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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO No.355/2010

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14th September, 2011

SH. DEEP NARAYAN

..... Appellant

Through: Mr. Arun Srivastava, Adv.

VERSUS

UNION OF INDIA

..... Respondent

Through: Mr. Abhinav Jain, Adv.

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? **Yes**
3. Whether the judgment should be reported in the Digest? **Yes**

VALMIKI J. MEHTA, J (ORAL)

CM No.17134/2010 (delay in refiling)

For the reasons stated in the application the delay in refiling is condoned.

CM stands disposed of.

FAO No. 355/2010

1. The challenge by means of this first appeal under Section 23 of the Railway Claims Tribunal Act, 1987, is to the impugned judgment dated 3.2.2010 of the Railway Claims Tribunal, and by which judgment,

the Railway Claims Tribunal dismissed the claim petition of the appellant who claimed to have been injured on account of a fall from a train near Badli on 17.11.2008.

2. The case of the appellant/claimant in the claim petition filed before the Railway Claims Tribunal was that he had purchased a second class general ticket for travelling from Adarsh Nagar to Holambi Kalan, Delhi. This is mentioned in paras 7 and 7A of the Claim Petition. In para 11 of the Claim Petition, it is said that the train ticket was lost as the hand bag containing journey ticket was lost. The case which was set up in the claim petition was that the appellant on 17.11.2008 was travelling from Adarsh Nagar to Holambi Kalan and since the train was over crowded and it took strong jerk/jolt, he fell down from the moving train and suffered injuries. It was then alleged that the right leg of the appellant came in the wheel of the train and which had to be amputated. It was further the case of the appellant that he became unconscious and was lying near the track for the whole night and in the morning he was taken to hospital when he was discovered lying near the track by a railway employee.

3. As contrasted to the case set up in the claim petition of not travelling with anyone and of having purchased a second class general ticket which got lost, in the affidavit by way of evidence the case however was laid out that actually the appellant was travelling with two of his friends namely Sh. Suresh and Sh. Sanjay and the computerized

joint train ticket for a total of three persons was purchased by the friend Sh. Suresh who had the same. While climbing the train, the appellant was separated from two of his friends who had to climb another compartment due to the rush of passengers and at the end of the journey his friend threw away the ticket and without waiting for him the friends left the station for their homes. In the affidavit, by way of evidence the appellant did not mention that he had become unconscious and in fact laid out a case that he remained lying on the spot for the whole night as the place of the accident was a lonely place. The Railway Claims Tribunal dismissed the claim petition pointing out to the various inconsistencies in the pleadings and the evidence on behalf of the appellant and which inconsistencies were serious contradictions. Some of the relevant observations as given by the Railway Claims Tribunal read as under:-

Regarding Issue No.1, the Ld. Counsel for the applicant submitted that in the claim application, it is mentioned that the applicant boarded the train 1-HNK from Adarsh Nagar Railway Station to Holambi Kalan, Delhi Junction on 17.11.2008 in the night after purchasing a valid journey ticket & the said journey ticket lost during the accident. In support of this issue, the applicant placed on record a document AW1/7 i.e. the original Railway Journey Ticket, when the applicant was examined as AW1. The Ld. Counsel for the applicant further submitted that the applicant was a bonafide passenger of the train in question on 17.11.2008. However, onus lies on the respondent to prove that the applicant was not a bonafide passenger of the train in question.

On the other hand, the Ld. Counsel for the respondent submitted that the contents of the affidavit AW1/1 & the claim application are contradictory to each other regarding the validity of railway journey ticket. In para No.7 & 11 of the claim application, it is stated by the applicant that the applicant lost his hand bag containing the railway journey

ticket & clothes due to accident. But, the applicant in his affidavit AW1/1 stated that the ticket on the strength of which the applicant was travelling with his friends from Adarsh Nagar Railway Station to Holambi Kalan had been thrown away by his friend Sh. Suresh & it was a computerized single ticket for three persons.

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In the present case, I observe that the applicant in his pleadings stated that the information regarding his injury falling down from the train, was given by the Railway line man to the GRP, who brought the applicant to the Babu Jagjivan Ram Hospital. But no such document was placed on record by the applicant to prove that information regarding the accident was given by Railway lineman to the GRP. However, the respondent placed on record a document R1 i.e. the report of Station Master Badli, that no such untoward incident occurred or reported on 17.11.08 at Badli Station. Regarding the above said report, the applicant did not submit any explanation. The contents mentioned in the claim application & affidavit AW1/1, are contradictory to each other on the ground that in the affidavit the applicant stated that he was travelling with his two friends, namely Suresh & Sanjay, but the said fact was not mentioned in the claim application. So, it is clear that it is an after-thought. If the applicant was travelling with his friends then why the applicant remained lying on the railway whole night on 17.11.08."

