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

% Judgment reserved on: 21.08.2024
Judgment delivered on: 23.09.2024

\+ FAO 5/2015

ANIL SHAH .....Appellant

versus

UNION OF INDIA & ANR .....Respondents

Memo of Appearance

For the Petitioner: Mr. N.K. Gupta, Advocate.
For the Respondent: Mr. Himanshu Pathak (SPC) and Mr. Amit Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. The petitioner had filed an application under Section 16 of Railway Claims Tribunal Act, 1987 (in short "RCT Act") seeking compensation of Rs. 4,00,000/- for the injuries sustained by him while he was aboard 13414 Dn. Farakka Express and met one untoward incident.

2. Said application has been dismissed by the learned Tribunal and feeling aggrieved, the present appeal has been filed under Section 23 of the RCT Act.

3. Let us straightway come to the averments made by the appellant in his claim application. In brief, he averred as under: -

i. He boarded train No. 13414 Dn. Farakka Express from Delhi on 31.05.2010.

ii. He was to go to Ara Junction and had purchased a valid second-class general ticket for journey upto Ara Junction.

iii. When the train reached at Dumraon railway station, he alighted for drinking water.

iv. At said station, many other passengers also started boarding the train, therefore, the compartment got overcrowded and when he attempted boarding, due to heavy rush he could only stand near the gate, *albeit*, inside the compartment.

v. Due to heavy rush and jostling among the passengers, he fell down from the moving train at Dumraon station.

vi. On account of such fall, his left leg, below knee had to be amputated.

vii. He was first brought to Sadar Hospital, Buxar for treatment by local passengers through Garib Rath Train.

viii. After primary treatment, he was brought to Sparsh Heritage Hospital, Patna for better management.

ix. His statement was recorded by the police at Sparsh Heritage Hospital on 10.06.2010.

4. It was in the above said background that he filed the above said claim application seeking compensation of Rs. 4,00,000/- with interest and other relief.

5. Such claim was resisted by respondent by contending that he was not a bonafide passenger of the train in question. It was also claimed that no one had seen him either purchasing the ticket or boarding/travelling the train and falling therefrom. It was also claimed

that there was no recovery of ticket either which could have shown that he had ever boarded any such train. It was also asserted that the police had contacted him only on 10.06.2015 and moreover, no copy of any police report or FIR had been annexed and, therefore, the petitioner had no *locus standi* to file the claim application. All in all, the averments made by the petitioner were labelled as home-made story.

6. The appellant entered into witness box and submitted his affidavit. He reiterated the averments made by him in the claim application. He did not examine anyone else.

7. No witness was examined by the respondent.

8. Learned Tribunal came to the conclusion that injured Anil Shah had failed to show that he was a bonafide passenger on board Farakka Express from Delhi to Ara Junction and that he had sustained injuries due to the accidental fall from the train amounting to any untoward incident falling within the scope and ambit of Section 123 (c) read with Section 124-A of the Railways Act.

9. Such findings are under challenge.

10. According to learned counsel for the appellant, the learned Tribunal did not appreciate the evidence appropriately and there was no reason to have disbelieved the appellant who had categorically deposed that he was travelling in the abovesaid train and fell down from the moving train, on account of jerk and overcrowding in the compartment.

11. It is also submitted that the appellant had been able to prove the foundational facts and, therefore, there was a presumption in his favour that he had purchased a ticket and was a bonafide passenger.

12. Contending that the RCT Act is a piece of social legislation, it is stressed that the learned Tribunal should have appreciated the facts in synchronization with the spirit and objective of the abovesaid Act.

13. All such contentions have been refuted by the respondent and it has been contended that the learned Tribunal has appreciated the evidence very justifiably and there is no reason to come to any different conclusion.

14. As already noticed above, the appellant has examined himself as AW-1. He deposed that the incident had taken place at Dumraon station where the train halted for about two minutes. He alighted for taking water and while he was boarding the train, it started moving. He deposed that he slipped and fell down. He denied that he was not travelling in the said train and that he did not fall from the train and had filed a false application seeking compensation. He did depose that he had come to Delhi for work but supplemented that he was not doing any work in Delhi.

15. There are few facts which need to be underlined.

16. There seems to be lack of continuity and necessary corroboration.

17. The alleged incident had taken place on 01.06.2010 at around 10:00 P.M. when the appellant had alighted down at Dumraon station.

However, there is no report, of any kind, from the Station Master of Dumraon. There is no report either from Railways or police suggesting that any such incident had taken place at Dumraon. It is not believable that if a person had fallen down in such a manner, no report would have been registered and police would not have been involved. Had there been any such report, from any official corner, it would have certainly given invaluable insight and great impetus, at least, in order to demonstrate that any incident had taken place at Dumraon.

18. From there, as averred, injured was taken to Buxar. We do not know who took him and under what circumstances. There is no corroboration from any neutral corner.

