IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.597 OF 2017

Nitin Navindas Hundiwala .. Appellant

Versus

Union of India, through the General Manager, Western Railway, Churchgate, Mumbai 400020. .. Respondent

…

Ms.Chaitrali Deshmukh for the appellant.
Mr.Chetan Agrawal with Nikita Banatwala for the respondent – UOI.

CORAM: BHARATI DANGRE, J.
DATED : 12th APRIL, 2022

JUDGMENT :-

1 The present Appeal is filed by the appellant, being aggrieved by rejection of his Claim Application by the Railway Claims Tribunal, Mumbai Bench, vide judgment dated 17/7/2013. The claim being filed u/s.16(1) read with Section 13(1-A) of the Railway Claims Tribunal Act, 1987 and Section

124-A of the Railways Act, 1989, sought compensation to the tune of Rs.Four lakhs from the respondent Railway on account of the injuries sustained by the appellant in an untoward incident alleged to have taken place on 23/11/2011.

Heard learned counsel Ms.Chaitrali Deshmukh for the appellant and Advocate Chetan Agrawal along with Nikita Banatwala for the UOI.

2 The appellant, being resident of Dahisar, Mumbai was working as a Consultant with S & S Enterprises, Mehra Estate, Vikhroli, and was earning Rs.10,000/- p.m from this engagement. In order to attend his duties, he had to commute from Dahisar to Vikhroli and in his normal routine, on 23/11/2022, he left his home and reached his office and on his return, reached at Vikhroli Railway Station, in order to reach to his home at Dahisar. He got the coupons validated by inserting them in Coupon Validating Machine and boarded a local train which took him to Dadar (Central Railway Station). From there, he came to platform no.5 (Western) in order to board a train to reach Dahisar Railway Station.

The claim of the appellant is that, he boarded 2nd Class General Compartment on 17.26 Fast Virar local train, which was overcrowded and on his boarding the train, he was pushed by the crowd from the compartment, and since he was standing on the edge, he lost his balance and accidentally, his

right leg slipped into the gap between the train and platform and he fell down from the running train and sustained serious injuries to his head and right thigh. He was removed to the Emergency Medical Room at Platform No.6 at Dadar (Central Railway) by On-Duty Railway Police and thereafter, moved to Sion hospital. On account of the accidental fall, he sustained the following injuries:-

(i) Fracture of shaft femur segmental U/3 & L/3 (Rt.)

(ii) Injury to (Lt.) knee joint

(iii) Head Injury.

3 He was admitted in Patel Nursing Home, Andheri (East) for better treatment and remained as an indoor patient from 23/11/2011 to 6/12/2011 i.e. in total, 14 days.

In his Application, the applicant specifically stated that on his medical treatment, he had to expend an amount of Rs.Two lakhs, but he had preserved the medical bills in original only to the tune of Rs.1,61,098/- and misplaced the remaining bills, but approximately, an amount of Rs.Two lakhs was spent on the treatment.

The claim projected in his application, was based on an accident, which was described as an untoward incident, which resulted in serious injuries, consequentially, posing him difficulty in long distance walk, lifting heavy things, difficulty and pain

while walking as well as climbing staircase, squatting and sitting crossed legs and immense pain in winters. Pleading that the disabilities incurred by him has changed his course of life and has impacted his life forever, he claimed compensation since the incident which resulted into the injuries, is an untoward incident, as defined in Section 123(c)(2) of the Indian Railways Act, 1989. The application filed by the applicant made the following prayer:-

> *"I pray that Rs.4,00,000/- or JUST compensation may please be awarded to me along with interest @ 9% p.a. from the date of application till the payment as per the provisions of Indian Railway Act, 1989"*.

