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

Decided on:- 11th October, 2019

+ FAO 474/2018

JITENDER SINGH

..... Appellant

Through: Mr.Sanchit Vashistha with
Mr.Kartikay Sharma,
Advocates

versus

UNION OF INDIA

..... Respondent

Through: Mr.Rajan Sabharwal, Advocate.

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CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant, then aged about 22 years, resident of Village Khurampur, Tehsil, Bawal, District Rewari, Haryana had concededly suffered injuries and was found in such state on the railway tracks just ahead of Rewari railway station sometime around 9.27 a.m. on 24.10.2016, and though taken to the hospital and given medical aid and assistance, suffered consequent amputation of both lower limbs. He instituted claim for compensation [(No.OA (IIu) 65/2017)] on 20.02.2017 before the Railway Claims Tribunal, Principal Bench, Delhi, *inter alia*, stating that while travelling in a railway train from his native village in Bawal to Delhi, he had suffered slip at the time of re-boarding at Rewari railway station where he had alighted for some time to fetch water. He claimed that he was travelling on a valid

journey ticket in the said railway train as a *bona fide* passenger with his cousin brother Master Giriraj (AW-2).

2. During the course of the inquiry into his claim case, the report of DRM was called for. The appellant examined himself as a witness (AW-1) besides relying on the testimony of his cousin brother (AW-2), producing a journey ticket (bearing No.G-99973397) which concededly had been issued for the travel in question. The Tribunal, however, concluded, by its judgment dated 27.04.2018, that the appellant was not a *bona fide* passenger of any train and, therefore, the incident in which he had suffered injuries and consequent amputation of lower limbs was not covered under the definition of the expression “untoward incident” as used in the Railways Act, 1989. The claim for compensation was, thus, dismissed.

3. Feeling aggrieved by the above-mentioned decision, the appellant has approached this Court by the appeal at hand.

4. The learned counsel on both sides have been heard and the record of the inquiry before the Tribunal has been perused.

5. It is noted that, according to the report of DRM, the appellant was travelling at the door of compartment of a railway train described as train No.14660 (Jaisalmer-Delhi Express). Reference is also made to a memo dated 24.10.2016 which is part of DRM’s report, it being a communication by Station Superintendent of Rewari railway station to the Railway Protection Force (RPF) sent at 09.27 hours on 24.10.2016 about fall of a person (identity then unknown) from the aforementioned railway train, after the said train had crossed the yard

towards Delhi side, the information having been received through walkie-talkie from shunting master Mr.Inder Mal, at 9.27 hours, arrangements having been made for the victim to be sent to civil hospital at 09.40 hours with both legs damaged.

6. The reasoning on which the claim of the appellant was disbelieved by the Tribunal needs to be extracted from the impugned decision, it reading thus:-

“There is no eyewitness of the incident, who would see the applicant falling from the running train. From the applicant’s side, even the train number of its name or time of boarding has not been mentioned. Perusal of the report of Inspector Incharge, /RPF, Rewari, annexed with the DRM’s Report shows that the applicant was travelling by Train NO.14660 (Jaisalmer-Delhi Express). A memo dated 24.10.2016, annexed with the DRM’s Report at Page No. 11, was issued by the Station Supdt./Rewari at 09.27 hrs. To the RPF/Rewari, which is as under:-

*“To
RPF/RE*

*Date 24/10/2016
Time 9/27*

One unknown person fell down from 14660 Exp. while leaving Yd. towards DLI side. Shunting Master Shri Indermal informed at 09.25 on walkie-talkie. RPF (RE) & Ambulance informed at 09.27. Both leg damaged & sent to Civil Hospital at 09.47”.

*Sd/-
Station Supdt.
Rewari”*

This assertion demolishes the applicant’s averment that he sustained a fall while attempting to re-board the train as it was leaving its platform at Rewari Railway Station. It may be noted that the first information came

from the first information came from the Shunting Master of the yard regarding an unknown person lying in the yard in an injured condition.

Applicant was cross-examined in this Tribunal on 26.10.2017, in which he did not give satisfactory replies to a few basic questions, which included as under:-

(i) At what time, did he buy the ticket at Bawal Railway Station?

(ii) Where did he Keep the ticket after purchase?

(iii) On which platform did he board the train from his journey commencing station i.e. Bawal?

(iv) Around what time did he sustain grievous injuries at Rewari Railway Station?

The applicant in answers to each of the above questions said that he did not know. Applicant's counsel would say that although the applicant sustained a fall at the time of re-boarding the train from the platform of Rewari Railway Station, however, he was dragged from the platform till the railway yard of Rewari Railway Station and therefore, his legs got severed as a result of dragging of the body. It was pointed out to the counsel for the applicant that if the body in that condition would be dragged for a distance of about 1-1 ½ kms. beyond the platform, perhaps the applicant would not survive.

