IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO. 170 OF 2022

APPELLANT : NARENDRA S/o. CHUHADRAM SHARMA

..VERSUS..

RESPONDENT : UNION OF INDIA
Through General Manager,
Central Railway, C.S.M.T. Mumbai.

Ms Sumesha Chaudhari, Advocate for the Appellant.
Shri C. J. Dhumane, Advocate for the Respondent/Sole.

CORAM : ABHAY AHUJA, J.

DATE : 18.10.2022.

ORAL JUDGMENT :

1. This is an appeal filed by an injured passenger being aggrieved by the rejection of his claim before the Railway Claims Tribunal, Nagpur. By a judgment dated 23rd December 2021, the Railway Claims Tribunal (the Tribunal), Nagpur, has dismissed the claim application filed by the Appellant.

2. On 30th November 2017, the Appellant was traveling from Masjid Bandar to Santacruz via. Vadala intersection by Andheri Down Local Suburban Train. On the said date, he boarded the suburban train from Masjid Bandar around 6.00 p.m. At around 6.20 p.m when the train left Cotton Green Railway Station, the Appellant was inside the coach and operating his mobile, when suddenly a thief attacked him and snatched his mobile phone and ran away. The Appellant also ran behind him. The train had already started moving and the thief jumped off from the train. The Appellant was running behind him and while trying to catch him, he also tried to alight the train behind him. However, by the time the Appellant tried to alight the train, the train had reached the slope of the platform of the Cotton Green Railway Station and the Appellant fell down from the train and got injured. The Appellant was taken to Sion Hospital and later on, he was admitted in a Private Hospital in Chembur from 30th November 2017 to 4th January 2018.

3. The Appellant filed a claim application before the

Tribunal claiming a sum of Rs.8 lakhs along with interest as compensation on account of the injuries sustained by him in the untoward incident that occurred on 30th November 2017. The Appellant contended that he was a *bona fide* passenger at the time of the incident and had sustained injuries in the said untoward incident, and therefore, entitled for the said compensation. The Tribunal has found that the Appellant had a valid journey ticket on the date of the incident. The Tribunal had examined the monthly season ticket that was submitted by the Appellant, which was found to be valid between the journey from Ville Parle to Chhatrapati Shivaji Maharaj Terminus/Churchgate via. 3 routes and valid from 30th November 2017 to 29th December 2017. Since the incident had occurred on 30th November 2017, the Tribunal held that the Appellant was a *bona fide* passenger of the train. Therefore, there is no issue on this count.

4. On the basis of the evidence, the Tribunal held that it was a case of fall while making an unsuccessful attempt of alighting from a running train. However, the Tribunal

observed that this was neither a case of accidental fall from the train during the course of travel nor a case of accidental fall while trying to alight the train, which was halting at the station. The Tribunal observed that the act of the Appellant was totally imprudent, irrational, callous and unmindful of the consequences.

5. The Tribunal holding that the injuries sustained by the Appellant on account of the untoward incident must be proved by the Appellant in order to claim compensation under Section 124-A of the Railways Act, 1989 (the "Railways Act"), and observed that the Appellant had not been able to discharge his burden in this respect. The Tribunal held that the Appellant was not involved in an untoward incident as defined under Section 123(c)(2) of the Railways Act. It further held that this was a case of self inflicted injury and would fall under the proviso (b) to Section 124-A of the Railways Act, and therefore, the Appellant would not be entitled to any compensation payable by the Railway Administration and decided the case against the Appellant

thereby rejecting the claim of the Appellant. The Tribunal also rejected the judgments cited by the claimant on the ground that the said judgments were distinguishable on facts, as in those cases the victims had died due to loss of balance and pushed by the thief during the mobile snatching. It was observed that the victims therein were not trying to alight or jump from the train as in this case, and therefore, the decisions cited were not applicable to the case at hand.

6. I have heard the learned counsel for the Appellant as well as for the Railway Administration.

7. It is not in dispute that the Appellant has fallen down from the train of which he was a *bona fide* passenger. But, just because the Appellant fell down from the running train while trying to catch the mobile snatcher, it is being held by the Tribunal that the said fall does not come within the purview of an accidental fall or an untoward incident as defined in Section 123(c)(2) of the Railways Act. The whole act of running behind the thief is being held to be an act, which was imprudent, irrational, callous and unmindful of the

consequences. That the Appellant himself was responsible for the incident and had self inflicted the injury upon himself. Therefore, the Railways was in no way responsible for the injuries sustained by the Appellant and the claim for compensation from the Railways Administration did not arise. That, it was for the Appellant to discharge his burden of proving that the injuries were sustained on account of an untoward incident, which according to the Tribunal, the Appellant had failed to discharge. Therefore, this was not a case of untoward incident within the meaning of Section 123(c)(2) of the Railways Act. That, since this was a case of self inflicted injury and would be excluded from the compensation payable under Section 124-A of the Railways Act by virtue of the exception contained in (b) of the proviso to the said Section.