4 In support of his claim, he filed his affidavit in lieu of evidence on 26/3/2015, where he reiterated his claim. He also filed the medical papers, reflecting the treatment offered to him. Apart, the accident memo signed by the Personnel, GRP in respect of the accident dated 23/11/2011 involving the applicant, which recorded that an aged person about 70 years, was found lying on platform no.5, and his personal details as well as the injuries sustained by him were set out in the accident memo. The time of the accident was described as '17.45' and the reason was particularly given as under :-

> "*while boarding running train on platform no.5*".

5 Along with the documents placed on record, the statement of the applicant recorded by the Railway on

23/11/2011 is also produced on record. In the said statement, the applicant has stated the cause of the accident as under :-

> *"As usual after completing my work, at about 17/30 hrs I was boarding Virar fast local at Platform No.5, Dadar(W) railway station by holding rod of door of train, train was started and my right leg slipped into the gap between the train and platform, and my hand lost grip of rod I fell down and sustained serious injuries to my head and right thigh. I was immediately removed to Emergency Medical Room, Platform No.6 at Dadar (Central) Railway Station, by the Railway Police with the help of stretcher porter and I was thereafter removed by them to Sion Hospital, by ambulance and admitted at 'E' ward, and my treatment is going on"*

6 It is this claim filed by the applicant which was adjudicated by the Tribunal, Mumbai Bench and was rejected.

Perusal of the impugned judgment would reveal the findings are rendered by the Tribunal on two main grounds, whether the applicant has proved that on the relevant day, he sustained injuries due to falling down from the train, as alleged and whether the incident can be described as 'an untoward incident' as defined u/s. 123(c)(2) of the Railways Act and (ii) whether the respondent prove that the claimant was not a bonafide passenger travelling in the train in question on the relevant day.

Answering the first issue in the negative, and second issue in the affirmative, the Tribunal has recorded as under :-

"16. Further I have also carefully perused the statement dt. 23/11/2011 of applicant Nitin Nagindas Hundiwala given to the police after the incident and marked as A-2, whereby it is recorded as under :-

> "…. I as usual today after completing my work, to go to residence at Dahisar, Vikhroli to Dadar Central and from Dadar (W) on platform No.5 of Dadar(W) while boarding Virar 5.26 hrs fast local train, I lost my hands grip and my leg slipped between the gap of the coach and platform and I fell down, suffered injuries to my head leg….."

17. On the other hand, Ld. Counsel for the respondent during the course of arguments argued that the injured applicant Nitin Nagindas Hundiwala while trying to board the running local train, which is an imprudent and criminal act on his part and during the process he had fallen down from the train in question and sustained serious injuries to his head and right leg. Thus, he himself endangered the safety of his life and as such, this incident is not covered within the meaning of Section 123(c)(2) of the Railways; and that the Railway Administration is exempted from any liability under Section 124-A of the Railways act.

19. From all the discussions, it is concluded that the injured applicant Nitin Nagindas Hundiwala on 23-11-2011, had not accidentally fallen down from the running train in question at Dadar Railway Station and had got injured, under some other circumstances and conditions other than falling from a moving train. As such, the present incident is not covered within the term "untoward incident" defined under Section 123(c)(2) of the Railways Act.

With the aforesaid observation, the application came to be rejected.

Being aggrieved, the applicant is before the Court.

7 In order to assess the sustainability of the said finding, it is necessary to refer to Chapter XIII of the Railways Act, 1968, which set out the liability of Railway Administration for death and injury caused to the passengers due to accidents.

"Accident" is defined as an accident of the nature described in Section 124 of the Act. 'Untoward incident' is another term which is defined in the said chapter and it include the accidental falling of any passenger from any train, carrying passengers.

Section 124 determine the extent liability of the Railway Administration, when in the course of working of the railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, 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 who has suffered a loss to maintain an action and recover damages in respect thereof, the railway administration shall, be liable to pay compensation to such extent as may be prescribed. Section 124-A provide for compensation on account of an untoward incident and since the

claim of the applicant revolve around the aspect whether the incident causing injuries to the applicant, is an untoward incident, which would make the applicant entitle for compensation, I must turn to the said Section.

