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

Date of Decision: August 17, 2016

+ FAO 315/2015

KASHMIR SINGH Appellant

Through: Mr. Shyam Singh Sisodia,
Advocate

versus

UNION OF INDIA Respondent

Through: Mr. Rajeshwar Singh, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
ORAL

1. In the impugned order, the Railway Tribunal has noted that the appellant got injured while attempting to board the train from the 'off side' of the platform. It is on this account that the Railway Tribunal came to the conclusion that the appellant is not entitled to compensation, as sought for, in the claim petition.

2. Learned counsel for the appellant submits that there is no evidence on record to support the aforementioned finding of the Railway Tribunal, which erroneously relies upon the statement of the Guard. It is pointed out that the evidence of the Guard has not been recorded and so, his statement cannot be relied upon and that appellant was a *bona fide* passenger and so, he is entitled to compensation under the Railways Act,

1989 reliance is placed upon a Single Bench decision of the Bombay High Court in *Union of India Vs. Kamal & ors.* IV (2014) ACC 281 (Bom.).

3. To controvert the aforesaid stand, learned counsel for respondent has drawn attention of this Court to page-42 of the trial court record to show that as per the Inquiry Report of the Railway Divisional Manager, the Guard- *Babu Ram* had clearly said in his statement that injured had fallen down from the train while trying to board it from the 'off side'. Attention of this Court was drawn to the statement of Head Constable- *Bhale Ram* to point out that even this witness had stated that the injured had crossed the railway line and had tried to board the train from the side of platform No.2. While drawing attention to Section 124A of the Railways Act, it is pointed out that appellant had sustained grievous injuries due to his own act, which was criminal, as he had unauthorizedly crossed the railway lines and had tried to board the train from the wrong side and so, he is not entitled to any compensation and thus, appellant's claim petition has been rightly dismissed by the Railway Tribunal.

4. Learned counsel for respondent further submits that the decision in *Kamal (Supra)* is not applicable to the facts of the instant case, as Section 18 of *The Railway Claims Tribunal Act, 1987* provides that Tribunal shall evolve its own procedure and is not bound by Code of Civil Procedure and in a expeditious manner, the claim petition shall be decided.

5. After having heard learned counsel for the parties and on perusal of the impugned order and the evidence on record, this Court finds that the Inquiry Report of 10th July, 2014 contains the statement of the Guard as well as the Head Constable and once this Inquiry Report has come on

record without any protest from appellant, he cannot be heard to say that the statement of witnesses are undated because there is no challenge to the Inquiry Report of 10th July, 2014. No premium can be placed on the act of a wrong doer even if he is a *bona fide* passenger. If a *bona fide* passenger is found to be boarding the train from the wrong side and that too, after unauthorizedly crossing the railway tracks, then such a passenger is not entitled to any compensation as per the mandate of Section 124 A of the *Railway Act, 1989*. Such a view is being taken as Section 18 of *The Railway Claims Tribunal Act, 1987* permits the Tribunal to evolve its own procedure and the Railway Tribunal is not bound by the procedure as laid down in the Civil Procedure Code. In the face of Section 18 of the *Railway Claims Tribunal Act, 1987* the decision in *Kamal (supra)* is unapplicable to the facts of the instant case. However, this Court finds that appellant has been unfortunate in losing both his hands when he fell from the train while boarding it from the wrong side.

6. During the course of hearing, learned counsel for respondent had apprised this Court that *Artificial Limbs Manufacturing Corporation of India* provides artificial hands at reasonable rates.

7. In the peculiar facts and circumstances of this case, this Court deems it appropriate to invoke Rule 44 of the *Railway Claim Tribunal Act, 1989*. The said Rule reads as under:-

“44. Inherent powers of the Tribunal- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for the end of justice or to prevent abuse of the process of the Tribunal.”

8. To meet the ends of justice, in the peculiarity of this case, by recourse to sub-Rule 3 of Rule 3 of *The Railway Accidents and Untoward Incidents (Compensation) Rules, 1990*, it is directed that the respondent-Railways shall deposit a sum of ₹80,000/- with *Artificial Limbs Manufacturing Corporation of India, Railway Colony, Paharganj, New Delhi* within four weeks of passing of this order, failing which the awarded amount shall carry interest @12% p.a. till the date of its deposit. As soon as the aforesaid amount is deposited with the *Artificial Limbs Manufacturing Corporation of India*, appellant shall be put to notice by the *Artificial Limbs Manufacturing Corporation of India* within two weeks for preparation of artificial hands. The appellant shall appear before the *Artificial Limbs Manufacturing Corporation of India* on 24th October, 2016 or as and when called by said Corporation to have artificial hands so that he is able to earn his livelihood and to survive with dignity. The respondent-Railways shall ensure compliance of this judgment and shall file the compliance report on or before 30th November, 2016. The grant of limited compensation is confined to the facts of the instant case and will not be treated as a precedent.

9. With aforesaid directions, this appeal is disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 17, 2016

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