

Bombay High Court

Harish Chandra Damodar Gaikwad vs Union Of India on 24 May, 2022

Bench: S. K. Shinde

Rane

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FA-979-2009

24.5.2022

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 979/2009

Shri. Harish Chandra Damodar
Gaikwad, aged 55year, Residing
at Motiram Park, Saraswati Apartment,
Room No.304, B- Cabin Road,
Ambernath, District-Thane.

) Appellant

:VERSUS:

Union of India,
represented by General Manager,
Central Railway, Mumbai-C.S.T.

) Respondent

Mr. Mohd. Hasain, Advocate for the appellant.

Mr. T.J. Pandian a/w. Mr. Dheer Sampat, Advocate for the
respondent.

CORAM : SANDEEP K. SHINDE, J.

JUDGMENT RESERVED ON : 6th May, 2022.

JUDGMENT PRONOUNCED ON : 24th May, 2022.

JUDGMENT :

1. Appellant's application under Section 16 of the Railway Claims Tribunal Act, 1987 claiming compensation for injuries sustained due to accidental fall from, the train carrying passengers, was rejected by Railways Claims Tribunal, vide judgment and order dated 17 th March, 2009. Thus, this Appeal under Section 23 of the Railway Claims Tribunal Act, 1987.

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2. Appellant would claim, that, he fell down from a local train, on 25th January, 2004 at around 17.00 hrs at Dadar Railway Station due to heavy rush of passenger in the compartment. As a result, he sustained serious injuries, to spine and pelvis and had undergone six surgeries, at LTMG

Hospital, Mumbai. While travelling, he was carrying with him a valid season ticket, bearing no.62490200, with journey extension tickets, Mulund to CSMT and CSMT to Mulund. Appellant would therefore claim, he was "bonafde passenger" In support of the claim, he had produced on record, season ticket (Pass), journey extension tickets, discharge card of LTMG hospital, report of A.R. Shaikh, Railway Police Constable

446. That being so, he claimed compensation in the sum of Rs.4,00,000/-. The claim was opposed by the respondents- Railway, contending that, appellant had sustained injuries due to his own act and negligence, and therefore claim was not admissible, in absence of "untoward incident" within the meaning of Section 123(c) of the Act of 1989. Respondents, relied on the evidence of Mr. Jagtap, Deputy Station Manager, Dadar Railway Station and Station Masters' Memo at Exhibit- R1, to contend that, appellant was knocked down by BL-25 dn (Badlapur train) at Kilometer 8/25 near platform no.4 at Dadar, while trespassing the front edge of the platform which itself was an offence punishable under Section 147 of the Rane 3/9 FA-979-2009 24.5.2022 Railways Act. Next ground taken up and urged while denying the claim, was that, appellant was not "bonafde passenger".

3. The Tribunal, upon appreciating the evidence held that, appellant was not the, "bonafde passenger", reason being, although he was carrying and possessing the valid 'Pass' (season ticket) and journey extension tickets, for want of identity card, season ticket could not have been held valid and therefore applicant was a passenger travelling without ticket. The next finding recorded by the Tribunal is that, a Station Master's memo dated 25th January, 2004 (Exhibit-R1) in no uncertain terms, reveals that, appellant was knocked down by BL-25 dn train, near platform no.4 of Dadar Railway Station and therefore report of A.R. Shaikh, Constable stating, appellant fell from the train, required no consideration and accordingly kept it out of consideration. Consequently, Tribunal concluded that, applicant was travelling without proper pass and in absence of "untoward incident" the claim was not admissible, and thus rejected the claim by judgment and order dated 17th March, 2009. Hence, this Appeal.

4. Heard learned counsel for the parties. Perused the records and proceedings.

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5. Expression "passenger" as defined under Section 2(28) of Act of 1989 means, "a person travelling with a valid pass or ticket. Expression "ticket" is not defined under the Act. However, term "pass" defined under Section 2(28) does not include ticket. Thus, to be understood, ticket includes "season ticket", which is popularly known as "Pass". Herein, appellant was travelling in the passenger train with valid and proper season ticket no.6249200 with journey extension tickets and this fact was not in dispute. Inspite of it, Tribunal held, appellant was travelling "without ticket" and thus concluded, applicant was not a "bonafde passenger". Question is, whether, for want of identity card, season ticket, carried and possessed by applicant-passenger, was invalid, and as such, was not "Bonafde Passenger"? In the context of these facts, respondents relied on instructions issued by the Ministry of Railways. Instructions stipulate that;

"It is necessary for the passenger to produce the identity card alongwith the season ticket, otherwise the season ticket will be invalid and passenger will be treated without ticket. It is necessary that, particulars of the passenger are properly and correctly entered on the Identity Card and the photograph frmly pasted thereon. The booking clerk will put a station stamp in such a way that half of the stamp appears on the photograph and remaining part appears on the Identity Card."