AW-2 Shri Giriraj Singh, who claimed to be a co-passenger of the applicant, was his cousin brother and he had a well tutored story to tell before the Tribunal. The said AW-2 deposed that a combined ticket for two was purchased by the applicant, which he (applicant) kept with himself. Applicant's cousin brother (Shri Giriraj Singh-AW-2), who as with the applicant right from the point of boarding the train i.e. Bawal Railway Station upto Rewari, Jn., where the train had stopped, did not see the falling of the applicant at the platform of Rewari Railway Station. In his cross-examination, the said AW-2, applicant's cousin brother, deposed that after the train started from Rewari Railway Station, he

was not aware as to where his brother (applicant) had detrained. Not only this, he did not make any effort either to stop the train when he did not find his brother (applicant) in the coach or even to get down at some intermediate station (enroute) himself to locate to missing brother (applicant). Between Rewari and Delhi, there are six more stations, where the Train No. 14660 (Jailsalmer-Delhi Express) has scheduled halts, which include Pataudi Road; Garhi Harsaru; Gurgaon; Palam; Delhi Cantt; and Delhi Sarai Rohilla, before reaching Delhi. Though it was to the knowledge of this co-passenger (AW-2) that the combined ticket of two was kept by his brother (applicant), who was not seen in the coach after Rewari Railway Station, the co-passenger-cum-cousin brother (AW-2) made no efforts to locate his cousin (applicant). In his cross-examination he (AW-2) deposed that it was only after reaching Delhi, that he (AW-2) became aware that his brother (applicant) had not alighted from the train and he (AW-2) enquired from other people present at Delhi Railway Station (as if they would know his brother (applicant) and would tell about him). Not only this, he (AW-2) further deposed that while at Delhi Railway Station, he (AW-2) rang up to his mother at Bawal and informed her about the missing brother (applicant), on which his mother instructed him to return to the village and not to worry about his cousin (applicant). Regretfully, on arrival to his village, the same very mother informed him (AW-2) that his cousin (applicant) has met with a train accident. All the information and replies given by the AW-2 in his cross-examination are essentially afterthoughts and only to cover up the reality that neither was there any ticket with his brother (applicant), nor did he (applicant) suffer injuries on account of falling from the train. Thus, since there was no eyewitness of the alleged fall, since the first information was given from the railway yard of Rewari Railway Station by a Shunting Master instead of from

the platform of Rewari Railway Station, wince no action was supposedly taken by the co-passenger (Aw-2) either by resorting to the use of alarm chain pulling or even by getting down at any of the intermediate stopping stations to come to Rewari in search of his missing brother (applicant) and due to the discrepancy regarding surfacing of the ticket filed by the applicant to show him as a bona fide passage, we are of the view that the ticket is not a genuine ticket, which was used by the applicant for his travel and that the alleged injuries sustained by him, resulting in amputation of both legs, did not arise due to any fall from the running train.

In the “furd bramadgi ticket railway”, annexed with the claim application (Ex.A-8), it has been mentioned that the alleged journey ticket was handed over by the applicant to the police in the presence of two witnesses on 25.10.2016 i.e. next day of the incident, whereas in the cross-examination, he (applicant) deposed that after the incident, his walled was OK and given to the police after 3-4 days. In the DD Entry No.29 of RPF Post/Rewari, recorded at 10.10 hrs. On 24.10.2016, annexed with the DRM’s Report, it has been recorded that when the RPF Staff reached the site of the incident, where the injured (applicant) was lying after the alleged fall, he (applicant) mentioned about his name and mobile number to the RPF staff, but on enquiry about the journey ticket, he could not give any reply. We, therefore find that on the day of incident the applicant did not give any information about the ticket whereas during his cross-examination, he deposed that the ticket was handed over by him to the police after 3-4 days of the incident and surprisingly, “furd bramadgi ticket railway” filed by the applicant, says that the railway ticket in question was given by the applicant, says that the railway ticket in question was given by the applicant to the police before two witnesses on 25.10.2016 i.e, the next day itself of the incident. The varying versions regarding the handing over of the

journey ticket by the same person (applicant) raises doubt where the ticket itself was a genuine ticket used by him (applicant) for his travel or it was a subsequently planted ticket to prove the status of the injured (applicant) as a bona fide passenger of Train No.14660 (Jaisalmer-Delhi Express) on the day of the incident. On account of the inconsistency of the applicant's deposition, both in writing and by oral, we are of the view that the railway journey ticket, filed by the applicant (Ex. A-9), is not one on which the applicant was travelling on that train at the relevant time of the incident. Since the applicant was found in an injured condition somewhere in the railway yard of Rewari Railway Station after the train left the passenger platform of Rewari Railway Station, we are lead to believe that the status of the applicant was not of a bona fide passenger of the Train No.14660 (Jaisalmer-Delhi Express).

In view of the above, it is clear that the applicant failed to prove his case. We, therefore, hold that neither the applicant was a bona fide passenger of any train at the relevant time of the incident nor were the injuries suffered by him as the result of fall from Train No.14660 (Jaisalmer-Delhi Express) and hence, the alleged incident is not covered under the definition of "untoward incident" as defined under Section 123(c), read with Section 124-A of the Railways Act, 1989."

