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

RESERVED ON : 23rd NOVEMBER, 2017

DECIDED ON : 18th DECEMBER, 2017.

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FAO 78/2015

TUNTUN KUMAR

..... Appellant

Through : Ms.Navneet Goyal with Ms.Kavita Tyagi,
Advocates.

versus

UNION OF INDIA

..... Respondent

Through : Ms.Shipra Shukla, Advocate.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P GARG, J.

CM No.4757/2015 (Delay)

For the reasons mentioned in the application, the delay in filing the appeal is condoned.

The application stands disposed of.

FAO 78/2015

1. The present appeal has been preferred by the appellant-Tuntun Kumar under Section 23 of the Railways Claims Tribunal Act, 1987 (hereinafter 'the Tribunal') to challenge the legality and correctness of

an order dated 20.03.2014 whereby the claim petition to award compensation was dismissed.

2. I have heard the learned counsel for the parties and have examined the file. On 19.06.2012 while travelling along with his brother Dharmender on 'Garhwal Express' from Chanderpur Siau to Delhi Shahdara, the victim-Tuntun Kumar accidentally fell down from the crowded compartment of the train, due to sudden jerk and jostling of passengers inside the coach and sustained grievous injuries leading to amputation of both his hands. The victim was taken to Dr.Hedgewar Arogya Sansthan by PCR who reached the spot on getting information from an unidentified caller at 10.20 p.m. on 19.06.2012 that an individual was lying in an injured condition at platform No.3 of Shahdara Railway Station. The victim was admitted in the said hospital on 10.55 p.m. with the alleged history of 'fall from train'.

3. The Tribunal declined compensation to the victim solely on the ground that at the time of admission in the hospital at 10.55 hours, the victim was 'smelling' alcohol. The victim was, thus, in a state of intoxication at the time of incident and under Section 124A of the Railways Act 1989 dealing with compensation, no compensation is allowed when the untoward incident occurs on account of 'intoxication'. The appellant denied if he was in the state of intoxication at the time of accident.

4. On perusal of the record before the Tribunal, it reveals that in the written statement filed by the Railways there was no specific assertion if the victim was in a state of intoxication at the time of accident. It was rather averred that the appellant was not holding any valid pass or ticket

and was not travelling in the train, as alleged. It was even denied that both legs (wrongly mention instead of arms) of the victim were amputated.

5. The appellant filed his evidence by way of affidavit (Ex.AW-1). In the cross-examination, nothing was suggested to him if he was in the state of intoxication or that the accident was due to his specific act because of intoxication. It was also not enquired as to when the appellant had consumed the liquor and if so at what place.

6. Perusal of the file further reveals that it was not a case of the Railways that the appellant was under the state of intoxication. Its Inquiry Report dated 14.02.2013 revealed that the victim had sustained injuries due to negligence and carelessness while crossing lines. Undoubtedly, the MLC recorded that the victim was 'smelling of alcohol'. It, however, does not elaborate as to how the examining doctor had come to the said conclusion. Admittedly, no blood sample of the victim was taken to ascertain if there were alcohol contents in the blood at the relevant time. Medical examination rather records the alleged history whereby it was informed that it was a case of fall from train. The MLC is to be read in its entirety. 'Smelling' of alcohol at the time of admission could not by itself prove that there was direct nexus between the alcohol and the grievous injuries sustained by the appellant which had occurred because of fall from the train. The respondent did not produce the examining doctor to ascertain the true facts.

7. In view of the above discussion, the impugned order declining compensation to the appellant cannot be sustained. Applying the principles laid down by the Supreme court in *Rathi Menon vs. Union of*

India (2001) 3 SCC 714, the appellant is held entitled to compensation of ₹8,00,000/- to the Schedule to Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 2016 (as on the date of this judgment).

8. The appeal is allowed and compensation of ₹8,00,000/- along with interest @ 7% p.a. from the date of filing of the claim application i.e.14.09.2012 is awarded to the appellant.

9. The Railways is directed to deposit the aforesaid amount by way of cheque in appellant's name on the date fixed.

10. Renotify on 19th January, 2018 for disbursement of the compensation.

11. The appellant shall remain present in Court on the next date of hearing along with passbook of his savings bank account near the place of his residence as well as PAN Card and Aadhar Card.

12. Copy of this judgment be sent to Railway Claims Tribunal, Principal Bench at Delhi.

13. Copy of this judgment be given *dasti* to counsels for the parties under signatures of the Court Master.

**S.P.GARG
(JUDGE)**

DECEMBER 18, 2017/sa