

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO No.138/2014 and C.M. Nos.8262-63/2014**

% **9th May, 2014**

SH. AJAY KUMAR GUPTA Appellant
Through: Ms. Aruna Mehta, Advocate.

Versus

UNION OF INDIA Respondent
Through:

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

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed under Section 23 of the Railway Claims Tribunal Act, 1987 impugning the judgment of the Tribunal dated 23.1.2014 by which the claim petition filed by the claimant has been dismissed. The appellant/claimant had filed the claim petition on the ground that he got injured in his left eye on account of an untoward incident on 14.7.2010 when a stone was thrown by some person from outside the train and he got injured in the eye because of the stone hitting his eye.

2. The facts of the case as pleaded by the appellant are that he was travelling on 14.7.2010 by Seemanchal Express train no.2488 from Anand

Vihar railway station to Jogbani. Appellant was a bonafide passenger and was sitting on berth no.39 of S-13 coach by the side of the window. The appellant states that a stone came through the window with force and hit his left eye causing bleeding/injury. The appellant stated that he pleaded with the on duty coach conductor but he was informed that the train will stop only at Kanpur Central railway station. After reaching the Kanpur Central railway station, claimant stated that he was sent by the railway authorities to the hospital for treatment and firstly was sent to the KPM Hospital, Kanpur and was thereafter referred to Lajpat Rai Hospital at Kanpur and where he was given initial treatment. Appellant claimed to have return to Delhi on 15.7.2010 and stated that he underwent further treatment at AIIMS. The claim petition was therefore filed with respect to the injuries suffered in the eye which according to the appellant was an ‘untoward incident’ i.e a ‘violent attack’ as stated in Section 123(c) of the Railways Act, 1989.

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

“8. According to the applicant, he was sitting by the side of window in S-3 coach and a stone came through the window and hit against his left eye causing bleeding injury. In the application or in the evidence, the time at which the incident occurred, is not mentioned and the place of occurrence is stated as between Tundla Junction and Kanpur. In the evidence affidavit, the applicant has stated that somebody threw a stone from outside, which hit the right eye of the applicant. In the

application, Column 6(b) relating to the particulars of the incident, the applicant has not stated that someone has thrown the stone from outside. What all stated therein is that the stone reached from the window in the said coach and hit the left eye of the applicant. In the application, it is repeatedly stated that it was the left eye, which was hit by the stone and it was left eye which suffered a bleeding injury due to the said hit. However, when it came to the evidence, the applicant has stated in the affidavit that a stone hit the right eye and it was the right eye, which suffered the injury. The medical record of treatment at various hospitals filed by the applicant under exhibit A-4 to A-6 would show that it was the right eye, which suffered injury and it was in respect of the right eye that treatment was rendered. The disability certificate states that *“On examination his best corrected visual acuity was NO perception of light, less than N36 in the right eye and 6/6; N6 in the left eye, which can be considered as 30% visually impaired.”* Ex.A-7, the certificate does not make it clear as to which of the two eyes was visually impaired. Be that as it may, the averments in the application are in total contradiction with the evidence adduced by the applicant as to the eye, which has suffered the injury, the application stating that it was left eye and the evidence showing that it was the right eye. The above medical contradiction between the pleading and the evidence remained unexplained.

9. According to the applicant, the incident occurred between Tundla and Kanpur and that after the train reached Kanpur, he was sent to KPM hospital along with a memo by a railway doctor. He claims to have made a request to the train conductor, who is stated to have told him that the train will stop only at Kanpur. It is not disputed that the distance between Tundla and Kanpur is more than 200 km. The application has not specified either in the application or in the evidence as to where between Tundla and Kanpur, the incident occurred and at what time. In the cross-examination, AW-1 stated that he did not give any written complaint to the TTE. According to him, after he reached Kanpur, he was sent to KPM hospital by a railway doctor along with a memo, Exhibit A-2. Admittedly, no complaint was given by the applicant to the station authorities at Kanpur. It is not known who has issued exhibit A-2, the memo since the same does not bear signatures of anyone. It refers to Re Da, which according to the applicant, means railway doctor. The name of the railway doctor is not disclosed and