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Although, instructions stipulate, season ticket would be invalid for want of Identity Card, in my view, for more than one reason, non-production of the Identity Card alongwith the season ticket by a passenger, who had sustained injury due to accidental fall, itself would not render valid season ticket, invalid. First reason is that, applicant was travelling with valid and proper season ticket. Therefore, he was "Passenger"

within the meaning of Section 2(29) of the Act. Second reason is, instructions relied on by the Railways, cannot be said to be 'mandatory' and therefore would not render, proper season ticket, automatically invalid for non-production of identity card. Furthermore, in terms of provisions of Section 54 of the Act of 1989, every passenger shall, on demand by, any railway servant present his "pass" or "ticket" to such railway servant for examination during the journey. Therefore, passenger producing proper season ticket without, identify card, ipso-facto, would not render season ticket, improper and/or invalid, unless, it is proved that passenger was using season ticket, that was issued in the name of another person. Although, Section 53 of the Act, prohibits transfer of 'certain tickets' however, it is not respondent's case that, season ticket produced by the applicant was issued in the name of another person. Even otherwise, in this case, the appellant had discharged the initial burden by fling an Affidavit of Rane 6/9 FA-979-2009 24.5.2022 relevant facts. Whereafter, burden was shifted on the Railways to prove that, he was not a "bonafde passenger". Herein, appellant had produced the valid season ticket bearing his signature and also journey extension tickets, which bore season ticket no.62490200. The signature of the appellant on season ticket, was not disputed by the Railways. Moreover, season ticket and the journey extension tickets, were recovered, from the appellant while removing him at Hospital. In the circumstances, non-production of Identity Card alongwith season ticket, itself would not render proper season ticket, invalid. Besides, in the case of Union of India Versus. Rina Devi, the Apex Court has held that, mere presence of body on railway premises will not be conclusive to hold that, injured or deceased was a "bonafde passenger" for which claim for compensation could be maintained. However, mere absence of ticket with such injured or a deceased, will not negative the claim that he was a "bonafde passenger". Initial burden would be on the claimant which can be discharged by fling an Affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown by the attending circumstances. Herein, the appellant has discharged the initial burden by fing Affidavit alongwith the relevant documents i.e. valid season ticket, journey extension tickets and report of Constable. However, his evidence has not Rane 7/9 FA-979-2009 24.5.2022 been rebutted by the respondents-Railways and therefore the fnding recorded by the Tribunal that, he was not a "bonafde

passenger" being contrary to evidence, is hereby quashed and set aside. Thus, I hold that, appellant was a "bonafde passenger".

6. The next question that falls for the consideration is, whether appellant had sustained injuries in "untoward incident" within the meaning of Section 123C(2) of the Railways Act, 1989. Appellant, in support of his claim, had relied on the report of Constable, A.R. Shaikh. The report is at Exhibit-A2. It reveals therefrom that, Mr. Jagtap, Deputy Station Manager had issued a station memo, calling upon Mr. Shaikh to remove the appellant-injured at the hospital. The evidence of the appellant and report of Constable, Shaikh was discarded by the tribunal on the ground that, report of Shaikh was contrary to Station Master's Memo. The memo, according to Tribunal reveals fact, that appellant was knocked down by BL-25 dn train near platform no.4. In context of these facts, I have perused the evidence of Mr. Jagtap, Deputy Station Master, Dadar Railway Station. His evidence reveals that, on 25th January, 2004, one unknown passenger, without disclosing his identify informed him that, a person aged about 52 years was knocked down by Badlapur train kilometer 8/25 Rane 8/9 FA-979-2009 24.5.2022 near platform no.4. In cross-examination, Mr. Jagtap admitted that, personally he did not see the accident. Moreso, motorman of BL-25 dn train, had not given memo to the Station Master, nor he was examined, by the respondents. Thus, it is to be held that, evidence of Mr. Jagtap, Deputy Station Manager was hear-say. In view of these facts and evidence on record, the finding recorded by the Tribunal, that appellant had not sustained injuries in "untoward incident", but suffered "self-inflicted injuries", is erroneous and therefore quashed and set aside. Even otherwise, in the case of Union of India Versus. Rina Devi, the Apex Court has clarified that, concept of "self inflicted injuries" would require intention to reffect such injury and not mere negligence of any particular degree. For all these reasons, the impugned order is quashed and set aside.

7. Appellant had moved an application under Section 16 of the Railway Claims Tribunal Act, 1987 claiming compensation, under the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. It was an injury claim. The compensation sought was in respect of the injuries sustained by the appellant in an "untoward incident". As such, the Railway Claim Tribunal, shall proceed to grant compensation to the appellants in terms of Rule 3 of the Rules, Rane 9/9 FA-979-2009 24.5.2022 1990, after verifying the medical evidence produced by the appellant in support of his claim, preferably before 31 st July, 2022, and in accordance with law, laid down by the Apex Court, in the case of Union of India v/s. Rina Devi.

8. The Registry shall transmit, records and proceedings in Original Application No. 675/2005 to the Railway Claims Tribunal, Bench, Mumbai within two weeks from the date of uploading the judgment on the website.

9. The appellant shall appear before the Railway Claims Tribunal Bench, Mumbai on 10th June, 2022.

10. Appeal is partly allowed and disposed of. NEETA SHAILESH SAWANT Digitally signed by (SANDEEP K. SHINDE, J.) NEETA SHAILESH SAWANT Date: 2022.05.25 12:20:39 +0530