Section 124A reads thus :-

> Section 124A – **Compensation on account of untoward incident.**— 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—
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> (a) suicide or attempted suicide by him;
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> (b) self-inflicted injury;
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> (c) his own criminal act;
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> (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. 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.

Explanation – For the purposes of this section, "passenger" includes –

(i) a railway servant on duty; and

(ii) a person who had 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"

8 Section 125 prescribe for the Application for compensation before the Claims Tribunal either under Section 124 or Section 124-A, by a person who has sustained an injury or suffered any loss and several other contingencies provided therein.

9 The term 'untoward incident' as used above, fell for consideration before the Hon'ble Apex Court in case of *Jameela & Ors Vs. Union of India, AIR 2010 SC 3705*, and on construing the two provisions contained in Chapter XIII of the Railways Act, 1989, their Lordships have recorded as under :-

"7 It is not denied by the Railways that M. Hafeez fell down from the train and died while travelling on it on a valid ticket. He was, therefore, clearly a passenger for the purpose of Section 124-A as clarified by the Explanation. It is now to be seen, that under Section 124-A the liability to pay compensation is regardless of any wrongful act, neglect or default on the part of the Railway Administration. But the proviso to the section says that the Railway Administration would have no liability to pay any compensation in case

death of the passenger or injury to him was caused due to any of the reasons enumerated in clauses (a) to (e).

8 Coming back to the case in hand, it is not the case of the Railways that the death of M. Hafeez was a case of suicide or a result of self-inflicted injury. It is also not the case that he died due to his own criminal act or he was in a state of intoxication or he was insane, or he died due to any natural cause or disease. His falling down from the train was, thus, clearly accidental.

9. 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 Section 124-A. A criminal act envisaged under clause (c) must have an element of malicious intent or mens rea. 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.

10 Another decision where the term has received a wider interpretation at the hands of the Hon'ble Apex Court is in case of *UOI vs. Prabhakaran Vijaya Kumar, 2008 (9) SCC 527*, where a lady trying to enter the train fell down on the railway track and was run over by the train and she died. On a claim being filed by her representatives before the Tribunal, the evidence of the prosecution witness was disbelieved by the Tribunal on an assumption that if he had been present on the spot, he would have helped the Station Master in removing the dead body and

further that the police did not record his statement. The Tribunal held that the act was not an untoward incident within the meaning of Section 123(c) of the Railways Act, as the same was not an accidental fall of passenger from train, carrying passengers. The High Court held that the case would fall within the expression "accidental falling of a passenger from a train carrying passengers" which was an 'untoward incident'. The High Court, therefore, awarded compensation and the Union of India filed an Appeal, which came to be dismissed with the following observations :-

> "10. We are of the opinion 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 our opinion 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 Section 123(c) of the Railways Act.
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> 11. No doubt, it is possible that two interpretations can be given to the expression 'accidental falling of a passenger from a train carrying passengers', the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence in our opinion the latter of the above mentioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred vide Kunal Singh vs. Union of India (2003) 4 SCC 524(para 9), B. D. Shetty vs. CEAT Ltd.

(2002) 1 SCC 193 (para 12), Transport Corporation of India vs. ESI Corporation (2000) 1 SCC 332 etc.

12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide Alembic Chemical Works Co. Ltd. vs. The Workmen AIR 1961 SC 647(para 7), Jeewanlal Ltd. vs. Appellate Authority AIR 1984 SC 1842 (para 11), Lalappa Lingappa and others vs. Laxmi Vishnu Textile Mills Ltd. AIR 1981 SC 852 (para 13), S. M. Nilajkar vs. Telecom Distt. Manager (2003) 4 SCC 27(para 12) etc"

The term 'accidental falling of passenger from a train carrying passengers' received a wider interpretation from the Apex Court and it was so set out in the following words :-

"14. In our opinion, if we adopt a restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford traveling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger i.e. a passenger traveling with a valid ticket or pass is

> trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression".