how the services of the railway doctor were requisitioned and by whom is also not disclosed. It is not the case of the applicant that he gave any complaint to the police authorities on duty on the platform. In the cross-examination, AW-1 stated that FIR was registered at Kanpur and his statement was also recorded. He has not produced a copy of the said FIR or a copy of the statement. He does not know if the police have filed any final report or not. If really any complaint was given by the applicant to the railway authorities at Kanpur and any FIR was registered based on the said complaint, there is absolutely no reason for not producing a copy of the same by the applicant. Ex.A-2 does not also mention any crime number or FIR number. Except Ex.A-2, an unsigned Memo, whose authenticity is not established, the applicant has not filed any other record of investigation by the police to show that he gave any complaint and the same was investigated into regarding the alleged incident. Kanpur Central is a major railway station, where several railway and police authorities would be available on duty. Admittedly, the applicant did not approach any of them. The respondent filed exhibit R-1, the CMI Report to the effect that no information was received regarding the alleged incident from any source and no entry was made in any records regarding the same. It is not known as to who referred the applicant of KPM hospital and who accompanied him. In the absence of any record of investigation by the police or any record of the station authorities pertaining to the alleged incident, the scanty evidence let in by the applicant cannot form a basis for sustaining the plea of the applicant that he suffered injury to the eye during the course of his travel. As stated upon, there is material contradiction between the applicant's pleading and the evidence as to the eye, which suffered the alleged injury that goes to the root of the matter." (underlining added)

4. A reading of the aforesaid paras shows that the claimant did not initially take up the case with the railway authorities that he had got injured because someone threw a stone from outside the train which hit the appellant. The case only was that a stone came from outside the train and which hit the appellant. Tribunal also notes that in the memo Ex.A2 relied

upon by the appellant there is no statement of the appellant that he has got injured because someone has thrown a stone from outside the train and by which stone the appellant got injured. Appellant in the cross-examination stated that an FIR was registered at Kanpur but he has not filed any copy of the alleged FIR. There is also no complaint made to the Railways by the appellant of his being injured on account of a stone being thrown by someone from outside the train and it hit the appellant who was sitting on the window seat of the coach. Tribunal also refers to the fact that there is no report lodged with the Railways of any incident with respect to stone throwing and there is no such entry accordingly made in records. Accordingly, the Tribunal in view of these findings, dismissed the claim petition, and to which I completely agree because the liability of the respondent/Railways is only in case of violent attack i.e a person throws a stone from outside the train and by which a bonafide passenger gets injured, and in proving this, the appellant failed before the Tribunal, and resulting in dismissal of his claim petition.

5. Of course, I must clarify that I do not agree with the conclusion of the Tribunal that Section 123(c) does not provide that when a person gets hit by a stone thrown by someone at the train and which hits and causes an injury to a bonafide passenger in train, the incident will not be an untoward

incident once the stone is thrown by a person from outside the train and a bonafide passenger gets injured. Section 123(c)(1)(ii) clearly states that there is an untoward incident because this provision deals/provides for compensation for injury caused if there is a violent attack. The expression 'violent attack' is very wide expression and throwing of a stone by a person from outside the train by which a bonafide passenger is injured will be included in the expression 'violent attack'. The word 'violent' is derived from the word 'violence' and violence has to be interpreted in its natural/ordinary meaning including of a person getting injured on account of throwing of stone by a person at a bonafide passenger in a train and which will be covered in the expression 'violent attack'. However, since the appellant failed to prove that he was injured on account of throwing of a stone by a person whereby the appellant was injured, consequently, the Tribunal has rightly dismissed the claim petition.

6. I may note that appellant has moved an application for additional evidence being C.M. No.8263/2014, however, after taking benefit of complete trial and failing in proving his case, and which had not only a number of improbabilities but also inconsistencies, the present is not a fit case to allow the appellant to lead evidence and therefore C.M. No.8263/2014 is dismissed.

7. 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.

MAY 09, 2014
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VALMIKI J. MEHTA, J.