

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

**FAO No.432 of 1998 (O&M).
Date of Decision: 19.05.2016.**

Harkanwarpreet Singh Bindra

....Appellant.

VERSUS

Union of India

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Inderjit Sharma, Advocate for the appellant.

Mr. Karminster Singh, Standing Counsel
for respondent-Union of India.

SNEH PRASHAR, J.

CM-3008-CII-1998

There being delay of 20 days in refiling the appeal, an application under Section 151 of the Code of Civil Procedure for condonation of delay was filed by the appellant.

Considering the averments made in the application, the delay is condoned and the application is disposed of.

FAO-432-1998

Challenge in this appeal is to the judgment dated 23.09.1997 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for short, “the Tribunal”) vide which the claim petition filed by the appellant was dismissed.

The facts as pleaded by the appellant in the claim petition filed by him were that on 19.11.1995 Chattisgarh Express Train arrived at Platform No.4 of Amritsar railway station at about 9:30 a.m. When the train stopped and the appellant, who was travelling in the train was about to alight, suddenly the train again started moving with a jerk, as a result of which he fell between the train and the platform and his both legs got amputated. It was also alleged that the level of Platform No.4 is lower than the steps of the trains and there remains a big gap between the steps of the train and the platform.

Submitting that he remained under treatment for a period of 1½ months and spent approximately Rs.2 lacs on his treatment and also that he has become 100% disabled, the appellant filed a claim application claiming compensation to the tune of Rs.5 lacs from respondent-railway administration. Since the claim application was filed after expiry of the limitation period prescribed for the same, an application under Section 5 of the Limitation Act was also filed for condonation of delay alongwith the petition.

The petition and the application were contested by the respondent-railways. It was denied that any such accident as alleged by the appellant had taken place at Platform No.4 of Amritsar railway station on 19.11.1995. The appellant was also said to be not a bonafide passenger of the train.

On the pleadings of the parties, issues were framed. Both the parties were given adequate opportunity to adduce evidence. Considering

the evidence led by both the parties and the submissions made on their behalf, learned Tribunal finding that the appellant is not entitled to any compensation, dismissed the application vide judgment dated 23.09.1997.

Feeling aggrieved, the appellant-claimant preferred the instant appeal.

The submissions made by Mr. Inderjit Sharma, learned counsel for the appellant and Mr. Karminder Singh, standing counsel for respondent-Union of India have been heard and record perused.

Learned counsel for the appellant argued that both the findings of learned Tribunal, one that no untoward incident as narrated by the appellant had taken place on 19.11.1995 at Platform No.4 of Amritsar railway station and the other that the appellant was not a bonafide passenger were wrong and unsustainable. There was ample evidence on file to prove that the appellant was travelling from Ludhiana to Amritsar in Chhatisgarh Express Train and he fell when he was trying to alight from the train at platform No.4 of Amritsar railway station after the train had stopped. The train suddenly started moving again with a jerk when he was trying to alight because of which he fell between the train and the platform and was run over by it. In addition to his own deposition made through his affidavit dated 22.04.1997, the appellant examined his father Raghbir Singh Bindra, two co-passengers who were travelling in the same train, namely, Surinder Kumar and Balwinder Singh and one Satwinder Singh, who although was not travelling in the train but was present at the platform as he had gone to receive his aunt who was coming from Delhi by that train and had

witnessed the accident. All the three eyewitnesses unequivocally supported the version of the appellant. The narration of accident by them is very much in consonance with the version of the appellant. From their statement, it was proved that the appellant lost his legs in a train accident and also that the appellant was a bonafide passenger of the train when the accident took place.

Admittedly, no First Information Report in respect of the accident was got registered with the police either by the appellant, or his father or any of the witnesses named by him. No information regarding the incident was given to any railway authority as well. For that reason neither the railway police nor the railway administration conducted any enquiry into the incident. It is noteworthy that there are two affidavits of the appellant available on record. One was attested by Judicial Magistrate Ist Class on 27.08.1996 i.e. after about nine months of the accident. In that affidavit, the appellant did not name any eyewitness of the accident and stated no reason for not lodging report with regard to the accident with the police or the railway authorities. It is in the subsequent affidavit attested by the Oath Commissioner on 28.03.1997 and filed before the Tribunal on 22.04.1997 wherein he stated that after he fell, he cried for help and his cries attracted one army personnel and one GRP constable named Ajaib Singh and they alongwith Balwinder Singh, Surinder Kumar and Satwinder Singh lifted him from beneath the train and placed him on the platform. It was further submitted by the appellant that he told the telephone number of his parents to a railway electrician namely Santokh Singh before he was

taken to the railway hospital. His father reached at the hospital and seeing his serious condition took him to Ram Saran Dass Kishori Lal Cheritable Trust Hospital, Green Avenu, Amritsar with the help of GRP Constable Ajaib Singh, a coolie, Balwinder Singh, Surinder Kumar and Satwinder Singh as co-passengers.

