

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No.60/2011**

% **14th July, 2011**

MEHTAB SON OF SHRI MOHD. SABIR Appellant
Through: Mr. Navneet Goyal, Advocate with Ms.
Gurpreet Kaur, Advocate.

VERSUS

UNION OF INDIA Respondent
Through: Ms. Shilpa Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this First Appeal under Section 23 of the Railway Claims Tribunal Act, 1987 is by the minor child through his father against the impugned judgment of the Railway Claims Tribunal dated 10.11.2010 which has dismissed the claim petition in which it was alleged that the minor fell down from a running train and sustained grievous injuries.

2. The appellant/applicant in the claim petition stated that he alongwith his father Mohd. Sabir was travelling on 7.3.2010 in E.M.U train from Dayabasti to Sadar Bazar Railway Station and that due to

heavy rush of passengers the minor appellant i.e., master Mehtab fell down from the train and sustained injuries. It was further stated that ticket was lost in the accident as the bag containing the journey ticket and other belongings of the father Mohd. Sabir were lost in the aftermath of accident.

3. The Tribunal has dismissed the claim petition by making the following pithy observations:-

“ Regarding the nature of the incident, the applicant has stated that due to heavy rush of passengers, Master Mehtab, who was accompanied by his father during travel, fell down from the running train. However, the initial police records pertaining to this case, ex.AW1/4 and ex.AW1/5 merely state that Master Mehtab had been cut down by a train giving the impression that it was a case of run over by the train. There is also on record the statement of Shri Mohd. Sabir, the father of the injured applicant, who has stated that he and his son had valid tickets, which were lost after the accident. However, it is significant that although Shri Mohd. Sabir claims that he was travelling with his son when the unfortunate incident occurred, he himself has admitted that he was not present at the site when his son was removed to the Hospital by the police. According to him, his son had fallen just beyond Dayabasti and as the train had stopped only at Vivekanandpuri railway station, he returned to the site of the accident from that station. Considering the fact that Vivekanandpuri railway station is little more than a kilometer from the site of the alleged incident, it is inconceivable that he would not have reached the site before the police had arrived and taken the injured to the hospital. It is important to note that the police first are to be called by some person at the site, who has seen the injured, and for police to arrive at the site and make arrangements for transporting the injured, it takes a fair amount of time. The fact that Shri Mohd. Sabir was not able to arrive at the site to see his injured son, is clear evidence of the fact that he was actually not travelling by the train. It is also relevant to mention that the residence of Shri Mohd. Sabir was in a Jhuggi near to Dayabasti, and

in all probability, Master Mehtab was a victim of run over by a train, as there is no evidence on record to show that he was either a bonafide passenger of the train concerned or that he sustained grievous injuries on account of an accident fall from the train. These issues are decided accordingly in favour of the respondent and against the applicant."

4. I completely agree with the findings of the Railway Claims Tribunal in that the appellant had failed to make out the requisite case that he was injured while travelling as a bonafide passenger in a train. Reference to the D.D. entry shows that all that was stated was that the claimant suffered injuries because of having been run over by a train. Normally, the railway police in case of serious injuries being caused to a person on account of a fall from a train or a death resulting by falling from the train normally makes a detailed report mentioning the factum with respect to fall from the train. Further, in the present case, the Tribunal has rightly disbelieved the case of the claimant that the ticket was lost in the aftermath of the accident. I may note that facts of the present case are not such that there has been a death on account of an untoward incident and consequently the ticket which may have been in the deceased's possession was lost in the untoward incident. In the present case, there is no death but only injuries are stated to have been caused. More importantly the alleged ticket was admittedly not with the minor/applicant, but with his father, who suffered no injuries and who continued the travel in the train till the next station around just a kilometer away. Further, it is found as a matter of fact that the injured was taken away, to the hospital even before the father of the

applicant reached the site. Surely, it cannot be that a father would not have reached the accident site which is admittedly a kilometer away, within 10 to 15 minutes, and the injured child had to be carried by the police to the hospital. In the facts of the case also, it is clear that it was not as if the police post was located immediately adjacent to the place where the injury is alleged to have been caused to the child by falling from the train for the police have immediately reached the spot. Also, the Tribunal in my opinion seems to be justified in making the observation that since the place of accident is not too far away from the place of residence of the applicant, it is possible that the applicant would have suffered injuries on account of either walking on the railway tracks or crossing the same near about his residence.

5. I am noticing that many cases are coming up before this Court where it is more than amply clear that there is a systematic endeavour to defraud the railways because of the enactment and implementation of the Railway Claims Tribunal Act, 1987 which provides for statutorily fixed compensation in case of an untoward incident. In case of death the compensation is fixed at Rs. 4 lacs, and which can be very large amount in many cases. It is high time that this practice of filing fraudulent claims against the Railways pursuant to the Railway Claims Tribunal Act is looked into very strictly, though of course in those limited number of cases where it is ex facie clear that a fraud is sought to be perpetrated on the Railways. The facts of the

present case show a clear attempt by the applicant, who is only a minor, and therefore actually his father Mohd. Sabir to defraud the railways. For pursuing a fraudulent case and seeking compensation perjury has been committed by making statements on oath before the Railway Claims Tribunal by filing an affidavit by the said Mohd. Sabir. I wish that Mohd. Sabir was better advised by his lawyers before the Railway Claims Tribunal but unfortunately this did not happen possibly because of the high amount of compensation.

6. The provision of Section 340 of Code of Criminal Procedure, 1973 (Cr.P.C.) provides for a complaint being filed before a concerned Metropolitan Magistrate in case any of the offences as stated in the said section are found to have been committed. The offences which are mentioned in Section 340 Cr.P.C. are those offences contained in Section 195(1)(b) Cr.P.C. A reference to Section 195(1)(b) shows that it includes the offences of perjury, giving false affidavits etc. and which are punishable under Sections 193, 199, 200 and 209 of Indian Penal Code, 1860 (IPC). Prima facie, in the present case there is made out a case for a complaint to be registered by the Registrar General of this Court acting under Section 340 Cr.P.C. against Mohd. Sabir through whom the present appeal has been filed and through whom the claim petition was also filed before the Railway Claims Tribunal and who has committed the offences of perjury, giving false evidence, giving and using false declaration and making a false claim.

7. Accordingly, while dismissing the appeal, I direct the Registrar General to make a complaint to the concerned Metropolitan Magistrate having jurisdiction and also take such other steps as are required in law under Section 340(1)(d) &(e) Cr.P.C.

8. The matter be listed before the Registrar General of this Court on 10.8.2011 in terms of the present order. A copy of this order be sent to Railway Claims Tribunal.

With the aforesaid observations, the appeal stands dismissed and disposed of.

JULY 14, 2011
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VALMIKI J. MEHTA, J.