Being a welfare state, in all cases, where the principle of strict liability applies, it was held that the defendant has to pay damages for injuries caused to the plaintiff, even though the defendant may not have been at fault. On reflecting, upon Rylands vs. Fletcher, one of most creative generalizations, which for a long time looked destined to have a successful future, the rule was progressively emasculated until subsequently it almost became obsolete in England. After referring to the repudiation of the principle in Rylands Vs. Fletcher, the Hon'ble Apex Court concluded that the principle of strict liability is not subject to any of the exceptions to the Rule in Rylands Vs. Fletcher.

The position of law is thus settled, as above.

11 Here is a case where the applicant specifically deposed before the Tribunal that he boarded the train which was overcrowded and received a forceful push from the crowd inside the compartment, as a result, he lost his balance and his leg slipped into the gap between the train and platform and he fell down on the running train and sustained injuries, the case would clearly fall within the situation covered by 'untoward incident'. Merely because there is a variance in his statement given to the police, where he had stated that while boarding the train, by holding a rod of door of the train, his right leg slipped into the

gap between the train and platform and when he lost grip on the road, he fell down. Assuming for a moment, that even this version is true, still even this action would not be outside the scope of 'untoward incident'.

In the wake of the statement of the applicant that he was commuting everyday for rendering his services to his employer – S & S Enterprises, who has certified that he was working as part time consultant for L & T's Works coordination and rendered services to them till 23/11/2011, it is apparent that he was undertaking journey on each day of his duty. The evidence on record which is not traversed by the Railway that he was pushed outside the train by the crowd and fell into the slip, is covered by the definition of untoward incident u/s. 123(c)(2) of the Railways Act, 1989.

12 The exception, where no compensation would be payable by Railway, is only when such an act would amount to a criminal act. Criminal Act is not defined in the Railways Act, but the two provisions in the Act which impose penalty for the offences under the Act are Section 154 and 156 of Chapter XV of the Railways Act, which reads thus :-

> **154 Endangering safety of persons travelling by railway by rash or negligent act or omission.** If any person in a rash and negligent manner does any act, or omits to do what he is legally bound to do, and the act or omission is likely to endanger the safety of any person travelling or being upon any railway, he shall be punishable with

imprisonment for a term which may extend to one year, or with fine, or with both.

155. Entering into a compartment reserved or resisting entry into a compartment not reserved.—

(1) If any passenger—

(a) having entered a compartment wherein no berth or seat has been reserved by a railway administration for his use,

or

(b) having unauthorisedly occupied a berth or seat reserved by a railway administration for the use of another passenger, refuses to leave it when required to do so by any railway servant authorised in this behalf, such railway servant may remove him or cause him to be removed, with the aid of any other person, from the compartment, berth or seat, as the case may be, and he shall also be punishable with fine which may extend to five hundred rupees.

(2) If any passenger resists the lawful entry of another passenger into a compartment not reserved for the use of the passenger resisting, he shall be punishable with fine which may extend to two hundred rupees.

A careful reading of the two provisions would lead to an irresistible conclusion that only the two acts described above which endanger safety of persons travelling by railway or travelling on step or engine of train are covered. If in the daily chores, a passenger attempts to gain an entry, into an overcrowded train and is pushed by other passengers, resulting into his fall, there is no reason why such incident cannot fall within the ambit of 'untoward incident'.

13 The local trains in Mumbai, which are often called as 'Life Line of the City' with almost huge number of city's inhabitants relying on them to get to work or other destinations at some point of time. Even, it is not unknown, for the residents of Mumbai who, commute through railways to undertake risk at some point of time, in order to reach their destinations within time and with the limited number of vehicles to travel in overcrowded train. The City, which is affordable and convenient, the calculated risk cannot be surely amounting to 'criminal act'.