The two main witnesses named by the appellant were Constable Ajaib Singh and Railway Electrician (Fitter) Santokh Singh. The railway administration filed affidavits of both the said officials. They consistently deposed that no untoward incident of any sort had taken place in their presence at Amritsar railway station on 19.11.1995. Constable Ajaib Singh stated that he was on duty in the “Musafir Khana” of the railway station on 19.11.1995 between 7:40 hours to 12:00 hours. He visited the platform during his duty hours but did not see any untoward incident and also no person suffered any injury in his presence at the platform. Similarly, Santokh Singh testified that he did not see any injured person on the platform. For the reason best known to the appellant, he did not ask for cross-examination of either Ajaib Singh or Santokh Singh. Learned Tribunal rightly concluded that had the said persons helped removal of the appellant-injured from underneath the train or had helped his father in shifting the appellant from railway station hospital to another hospital, the appellant would have mentioned their names in his affidavit dated 27.08.1996 itself and would not have subsequently introduced them as witnesses. Scrutinizing the affidavits of Surinder Kumar, Satwinder Singh and Balwinder Singh, the other three witnesses of the accident named by the

appellant, the findings of learned Tribunal are as under:-

“So far as the affidavit of Surinder Kumar son of Madan Lal of Amritsar is concerned the same has been belied by the deponent himself while appearing in the witness box for cross-examination on 7.8.1997. In the affidavit, Surinder Kumar deposed that on 19.11.1995 he was travelling in Chhatisgarh Express train from Ludhiana. However, in cross-examination, he turned turtle and came with fancy deposing that he boarded the Chhatisgarh express Train at Jalandhar Railway Station to go to Amritsar. When asked why he had gone to Jalandhar, he deposed that he had gone there to meet his sister. He also admitted that the injured applicant was not in the bogie in which he was sitting. He also admitted that the injured applicant had already fallen underneath the train when he alighted from the compartment. The cross-examination of Surinder Kumar itself shows that he never travelled in the Chhatisgarh Express train and has given a false affidavit. So far as Satwinder Singh, Advocate is concerned, admittedly, he was not travelling in the Chhatisgarh Express train. He had allegedly gone to the platform to receive his aunt. He admitted that his aunt was travelling in a sleeper coach against a reserved seat. He admitted that the injured was not travelling in the same coach and was travelling in a different bogie. In the end, he admitted in his cross-examination that he did not inform the matter to the police or the railway authorities. In the affidavit of Shri Balwinder Singh, he deposed that he was travelling from Ludhiana to Amrtisar in Chhatisgarh Express train. In his cross-examination he admitted that he did not meet the applicant-injured in the bogie even though allegedly they were travelling in the same bogie. It seems to us that the affidavits of Balwinder Singh and Satwinder Singh have been

procured only to seek help to give strength to the case of the applicant. Had these persons been present at the spot, it was but incumbent upon the applicant to have disclosed their names in his affidavit, which was prepared on 27.8.1996 and in any case, it should have been specifically mentioned in the claim application itself that the accident in question was witnessed by these persons. The most alarming snag in the case is that after the accident took place on 19.11.1995 the matter was never reported to the police or to the railway administration on that day or subsequently any time till the present claim application was filed after one year and six days. Out of the so many persons who have filed affidavits two are advocates, particularly the father of the applicant also, but it is quite strange that none of these law knowing persons thought of giving any information to the police or to the railway administration that such an incident/accident had taken place. All of them kept mum and only in the claim application filed after one year and six days, it was disclosed that the applicant-injured received the injuries by way of rail accident by falling from the train on account of the lapses of railway administration. In the same manner, the genesis of the case stand falsified by the railway administration by filing the affidavit of constable Ajaib Singh and Santokh Singh, fitter, whose names were also disclosed by the applicant in his evidence that they had arrived at the spot. These witnesses categorically stated that no such accident took place at Railway Station, Amritsar on 19.11.1995 at about 9.30 A.M. Similar are the affidavits of Railway Station Master and the Guard who categorically stated that no accident took place at the spot in which the applicant may have been injured by any type of rail accident. The Government Railway Police's Munshi also disclosed that no report of any accident was ever

got recorded by anyone in the Government Railway Police Station.”

Indeed, the testimony of none of the witnesses named by the appellant was trustworthy. It also appears strange that none of the said persons, even the father of the appellant, who was an advocate, thought of informing railway police, railway administration or city police about the accident at any point of time. If at all the accident had taken place as stated by the appellant, not one but numerous passengers alighting from the train or present at the platform would have seen the appellant in injured condition. The fact that no public person or railway official informed any authority about the incident, certainly renders the version of the appellant doubtful. The finding of learned Tribunal that possibility of the injured having received injuries in a different manner cannot be ruled out, calls for no intervention.

Learned Tribunal also did not find the appellant to be a bonafide passenger. No passenger ticket was produced by the appellant. His statement was that Surinder Kumar and Balwinder Singh were travelling with him in the same train was also found to be incorrect as none of the said witnesses proved to be trustworthy. The said co-passengers also could not produce their train ticket. Satwinder Singh, who stated that he had gone to receive his aunt, did not produce platform ticket or atleast ticket of his aunt who had travelled from Delhi in the same train. It is quite apparent that the persons named by the appellant as eyewitnesses were all procured witnesses.

The claim application of the appellant was rightly dismissed by learned Tribunal and the appeal being devoid of merit is also hereby dismissed.

(SNEH PRASHAR)
JUDGE

19.05.2016.
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