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**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.**

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**CWP-25938-2024 (O&M).
Date of Decision: 14.10.2024.**

MUKESH KUMAR

... Petitioner(s)

Versus

UNION OF INDIA AND OTHERS

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Ms. Pratula Sethi, Advocate,
for the petitioner.

VINOD S. BHARDWAJ, J. (ORAL)

The petitioner has approached this Court for seeking issuance of a direction to the respondents to pay compensation to the petitioner on account of the injuries sustained by him in the incident that took place on 05.09.2023 resulting in amputation/separation of his right leg.

2 Learned counsel for the petitioner has vehemently argued that on the date of incident i.e. on 05.09.2023, the petitioner Mukesh Kumar was going to his in-laws place near Chirod on his motorcycle. He had parked his motorcycle on the side of railway track and was waiting for the goods train

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to pass. It is averred that during the passing of the said goods train, there was some material protruding from the middle of the goods train which hit on his legs as a result whereof amputation/separation of his right leg occurred. It is averred that the factum of incident was informed by the Assistant Loco Pilot of the goods train whereupon the petitioner was sent to hospital. The matter was recorded by the Chowki Incharge GRP Hisar on the same date vide General Diary No.004 dated 05.09.2023. The preliminary medical examination of the petitioner was conducted on the same date i.e. on 05.09.2023 and the right leg of the petitioner below the knee had to be amputated as a result thereof, he has suffered permanent disability to the extent of 70%. It is further averred that the petitioner had earlier approached the Railway Claims Tribunal vid O.A. No.OA/II(1)/CDG/44/2024 which was dismissed as withdrawn with liberty to approach the appropriate Tribunal.

3 I have heard the learned counsel appearing on behalf of the petitioner and have also gone through the documents appended along with the present petition.

4 The specific case of the petitioner is that there was some protrusion from the goods train, however, no such fact stands established. The statement of the Assistant Loco Pilot and also the proceedings of the GRP, Hisar, do not reflect that there was prima facie any negligence on the part of the railways or that there was any material protruding out of the

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goods train. It has also come forth that the petitioner had parked his motorcycle along the railway track when he suffered the injury.

5 Having heard the learned counsel for the petitioner at length and on going through the record notwithstanding that the petitioner has sustained injuries, however, there is no prima facie evidence to establish that the respondent Railways was negligent in the matter. The petitioner himself is not in a position to give the exact cause of accident. Hence, disputed questions of fact would arise before this Court. It can be conclusively held that the respondent Railways is liable to pay any compensation on principles of strict liability. Still further, the quantum of compensation again is a matter which would require leading of evidence. Both the aspects involve disputed questions of fact that cannot be gone into by a writ Court. Since this Court was inclined to dismiss the petition on the ground of maintainability due to involving disputed questions, merits of the case are not being gone into lest it may cause prejudice to any of the parties.

6 In view of above observations, however, learned counsel for the petitioner does not press the instant petition so as to take recourse to an appropriate remedy available to the petitioner in accordance with law.

7 Disposed of as withdrawn with liberties as aforesaid. Needless to record that the observations recorded above are solely for entertaining the writ petition or not and are not an expression on merits. The competent

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Court shall take a decision as per law and on the strength of evidence adduced before it.

October 14, 2024.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No