4. In addition to the aforesaid findings and conclusions of the Railway Claims Tribunal, I would like to take note of the following:-

(i) The pleading and the evidence of the appellant in the Railway Claims Tribunal is totally silent as to what is the occupation of the appellant. This is important because these days almost everyone has a mobile phone and it was not the case of the appellant that he became totally unconscious after falling from the train. The appellant, therefore, could very well have contacted someone since he was not unconscious.

(ii) There is no reason why a person who would only be seriously injured in the leg would prefer to keep on lying near the track and not drag himself to a reasonable distance or at least shout and raise hue and cry. Of course, the appellant has sought to contend that he fell down near a lonely place, however, the DD No.6 clearly shows that the appellant had fallen near Badli Gate i.e. a Railway Crossing gate. Surely, at a Railway Crossing Gate there would have been a railway employee manning this gate. The stand of the appellant therefore totally lacks credibility.

(iii) It is not believable that the other two friends of the appellant, assuming they were friends, would not wait at the railway station for the appellant at the destination because the train ticket for all the three persons was allegedly with Sh. Suresh and the appellant would have required the ticket at the time of exit from the train and thus the friends would have waited for the appellant or at least made enquiries.

5. A resume of the facts of the present case show the following important conclusions.

(i) Whereas in the claim petition a case was laid out that the ticket was lost in the accident, in the evidence, a totally new case was laid out that the ticket was with his friend Sh. Suresh who threw the ticket on the completion of the journey.

(ii) No where in the claim petition, it is mentioned that the appellant was travelling with his two friends, and this totally new case of the
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appellant travelling with his friends, and that too having purchased the joint computerized ticket of three persons, has come out for the first time only in the affidavit by way of evidence filed.

(iii) The appellant has deliberately not proved his occupation in life which would have been very vital to arrive at a conclusion on the issue of there having taken place the untoward incident of the appellant falling from the train. It is inconceivable for a person to say that although the serious injury was only in the leg, he continued to lie throughout the night near the railway tracks and did not choose to drag himself or raise a hue and cry, considering that Badli Railway Gate was near the place of incident. It is also doubtful therefore that the appellant in fact had fallen near the lonely place. I may only add that throughout the railway tracks in the city like Delhi, there is hardly a lonely place and at most of the places adjacent to the tracks either there are constructions or habitations or some or the other activities. In the facts of the case and considering that the appellant was only seriously injured in the leg, this becomes very relevant.

(iv) It is not possible that the friends would have made no enquiries about the appellant on reaching destination or in fact not make hectic enquiries if the appellant was not found at all. It is inconceivable that if the appellant was travelling with friends, such friends would simply leave for their homes, more so considering the fact that the ticket of the appellant was with Sh. Suresh and Sh. Suresh would have known that

the appellant would have been accosted at the gate of railway station for the ticket.

(v) If the appellant really did fall from the train, there was no reason why someone or the other in the train would not have either tried to pull the chain or raise hue and cry or at least orally reported the incident to at least one railway employee. After all, the train was alleged to be chok-a-blok with passengers. This further shows the total lack of credibility in the case of the appellant.

6. I, therefore, completely agree with the Railway Claims Tribunal that there was no untoward incident of the appellant falling from a train.

7. I have been observing in a few judgments of mine that many appeals are coming up before this court and in which cases it is quite clear that these cases are completely false cases and an endeavour is being made to get statutory compensation running into lacs of rupees which is allowable by the Railway Claims Tribunal. In one of the cases, being **FAO 60/2011 titled as Mehtab Vs. Union of India decided on 14.7.2011**, I have also initiated proceedings under Section 340 Cr.P.C.

8. In the present case also, it is quite clear that the claim is ex facie false. Instead of however proceeding under Section 340 Cr.P.C, I would prefer to impose costs on the appellant so as to act as deterrent to similarly situated persons who chose to file false claims. This appeal is

therefore dismissed with costs of Rs.15,000/- and which costs be paid within a period of four weeks from today.

The appeal is accordingly disposed of. Trial court record be sent back.

SEPTEMBER 14, 2011
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VALMIKI J. MEHTA, J.