

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 67 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DEVAN M. DESAI

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Approved for Reporting	Yes	No
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DIVAKAR RAMBAHADUR

Versus

UNION OF INDIA

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Appearance:

MR KUNAL M SHAH(5588) for the Appellant(s) No. 1

MR MAHESH B SHAH(1053) for the Appellant(s) No. 1

MR PJ MEHTA(467) for the Appellant(s) No. 1

MR KM PARIKH(575) for the Defendant(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE DEVAN M. DESAI**

Date : 02/07/2025

ORAL JUDGMENT

1. The present First Appeal is preferred by the appellant-original claimant under Section 23 of the Railway Claims Tribunal Act, 1987 (hereinafter referred to as 'the Act') assailing the impugned judgment and order dated 21.11.2019 passed in Claim Application No.OA(IIU)/ADI/2018/114 by Member (Judicial), Railway Claims Tribunal/Delhi at RCT/Ahmedabad Bench, Ahmedabad.

2. Heard learned advocate Mr. P.J. Mehta for the appellant and learned advocate Mr. K. M. Parikh for respondent remained absent.

3. The brief facts of the case are as under;

4. The claimant-injured filed a claim application under Section 16 of the Railway Claims Tribunal Act, 1987 for an untoward incident occurred due to incidentally falling down from a running train bearing Train No.16534 named KSR Bengaluru-Bhagat Ki Kothi Express Train on 13.03.2018 near Palanpur Railway Station. The claim application was resisted by Railway Authorities by filing Written Statement and production of DRM report. Claimant filed examination-in-chief in support of the claim application. After considering the evidence on record, the claim application came to be dismissed by learned Tribunal.

4.1. Being aggrieved and dissatisfied with the impugned judgment and order, claimant-appellant has filed the present First Appeal.

5. Learned advocate for the appellant submitted that the injured claimant, on 12-13/03/2018 was going to Abu Road by purchasing a railway travelling ticket in a train named KSR Bengaluru-Bhagat Ki Kothi Express Train. Claimant was travelling in the general compartment of the said train. Due to heavy rush in the general compartment of the train, claimant was standing near the entrance gate of the general compartment of the train. On 13.03.2018, during the course of journey, when the train was running near Palanpur, Railway Station, because of sudden jerk and jolt as well as due to heavy rush and push of other passengers, claimant lost his balance and accidentally fell down from train. Because of the untoward incident, claimant sustained serious injuries and right leg above knee was crushed under the wheels of the train and also sustained other multiple injuries on right hand. Claimant was admitted in Civil Hospital, Palanpur. The panchnama of the place of incident was drawn by the GRP of Palanpur on 14.03.2018. The victim was treated at Civil Hospital Ahmedabad from 13.03.2018 to 02.05.2018. It is

contended that claim application came to be dismissed on a simple ground that the injured had committed daredevil act and also held that the victim was trying to deboard from a running train. Reliance is only placed upon DRM report by the railway authorities. The affidavit of examination-in-chief was submitted by claimant and except general questions, there was no effective cross-examination of claimant by the railway authorities. The Railway Authorities did not lead any oral evidence. The incident is an 'untoward incident' as contemplated under Section 123(c) (ii) of Railway Act. In absence of any contrary material, a presumption is required to be drawn that the victim has fallen down from train and was also having a valid ticket. The panchnama of the place of incident was done on the next day of the incident and there is every chance during such period, the ticket which might have fallen down from the pocket of victim may not have been found at the place of incident. It is further contended that DRM report was submitted on 05.11.2018 i.e. 8 months after the date of incident. The DRM report is not a

conclusive piece of evidence in determining whether the incident is an untoward incident or not. The question in the claim application arising under the Railways Act, regarding negligence is not to be gone into.

5.1. In support of submissions, learned advocate for the appellant has placed reliance upon the decision in the case of ***Union of India Versus Rina Devi*** reported in ***(2019) 3 SCC 572***.

6. On perusal of the Written Statement filed by Railway Authorities against the claim application, it appears that the claim application is resisted on the ground that the incident is not an 'untoward incident' as defined under Section 123(c)(ii) of the Act and the reliance is placed upon DRM report, wherein the statement of Gateman of railway crossing and the statement of Station Master, Palanpur have been recorded. It is also the contention raised in the Written Statement that no valid ticket was found with claimant on the date of incident and therefore,

claimant was not a *bonafide* passenger as defined under the Act. It is also a contention of the respondent-Railway Authorities that it is a case of a self-inflicted injury as defined in Section 124A(b) of the Act. The victim was negligent and careless and was trying to deboard from a running train.

7. I have considered the submissions cavassed by the learned advocate for the appellant and perused record and proceedings. Claimant victim, as per the case pleaded in the claim application, was travelling to Abu Road by KSR Bengaluru-Bhagat Ki Kothi Express Train bearing Train No.16534 on 13.03.2018. As train reached near Palanpur Railway Station, because of the rush and push of passengers in the general compartment, claimant who was standing near the entrance gate lost balance and fell down accidentally. Resultantly, claimant was dragged with the train and he lost his right leg above knee and also sustained injuries on right hand and other parts of the body. Affidavit of statement of fact was submitted by claimant,

who was cross-examined by Railway Authorities but nothing substantial could be extracted from the cross-examination. Railway Authorities did not lead any oral evidence and relied upon only on DRM report dated 05.11.2018. Undisputedly, duration between date of incident and the submission of DRM report is nearly about 8 months. The DRM report indicates that the Investigating Officer has mainly relied upon the investigation done by police, statement of Gateman, Station Superintendent, guard of the Train No.16534 and the statement of Loco Pilot of Train No.16534. However, those witnesses were not examined by Railway Authorities in rebutting the contention of claimant. The Railway Authorities withheld the material evidence during the proceedings. In absence of any rebuttal evidence, a presumption has to be drawn that the incident which has occurred on 13.01.2018 is an untoward incident as defined under Section 123(c)(2). Section 123(c) defines untoward incident. Sub-section (2) of Clause (c) of Section 123 of the Act envisages that untoward incident means

the accidental falling of any passenger from a train carrying passengers. When respondents have failed to establish that deceased had fallen down from running train while deboarding train, a presumption is required to be drawn in favour of claimants that incident is an untoward incident. I am of the view that claimant has established the fact that the incident is an untoward incident. Section 124A of the Act provides compensation on account of untoward incident. The said provisions are reproduced for the sake of convenience as under:-

“124A. 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 of 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 medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.”*

The said provision mandates that when 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, is entitled to maintain an action and recover damages in respect thereof and Railway Administration shall be liable to pay compensation. The exceptions are carved out in the proviso to Section 124A. However, in the present case, since the Railway Authorities could not prove its contention that the case falls within the exception laid down in Section 124A, claimants cannot be deprived of their legitimate right to recover compensation.

8. In the case of ***Union of India Versus Rina Devi (supra)***, the question of absence or presence of a valid travelling ticket has been discussed and decided. In paragraph No.29 of the said decision, the Hon'ble Apex Court has discussed which is reproduced as under;

“29. 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 bona fide 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.”

9. In the background of the aforesaid facts, learned Tribunal has committed an error by rejecting the claim application. Accordingly, First Appeal stands allowed. The Claim Application of the claimant being Claim Application No.OA(IIU)/ADI/2018/114 filed by claimant is allowed.

10. Record and proceedings, if any, be sent back to the concerned Court below forthwith.

RINKU MALI

(D. M. DESAI,J)