

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

**RESERVED ON : 11th DECEMBER, 2017
DECIDED ON : 10th JANUARY, 2018**

+ FAO 446/2011
REKHA DEVI Appellant
Through : Mr.N.K.Gupta, Advocate.
versus
UNION OF INDIA Respondent
Through : Ms.Rashmi Malhotra with Mr.Himanshu
Kaushik, Advocates.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Present appeal has been filed by the appellant – Rekha Devi to impugn a judgment dated 19.07.2011 of Railway Claims Tribunal (hereinafter ‘the Tribunal’) by which her claim petition filed under Section 16 of the Railway Claims Tribunal Act was dismissed. The appeal is contested by the respondent.

2. I have heard the learned counsel for the parties and have examined the file. In the claim petition filed by the appellant before the Tribunal, it was averred that on 21.05.2009, the appellant along with her husband was travelling in 2368 DN Bikramshila Express from New Delhi to Bakhtiyarpur on the strength of a valid second class railway journey ticket. As the ticket for Khusropur was not available, ticket for Bakhtiyarpur was purchased from New Delhi. It was further averred that there was heavy rush inside the train

compartment. When the train approached Khusropur station, the appellant along with her husband came near the gate to get down. Due to sudden jerk and thrust from the passengers, she lost her balance and accidentally fell down from the moving train and sustained grievous injuries; her left leg above knee and five fingers of right leg were amputated. She was brought to PMCH, Patna for treatment.

3. The claim petition was contested by the respondent and it was stated that the Tribunal did not have any jurisdiction to entertain the present claim application. The appellant was not bonafide passenger; she sustained alleged injuries due to her own acts of omission and negligence. She did not sustain any injuries due to an 'untoward incident'.

4. The appellant examined herself as AW-1 and relied upon several documents (Ex.AW-1/2 to Ex.AW-1/6 and Mark 'A'). The respondent did not examine any witness. Upon perusal of the evidence and after considering the rival contentions of the parties, the Tribunal by the impugned judgment dismissed the claim petition. Being aggrieved and dissatisfied, the present appeal has been preferred.

5. Learned counsel for the appellant urged that the appellant had lost the ticket at the time of accident and its non-recovery cannot be considered fatal. Reliance was placed on various authorities which are on record.

6. On perusal of the evidence on record, this Court finds no illegality or irregularity in the impugned order. The onus to prove that the appellant had purchased a valid ticket from Delhi to board the train

in question was initially upon the appellant. She, however, did not produce any credible document to show if on the specific date and time, she had purchased any valid ticket to travel in the train in question from Delhi. Admittedly, no such ticket was found at the spot. It was never handed over by her to the railway authorities any time. Since the appellant was allegedly accompanied by her husband, prima facie, there was no question of loss of ticket at the spot. The victim was allegedly taken to hospital by her husband with the assistance of certain other public individuals. No such individual including the appellant's husband has been examined. It has not been explained as to where the ticket of the claimant's husband was? It is highly unbelievable that the appellant would lose only her ticket in the presence of her husband when there are no allegations if she lost her other articles.

7. Soon after the incident, no report was lodged with the police authorities. The occurrence was not even reported to the railway authorities. No plausible explanation has been offered by the appellant for not moving the authorities promptly after the alleged incident. Even if the victim was unable to report due to her admission in the hospital for treatment, there was no difficulty for her husband to move the police / railway authorities.

8. No credible document has been produced by the appellant to show as to for what duration she remained admitted in the hospital, and if so, from which date and time. The medical evidence has not come on record. No doctor from the concerned hospital was

examined. No prescription slip has been produced on record; the expenses incurred on the medical treatment have also not been proved.

9. It is pertinent to note that after a considerable delay, the appellant opted to make a statement before the railway police Bakhtiyarpur on 11.06.2009. Self-serving statement without any corroboration is not enough to sustain her claim.

10. Present claim petition was filed after an inordinate delay on 29.08.2010. It creates serious doubt about the authenticity of the appellant's claim. In the claim petition, the claimant did not give the 'brief particulars of the accident' indicating the date and place of accident and name of the train as to be incorporated in column 6(a). Date of filing the claim petition i.e. 29.08.2010 (page 33) has been tampered with. It is inconsistent to the appellant's claim that the claim petition was being filed within one year from the date of accident i.e. 21.05.2009. Similarly, there is tampering on the date at page 43 of the petition.

11. Considering the facts and circumstances of the case, this Court finds no illegality or irregularity in the impugned order to intervene. The appeal is dismissed.

12. Trial Court record be sent back with the copy of the order.

(S.P.GARG)
JUDGE

JANUARY 10, 2018 / tr