7. This Court is of the view that the above reasoning is most unfair, unjust and, if one may use the expression, weird logic. A person put in the position of the appellant, wherein he had suffered such serious injuries as led to the amputation of both his lower limbs, could not be expected to remember the train number or its name, not the least specify the time at which he had purchased the ticket or what

was the number of the platform from where he had boarded to commence the journey or the specific time at which he had sustained the fall. He would have been traumatized by the accidental fall and damage to his body, which was apprehended to result in permanent disability, to remember such details by heart.

8. It is most unfair to disbelieve the appellant on account of the conduct of his cousin brother (AW-2). It has to be remembered that both the said persons i.e. the appellant and his cousin brother are poor, illiterate villagers. They were travelling together and this is demonstrated by the joint journey ticket which was produced in evidence, the genuineness of which document is not even questioned. AW-2 may not have made any serious efforts to locate his cousin brother (the appellant) till after the train had reached Delhi. It does appear that, after Rewari railway station, the train would have stopped at least at six railway stations in between. But then, due to the omission on the part of the cousin brother (AW-2) to be vigilant and watchful about the continued existence and companionship of the appellant on the same train, it does not mean that a story about joint travel has been created subsequently.

9. It does appear that the mother of AW-2 had earlier been dismissive about his failure to locate AW-1 when the train had arrived at the Delhi railway station and consequently had asked him to return to the village. It also does appear that the mother, after AW-2 had returned to the village, shared the information about the train accident. But then, given the chronology of the events, it is very apparent that

by the time AW-2 had returned to the village, the information about the accidental fall and injuries would have reached the family of the victim which included the cousin brother (AW-2).

10. It is not necessary that for every accident that happens, there must always be an eye-witness produced. In torts, the rule of *res ipsa loquitur* applies and findings can be returned on basis of circumstantial evidence. Mercifully, in the present case direct evidence is available in the form of testimony of AW-1, the victim himself.

11. As per version of respondent, the victim was found at some distance - referred to vaguely as one or one and a half km away – from the platform, in injured condition on the railway tracks. No cogent or credible evidence supportive of this was offered. Shunting master Mr. Inder Mal to whom the first formal input is attributed would have been the most appropriate person to establish these facts. He was not tendered as a witness. This must result in adverse inference being drawn against the story of the respondent. Even otherwise, the train, as the evidence shows, had picked up speed. The railway train, it is well known, takes time to come to a halt, particularly after it has picked up speed. The possibility of there being some distance between end of railway platform and the place from where the victim was removed to hospital may be assumed. Nonetheless, since DRM's report confirms the version of the appellant about fall from the moving train, it is really inconsequential whether

the fall occurred while re-boarding or while standing near the exit door of the compartment of the said railway train.

12. As observed earlier, the appellant had not specified the railway train. This should not have resulted in his case of fall from a moving train to be rejected. The Railways had specified the railway train from which the fall occurred. The Tribunal has been most unfair in rejecting even the case of the respondent-Railways about the appellant having fallen down from Jaisalmer-Delhi express. There was no occasion for the tribunal to disbelieve the case of the appellant by rejecting the description of the train given by the Railways itself.

13. The reasoning set out in the impugned order rejecting the railway journey ticket referred to earlier as proof of *bona fide* travel is also not palatable. The railway ticket had been handed-over by the victim to the railway police on the very next day. It was being carried, as per his version, in the wallet kept on his wearing apparel. This was a railway ticket commonly issued for him and one more co-passenger which, in the given facts and circumstances, would be none other than his cousin brother (AW-2). The vague reply of AW-1, during his cross-examination, that he had handed over the railway ticket to the police 3-4 days after the accident only demonstrates lack of memory on his part. It does not lead to the conclusion that the railway journey ticket has been procured to set up a false claim.

14. For the foregoing reasons, the impugned judgment rejecting the claim of the appellant of being a *bona fide* passenger when he suffered fall from the moving railway train and sustained injuries resulting in

permanent disability cannot be upheld. It is set aside. It is held that the appellant suffered the untoward incident resulting in injuries consequent whereupon he has been rendered permanently disabled due to amputation of both lower limbs when he was travelling in the railway train as a *bona fide* passenger. He is entitled in law to recover compensation from the respondent.

15. The Tribunal, it is noted, did not go into the issue of assessing the compensation for which the appellant is entitled. In this view, it will be proper that the proceedings arising out of the claim case of the appellant are restored and revived on the file of the Tribunal and it be directed to proceed further for computing the compensation that is to be awarded as per law. Ordered accordingly.

16. The parties are directed to appear before the Railway Claims Tribunal on 07.11.2019.

17. The appeal is disposed of in the above terms.

18. The Tribunal's record shall be returned forthwith with a copy of this judgment

R.K.GAUBA
(JUDGE)

OCTOBER 11, 2019
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