



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

% **Judgment reserved on : 30 October 2023**  
**Judgment pronounced on : 21 November 2023**

+ **FAO 215/2017 & CM APPL. 17711/2017**

**UNION OF INDIA** ..... Appellant

Through: Ms. Neetu Singh, proxy counsel  
on behalf of Mr. Raj Kumar for  
UOI.

versus

**BAZAR @ ISTAQ** ..... Respondent

Through: Mr. Yogesh Swaroop, Mr.  
Kunal Sharma, Mr. A. Kumar,  
Advs.

**CORAM:**

**HON'BLE MR. JUSTICE DHARMESH SHARMA**

### **JUDGMENT**

1. This appeal is filed by the appellant/Union of India under Section 23 of the Railway Claims Tribunal Act, 1987<sup>1</sup> assailing judgment dated 05.12.2016 passed by the learned Presiding Officer Railways Claims Tribunal, Principal Bench, Delhi<sup>2</sup> whereby the claim petition of the applicant/respondent was allowed in OA (IIU) No. 28/2016.

### **BRIEF FACTS:**

2. Briefly stated, a claim petition was filed by the applicant, who is the respondent in the present appeal, claiming that on 12.02.2015 he was travelling in passenger Train 1-DJ from Ghevra to Rohtak Railway Station along with Ismil and two other persons on the

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<sup>1</sup> RCT Act



strength of valid second class ordinary tickets, when due to a sudden jerk/jolt and push/pull of the passengers, he fell down at Ghevra Station and came under the running train resulting in amputation of both his legs below the knee. It was claimed that some money, papers and tickets were kept in his shirt pocket, which were lost at the spot due to the accident.

3. The claim petition was contested by the Railways/Union of India *inter alia* defending the claim on the ground that the claimant was a not '*bonafide passenger*' as he was travelling without a valid rail ticket and that he attempted to board a running train and was therefore guilty of negligence in doing so.

### **IMPUGNED JUDGMENT:**

4. On the issue of whether the applicant/respondent was a *bonafide* passenger, the learned RCT delivered a finding in favour of the applicant/respondent. With respect to Issue No. 2, which was framed as whether the injuries were sustained in an 'untoward incident', was also decided in favour of the applicant. Lastly, relying on the disability certificate Ex.A-8 by which it was found to be a case of bilateral amputation, Issue No.3 was also decided in favour of the applicant/respondent. Therefore, he was held to be entitled to the statutory amount of compensation. Learned RCT accordingly awarded a compensation of Rs. 4,00,000/- in favour of the applicant/respondent with interest @ 9% from the date of filing of the petition till the date of payment/realization.

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<sup>2</sup> RCT



### **GROUND FOR APPEAL:**

5. The impugned judgment is assailed in the present appeal *inter alia* on the grounds that the learned RCT failed to appreciate that as per the evidence brought on the record, the applicant/respondent was trying to board a moving train along with a *Dholak* when he met with an accident, and thus, there was an act of contributory negligence on his part and lastly, no railway ticket was recovered from him, and therefore, the finding that the applicant/respondent was a *bonafide* passenger was also erroneous in law.

6. On filing of the present appeal, operation of the impugned Judgment was put in abeyance vide order dated 09.05.2017. This Court also requisitioned the digitized copy of the Lower Court Record<sup>3</sup>, which has been made available.

### **ANALYSIS AND DECISION**

7. None appeared for the appellant when the matter was called for final hearing. After hearing the arguments advanced by the learned counsel for the applicant/respondent and on perusal of the record including the LCR, this Court proceeds to deliver the following judgment. It has been noted that learned counsels for the parties were given three weeks time to file written submissions, which have not been filed by either of the parties.

8. First things first, it is well settled that the RCT is not bound by the procedure laid down in the Civil Procedure Code and/or the Indian Evidence Act. The Tribunal in arriving at a decision is to be guided by the principles of natural justice. The substance of evidence led on the



record would show that at the first possible moment in this unsavory story, the claimant/respondent made a statement to the police, which is reflected in DD no. 16PP dated 12.02.2015, that he had boarded the train along with three others and was going to Meerut to sell dholaks. It is pertinent to mention that the claimant/respondent hails from a very impoverished background and it is improbable that being a layman he would be in the state of mind to concoct a version of the accident, keeping an eye on the grant of any compensation in the future. This version was corroborated by his co-passenger Ismil in his statement under section 161 Criminal Procedure Code to the Investigating Officer. Although Ismil was not examined during the inquiry before the RCT, the version of AW-1 i.e., the claimant was not challenged in the cross-examination, to the effect that he had already boarded the train with three others namely, Ismil, Iliyas and Talib and fell out of the running train due to overcrowding. The plea in the appeal that the claimant was trying to board a running train with a dholak is by way of an afterthought. No such suggestion was given to AW-1 in his cross-examination and his testimony read as a whole is inspiring truthfulness. Secondly, there is no such fact deposed by RW-1 i.e., the Guard on Train no. 54031 in his testimony either.

9. All said and done, the plea of injury being self-inflicted is negated by the authoritative pronouncement of the Supreme Court in *Union of India v. Rina Devi*<sup>4</sup>, wherein it has been held as under:—

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<sup>3</sup> LCR

<sup>4</sup> (2019) 3 SCC 572



*“25. We are unable to uphold the above view as the concept of ‘self-inflicted injury’ would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on ‘no fault theory’. We may in this connection refer to judgment of this Court in United India Insurance Co. Ltd. v. Sunil Kumar laying down that plea of negligence of the victim cannot be allowed in claim based on ‘no fault theory’ under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an ‘untoward incident’ entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor.”<sup>5</sup>*

10. Further, the plea that the claimant/respondent was drunk at the time of the accident is also belied from the evidence on the record. No such case was ever propounded by the appellant. Lastly, in view of the

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<sup>5</sup> 124A. Compensation on account of untoward incident – When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependent of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident.

Provided that no compensation shall be payable under the section by the railway administration if the passenger dies or suffers injury due to –

(b) self-inflicted injury;

Explanation. – For the purpose of this section, “passenger” includes-

- (i) a railway servant on duty; and
- (ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.

Note that clauses (a), (c), (d) and (e) of Section 124A have not been reproduced as they are not relevant to the facts of the present case.



categorical statement of AW-1 that he had purchased a rail ticket for himself and another, which has not been challenged in the cross-examination either, except for a bald suggestion, the findings of the RCT cannot be faulted which rightly observed that that in a critical accident like the present one, there was a great probability that the tickets might have slipped out of the shirt pocket of the victim and was lost.

11. In view of the foregoing discussion, the present appeal is bereft of any merits and the same is dismissed. The interim order dated 09.05.2017 is vacated and the Registrar RCT is directed to release the compensation amount to the claimant/respondent forthwith as per the applicable norms. The pending application also stands disposed of.

**DHARMESH SHARMA, J.**

**NOVEMBER 21, 2023**

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