inebriated condition towards Hospet Yard and while returning, I slipped and fell down on Railway line while trespassing from Road No.05 to Road No.04 in the meantime runover by unknown train and my two legs cut due to the said incident later under medical treatment at VIMS Government Hospital, Bellari I got conscious.

This is my true and correct statement to the best of my knowledge to read over and explained in the version of Kannada and Telugu Language and accepted as correct and signed by me.

(emphasis supplied)

14. Furthermore, on perusal of close scrutiny of Exh A-2 i.e., Intimation of Medico Legal Case, wherein the treating Doctor, i.e., Casualty Medical Officer, VIMS Bellary has clearly mentioned that Shri Pandu Naik S/o. Shri Mohan Naik, Age: 22 Years was admitted on 21.12.2017 at 10.04 AM vide Reg No.306619 with a **‘history of hit by train near Railway Track at Hospete’**. In addition, applicant placed on record Exh A-5 i.e., memo issued by on duty Station Superintendent, Shri Sandeep Suman Prathapa S/o. Devendra Prathap, presently posted and working at Station Superintendent,

Munirad Railway Station, wherein it is clearly mentioned that “one male unknown person, aged about 30 to 35 years was run over on Road No.4 and found unconscious”

15. These documents, which clearly suggests that the injured was in an intoxicated state and was hit by train cannot be ignored and have to be taken into consideration for fair and just disposal of justice.

16. The legal maxim is very clear that ‘No one can take advantage of his own wrong’. This principle asserts that a person should not benefit from their own wrongful actions or decision, emphasizing fairness in legal proceedings.

17. Furthermore, no oral evidence was adduced by applicant to deny the stand projected by respondent in the DRM’s Report supplied on the same date when he made his deposition to controvert and rebut a specific stand taken by respondent about his mental, physical position and consumption of liquor. His state of mind and consumption of alcohol before boarding the train, can safely be concluded that applicant was not vigilant about his own safety and suffered injuries. The various documentary evidence produced by the injured applicants himself disproves his case. Taking any other view and awarding compensation to applicant, in the given circumstances, would amount to giving premium for consuming liquor; and trying to board the moving train under the influence of intoxication and then falling from train in an intoxication state⁸ which no sane person in society would approve.

18. In view of all the above discussion, it is concluded that the injured applicant (H.M. Pandu Naik), on 21.12.2017, was under the influence of alcohol while crossing Road No.4 and was hit by Goods Train and sustained serious injuries. As such the alleged incident dated 21.12.2017, is not an untoward incident and it is not covered within the ambit of Sec. 123 (c) (2) of the Railway Act, 1989; that it falls under clause (d) of Sec. 124 (A), i.e. **“Any act committed in a state of intoxication or insanity”** and as such the applicant cannot be compensated. Thus, we have no hesitation to conclude that applicant has not been able to prove issue No.2 that he sustained injuries in an “untoward incident”. Therefore, we hold that issue No.2 is decided in negative and against applicant. As consequence of this, question of making any further elaboration on issue No.2 does not arise.

ISSUE No.3

19. In view of the above findings on Issues No.1 and 2, this issue does not arise for considerations. As such, the Injured applicant is not entitled to any relief at the hands of this Tribunal. Accordingly, the claim application deserves to be dismissed and is hereby dismissed. Hence ordered:

O R D E R

1. In the result the Claim petition is **‘Dismissed’** on contest but in the peculiar circumstances of the case without costs.
2. In the facts and circumstances of the case, there is no order as to costs.

(RAVI NANDKEOLYAR)
MEMBER (TECHNICAL)

(IVY CHARLES D’CRUZ)
MEMBER (JUDICIAL)

Judgment pronounced on Monday, the 30th September, 2024.

(RAVI NANDKEOLYAR)
MEMBER (TECHNICAL)

(IVY CHARLES D’CRUZ)
MEMBER (JUDICIAL)