> "While there may be cases where there is intention to inflict oneself with injury amounting to self-inflicted injury, which falls short of an attempt to commit suicide, there can also be cases where, irrespective of intention, a person may act with total recklessness, in that, he may throw all norms of caution to the wind and regardless to his age, circumstances, etc. act to his detriment".

The Tribunal has, therefore, erred in making the case of the applicant fall within the scope of 'Criminal Act', as it lack any means rea.

The purpose of Section 124-A of the Act is to provide speedy remedy to an injured passenger or to the dependents of the deceased passenger involved in an untoward incident. To some extent, the said provision can be compared with a principle contained in Motor Vehicle Act, based upon 'no fault liability'.

The provision in the Railway Act, being a part of the beneficial legislation, it cannot be stretched to refuse to award compensation to a person who may act callously or imprudently at times.

14 Reverting to the second aspect about whether the applicant was a bonafide passenger of the railway, in absence of the ticket not being traced into his belongings when he was admitted into the hospital, the Tribunal has refused him the compensation. The learned counsel for the applicant Ms.Deshmukh has rightly relied upon the decision of the Apex Court in case of *Union of India vs. Rina Devi 2019 (3) SCC 572,* where the Apex Court highlighted the concept of 'self inflicted injury', and held that in order to establish a claim u/s.124 and 124-A about the claimant being a bonafide passenger, it has been held that mere absence of ticket with an injured or the deceased will not negate the claim that he was a bonafide passenger.

The issue was dealt in depth by the Apex court in view of the conflicting decisions, holding the field, at the hands of various High Courts and the position of law has been settled in the following words :-

> *"We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bonafide passenger for which claim for compensation could be maintained. 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 be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly".

15 In light of the aforesaid legal position, the facts of the case are to be appreciated. The applicant has proved certain facts, being, that at the time of accident, he was working with S & S Enterprises located at Vikhroli, and he being resident of Dahisar was required to travel to Vikhroli on the fateful day of the accident, and when he specifically deposed that he got the tickets validated by inserting the coupons in Coupons Validating Machine (CVM) and boarded the local train and reached at Dadar (Central Railway Station) and then boarded the fast Virar Local train in order to reach his destination at home.

Here is a person who is undertaking travel everyday for attending his work and merely because no ticket is found in his pocket, will not amount to he being classified as 'not a bonafide passenger' The railway has failed to discharge its burden to establish that he was not a bonafide passenger, and therefore the Tribunal has grossly erred in recording that, in absence of the ticket being found, he is not a bonafide passenger.

16 As far as the claim of the applicant is concerned, he has deposed that he spent an amount of Rs.Two lakhs on medical treatment, but produced the original medical bills to the tune of Rs.1,61,098/- since he lost the other bills. He has further deposed

about his present status that he is unable to walk long distance, lift heavy things, is unable to climb staircase, squat, sit crossed leg for long time and he was aged 70 years when he met with the accident. The compensation claimed by him is to the tune of Rs.Four lakhs. In my considered opinion, since he has been able to establish the medical expenses of Rs.1,61,098/-, he is entitled for the same. Apart from this, he is also entitled to be compensated for the loss suffered by him on account of the accident, when he is unable to follow the normal pursuit of his life. His employer has certified that he did not attend the duty after the accident, meaning thereby that he is unable to take the strenuous journey, which has incapacitated him from long walks, climbing staircases etc. which is imperative for travelling from his place of residence to his work place.

In the fitness of things and surrounding circumstances, he deserve to be compensated with an amount of Rs.1,50,000/- for the said loss caused to him. He is thus entitled for a total compensation of Rs.1,61,098/- for actual medical expenses plus a sum of Rs.1,50,000/- for the loss caused to him, by way of compensation for the untoward accident. The amount shall be payable to him along with interest @ 7% p.a from the date of this judgment till it's realization.

17 In the result, the impugned judgment and order is quashed and set aside.

Tilak

The Appeal is allowed in the aforesaid terms.

No order as to costs.

(SMT. BHARATI DANGRE, J.)

Tilak