19. If appellant is to be believed, some certificate had been issued by the Station Master of Buxar station and strong reliance has been placed upon the same which has been proved as Ex A-1 which is stated to be typed true copy. It reads as under: -

> *"* *01/06/10*
>
> *सेवा मे,*
>
> *व० म० चिकित्सक अधिकारी*
> *बक्सर*
> *थाना प्रभारी जी आर पी*
>
> *डुमराव मे 3484 से एक यात्री का पैर कट गया है। उसे 2353 से कुछ यात्री लेकर आ रहे है। उचित कारवाई हेतु।*
>
> *नोट: उस दिन दिये गये राजीव कुमार का सत्यापित लिपी।*
>
> *06/06/10*
> *उप स्टेशन प्रबंधक*
> *बक्सर पूर्व रेलवे"*

20. During trial, a serious objection was raised with respect to authenticity of said certificate.

21. According to respondent, no such certificate used to be issued by the Railway Officials and keeping in mind the aforesaid contention, the learned Tribunal had to ask the appellant to produce the certified copy of Ex-A-1. This is found recorded in the order-sheet dated 07.08.2014. Learned counsel for the appellant sought time to place on record such certified copy but fact remains that no such copy was placed. Moreover, there was no request from the appellant to summon any such official for verifying the above certificate.

22. In view of the above, the veracity and authenticity of the aforesaid certificate comes under cloud.

23. Moreover, such certificate does not even contain the name of the injured. It is also not clear as to how, when the incident had taken place at Dumraon, said certificate came to be issued by Buxar. Moreover, it talks about accident caused by some other train (3484) not Farakka Express (13414). Such fact has also not been elucidated by the appellant.

24. The appellant should have called the concerned official from Dumraon or Buxar in order to show and demonstrate that the accident had taken place in the manner claimed by him and that the above said certificate was genuine and that the same had been issued in context of the injuries suffered by him only. Since, despite grant of time, it failed to bring on record the certified copy and failed to examine any official of Railways, the abovesaid document i.e. Ex-A-1 cannot be read in evidence, for not being proved in accordance with law.

25. The injured had also sought time before learned Tribunal to

submit copy of investigation report conducted by the police but fact remains that it was not placed. Undoubtedly, the respondent should have also placed on record DRM report, but fact remains there is not enough of clarity as to what happened at Dumraon or Buxar.

26. The Court does not have benefit of getting any corroboration from any independent corner. There is no statement from any official of Government Railway Police (GRP) or Railway Protection Force (RPF) or for that matter from any railway official or police official who might have immediately rushed to the spot after the alleged incident.

27. Moreover, if the injured is to believed, he was taken to Buxar Hospital by several passengers but there is no report from any such hospital of Buxar.

28. For the first time, the police had contacted the injured on 10.06.2010 and this gap of around nine to ten days cannot be kept aside in a casual manner.

29. There is no statement of any co-passenger either who had, as alleged, taken the injured to the hospital.

30. Surprisingly, in the appeal, the injured has come up with a new fact altogether and in his appeal, he claimed that after purchasing the ticket, he along with his brother had boarded the aforesaid train. If that was really so, he could have easily called his brother in order to corroborate that he was travelling in such train. Even if, it is assumed that ticket of the injured got lost in the process of the accident, at least, such brother could have easily produced his own ticket to demonstrate

that they both were travelling together in the train.

31. It is also not made clear as to why said fact, that his brother was also travelling with him, was never taken before the learned Tribunal.

32. Thus, apparently, the blame squarely lies on the appellant himself as he could not bring on record enough of material which may indicate that untoward incident had taken place at Dumraon on 01.06.2010. There is no recovery of ticket either and despite opportunities sought from the learned Tribunal, the injured did not submit any police investigation report or for that matter, certified copy of Ex-A-1.

33. Thus, except for his own self-serving statement, there is nothing which may throw light as to how the incident in question had taken place. As noticed, there is no corroboration to his version either by any official of Railways or by GRP or RPF. It is hard to believe when the accident had taken place allegedly on 01.06.2010 at Dumraon station and when from Dumraon, the injured was brought to Buxar by another train and then from Buxar he was brought to Patna for better management, the matter would not come to notice to any Railway official or Police official. No record of Dumraon Railway Station or any diary entry suggesting any untoward incident has seen light of the day and the initial onus of proving the foundational facts, squarely was on the shoulder of the appellant which he has obviously failed to discharge in the desired manner.

34. It is contended that when the injured was taken to Sparsh Heritage Hospital, it was mentioned therein that he had received the

injuries on account of fall from the train at Dumraon. However, it is not made clear as to who brought him to said hospital from Buxar and quite possibly, such history might have been recorded as per the information revealed by none other than the appellant himself.

35. All in all, the entire case is based on the statement which the appellant had given to the police after nine days of the incident and this gap and hiatus of nine days cannot be digested in a nonchalant manner. Thus, apparently, the appellant has failed to show that he had sustained injuries due to accidental fall from Farakka Express. The aspect related to presumption even in absence of recovery of any ticket pales into insignificance as it is not possible to come to a definite conclusion that the injured herein had accidentally fallen from a moving train.

36. Consequently, the findings recorded by learned Tribunal seem to be in consonance with the evidence led by the appellant and there is no reason to come to any different conclusion.

37. The appeal stands dismissed.

(MANOJ JAIN)
JUDGE

SEPTEMBER 23, 2024/*sw*