

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

+ **FAO No. 96/2012**

% **30th April, 2014**

UNION OF INDIA Appellant
Through: Mr. A.S. Dateer, Advocate

Versus

VIKRAM BAHADUR CHAND Respondents
Through:

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Costs of Rs. 5,000/- imposed upon the appellant on 15.4.2014 are waived.

2. This first appeal is filed by the Railways under Section 23 of the Railway Claims Tribunal Act, 1987 impugning the judgment of the Tribunal dated 30.9.2011 by which the claim petition filed by the respondent/claimant was allowed.

3. The facts of the case are that respondent on 2.3.2010 was to travel from New Delhi to Bangalore by Karnataka Express Train. The appellant for the purposes of journey had purchased a railway ticket. The train was

overcrowded and when the train started moving from the New Delhi Railway Station, due to sudden jerk and jolt as well as thrust from the passengers, the respondent lost his balance and fell down from the moving train. Because of the accident, respondent suffered injuries to both his legs which had to be amputated. The respondent was brought to the Lady Hardinge Medical College & Smt. Sucheta Kriplani Hospital, New Delhi for treatment by the police and the matter was reported to police vide DD no. 27A dated 2.3.2010. The claim petition was accordingly filed before the Tribunal.

4. Tribunal has allowed the claim petition by holding that the respondent was a *bona fide* passenger and which had been proved by the original train ticket filed as Ex. AW 1/2. The factum of the accident is mentioned in DD entries and statement made to the police on 2.3.2010, the date of the accident, which have been filed and proved as Ex. AW 1/4 and Ex. AW 1/5. No evidence in rebuttal was at all adduced on behalf of the appellant. The relevant observations of the Tribunal for allowing of the claim petition read as under :

“Issue Nos. 1 to 5:

The above mentioned issue are taken up together for the sake of convenience because these issues are inter-connected and inter-related to each other. In support of these

issues, the applicant has placed on record is affidavit as AW1/1 along with other documents i.e AW1/2 to AW1/7 & Mark-A in evidence. It is submitted that the applicant boarded the Karnataka express train from New Delhi for going to Bangalore city, on the strength of valid railway journey ticket, & the train was overcrowded & it is further stressed that as the train, started moving from New Delhi railway station, then there arose a sudden jerk/jolt & due to that jerk/jolt as well as thrust from the passengers, the applicant lost his balance & fell down from the moving train, resulting in the amputation of his both legs. The injured/applicant was brought to Lady Hardinge Medical College & Smt. Sucheta Kriplani Hospital, New Delhi for treatment by the police. It is further emphasized that the untoward incident occurred, only due to the accidental falling of the applicant from the train & in this regard matter was reported to the GRP NDRS vide DD no. 27A dt. 02.03.2010. The applicant, in his evidence stated that he fell down from the train, due to sudden jerk & thrust from the passengers. During treatment, his right leg above knee & left leg below knee were amputated. Ld. Counsel further emphasized that no evidence was adduced by the respondent in rebuttal and the respondent also did not challenge the authenticity of the above mentioned documents. It is further submitted that the respondent also could not elicit any material thing from the cross examination of the witness. Hence, the applicant is entitled to get compensation, on account of injuries, suffered by him, caused due to the untoward incident, which occurred on 02.03.2010. The evidence of the applicant coupled with the documents placed on record with regard to the accident in question, fully establish the case of applicant. Hence, the applicant is entitled to get compensation from the respondent. On the other hand, the respondent submitted that the alleged incident is not covered under Section 123 (c) (2) of the Railways Act & the contents of the claim application do not attract the ingredients of sections 123(c) read with section 124 A of the Railways Act, 1989 & so, it is not a case of an untoward incident & the validity of the alleged ticket is under investigation & it is further submitted that the ticket placed

on record, does not belong to the applicant rather it belongs to any other person. Hence, the Railway Administration is not liable to pay any compensation to the applicant. In support of their version, the respondent placed on record the affidavit of Sh. Manik Chand as RW/1 & other documents as RW1/2& RW1/3. Hence, Railway Administration is not liable to pay any compensation to the applicant.

After perusal of the record, I observe that onus, lies on the respondent to prove that the injured/applicant was not a bonafide passenger of the train in question & in this regard, no convincing & plausible evidence was adduced on behalf of the respondent. The respondent is also miserably failed to establish that the ticket i.e AW1/2 placed on record, does not belong to the applicant rather it belongs to any other person, but RW1 did not place on record the statement of Sh. Prem (brother of injured), which was recorded by him as it was stated by him during his cross examination before the Tribunal. This inference goes against the respondent. Therefore, in the totality of the circumstances, I have no hesitation in holding that the applicant was travelling as a bonafide passenger on the train in question on the relevant date. As per Section 123 © 2 of the Railways Act, 1989, “Untoward Incident” means..... the accidental falling of any passenger from a train carrying passengers”. The applicant has mentioned the details of his fall from the train, in his affidavit and also in the claim application. The applicant was cross examined by the respondent, but the respondent could not get any material thing from the evidence of the applicant. No questions or suggestions were put to the witness/applicant that the applicant did not receive any injury after falling from the train in question. However, in the documents AW1/4 & AW1/5, it is clearly mentioned that the applicant received injuries after falling from the train in the night of 02.03.2010, while he was boarding the Karnataka express train as his foot slipped, due to heavy rush in the train compartment. The contents of the documents AW1/4 & AW1/5 are also narrated by the applicant in his cross examination, when examined before the Tribunal, as on 03.01.2011.”

“The respondent did not specifically, challenge the nature of injuries sustained by the applicant. So, it is clear that the applicant has lost his right leg (above Knee) & left leg (below knee) in the untoward incident & for that, the respondent is liable to pay compensation to the applicant. Having regard to the nature of injuries, it is clear that it would clearly attract item no.3 of part II of the Schedule. The compensation payable for such injury in Rs. 4,00,000/- (Rs four lakhs). Hence, the applicant is entitled To get compensation of Rs.4,00,000/- (Rs four lakhs) from the respondent Railway Administration. The above mentioned issues are decided in affirmative & in favour of the applicant.”

5. I do not find any illegality whatsoever in the impugned judgment of the Tribunal because the train ticket has been filed and proved on record as Ex. AW 1/2 and which is of travel from New Delhi to Bangalore. Respondent has not led any evidence, and therefore, has failed to prove that the train ticket did not belong to the respondent/claimant. The factum with respect to the happening of the untoward incident is proved from the documents Ex. AW 1/4 and Ex. AW 1/5 and there is no reason to disbelieve the contents of the same because there is no reason why respondent would have given a false statement to the police when the accident happened. It is too far fetched to presume a false statement to the police contemporarily made allegedly because a claim would be thereafter filed before the Tribunal. I do not think that people get both their legs crushed in an

accident and in such a grave situation give a false statement of travel to the police simply for the purpose of subsequently claiming compensation. Making a statement to the police immediately after the incident naturally shows what actually happened, and therefore, the documents Ex. AW 1/4 and Ex. 1/5 show that the respondent had boarded the Karnataka Express Train but he was pushed out from the train on account of the crowd in the train. The train ticket number has also been mentioned in the statement of the respondent to the police which is Ex. AW 1/5 showing the undoubted validity of the ticket and hence of the respondent being a bonafide passenger.

6. In view of the above, there is no merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs.

APRIL 30, 2014
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VALMIKI J. MEHTA, J