8. In the case of **Union of India vs. Rina Devi**[1] the Hon'ble Apex Court, while clearly holding that for applying the concept of self inflicted injury, an intention to inflict such

[1] AIR 2018 SC 2362

injury would be necessary. Mere negligence, of any particular degree, cannot be cited to apply this concept. The Apex Court then went on to hold that death or injury in the course of boarding or de-boarding a train will be an untoward incident entitling a victim to the compensation and would not fall under the proviso to Section 124 merely on the plea of negligence of the victim. Paragraph 16.6 of the said decision is usefully quoted as under :

> *"16.6 We are unable to uphold the above view as the concept of 'self inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. We may in this connection refer to judgment of this Court in United India Insurance Co. Ltd. v. Sunil Kumar[34] laying down that plea of negligence of the victim cannot be allowed in claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the pleas of negligence of the victim as a contributing factor."*
>
> *(Emphasis Supplied)*

9. Let us imagine a situation when we are in a train and busy operating our mobile, when someone suddenly snatches the mobile and runs; what would be any ordinary normal person's reaction. Undisputedly, it would be to run towards the person, who has snatched the mobile and try to stop him and recover the mobile. By no stretch of imagination, such an action can be said to be imprudent or irrational or callous or unmindful of the consequences. If for a moment we assume that it was not the train and it was a simple road or a platform, on which the Appellant would have been standing and someone would have snatched the mobile and ran, what would a normal person have done. The person would have run after the thief, tried and catch him and recover his possession and if while doing so, the person would fall down, could it be said that the person was imprudent or irrational or callous or unmindful of the consequences. I think it would be too fantastic to presume so. No person running after a thief to recover the possession stolen away from the person can be said to have an intention to inflict injury upon oneself. The

only intention that the person running after the thief would have is to somehow or the other recover the possession stolen by the thief. No rational or prudent person would do anything other than what the Appellant did. Therefore, I do not think that the Tribunal was right when it found that the Appellant was totally imprudent or irrational or callous or unmindful of the consequences. When your mind has only one single focus that is to somehow or the other recover your possession, how can the person said to be unmindful of the consequences. It was simply unintentional and accidental. If the person could have been mindful there was no question of the accident taking place.

10. In my considered view, therefore, the Appellant's accidental falling down from the train during the process of chasing the thief was an untoward incident.

11. Infact, Section 123(c)(1)(ii) also would support this view. The said Section 123 is usefully quoted as under :

> *"123. Definitions.- In this Chapter, unless the context otherwise requires,-*

(a) "accidental" means an accident of the nature described in section 124;

(b) "dependent" means any of the following relatives of a deceased passenger, namely:-

(i) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his parent;

(ii) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a pre-deceased son, if dependent wholly or partly on the deceased passenger;

(iii) a minor child of a pre-deceased daughter, if wholly dependent on the deceased passenger;

(iv) the paternal grandparent wholly dependent on the deceased passenger;

[2c][c] Untoward incident" means -

(1)(i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson,

by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers]"

(Emphasis Supplied)

12. As can be seen from the above quoted provision Section 123(c)(1)(ii), an untoward incident would also mean the making of a violent attack or the commission of a robbery or dacoity by any person in or on any train carrying passengers or in a waiting hall, cloakroom or reservation or booking office or on any platform, or in any other place within the precincts of a railway station.

13. Although the word “theft” is not specifically mentioned in this provision, however, considering that the Railways Act is a beneficial legislation, a wide and liberal interpretation deserves to be given to the provisions and not a literal one. The fact that a thief snatches the mobile of a *bona fide* passenger and runs and is able to jump off the train well in time before the platform ends, although unfortunately the passenger who runs behind him alights the train just after the platform is ending and falls down, injures himself, in my view may also be considered a violent attack or an attempt to commit robbery or dacoity in a train carrying passengers or within the precincts of the Railway premises and be an

untoward incident in that sense. However, even if one were not to take recourse to the above quoted provision, in view of what has been observed above, there is no doubt and it is also not in dispute that there has been an accidental falling down of the Appellant from the train carrying passengers under Section 123(c)(2) of the Railways Act.

14. In the facts and the circumstances of this case, I am clearly of the view that the Tribunal erred in dismissing the claim for compensation filed by the Appellant. This definitely cannot be said to be a case of self inflicted injury. The Appellant while attempting to recover his mobile from the thief, ran after him and while trying to do so, fell from the train at such a point of the platform, where there was a slope and then got himself injured as described in the discharge summary. When there is no intention to harm oneself, it cannot be said to be a case of self inflicted injury. This is a clear case of untoward incident and not a case of self inflicted injury. Also, this case does not fall under any of the exceptions cited in the proviso to Section 124-A. In my view, the decision

of the Tribunal dated 23rd December 2021, deserves to be set aside.

15. The impugned judgment is hereby set aside. The Appellant is entitled to a claim of Rs. 8 lakhs, which is to be paid to him as per the compensation notified by the Ministry of Railways vide the Railway Accidents and Untoward Incidents (Compensation) Rules, 2016, which have come into effect from 1st January 2017.

16. In this view of the matter, let an amount of Rs.8 lakhs be paid to the Appellant by the Respondent Railway authorities within a period of four weeks by depositing the same in his savings bank account after due verification.

17. The appeal, accordingly, stands **allowed** in the above terms. No costs.

(ABHAY AHUJA, J.)