
Before Railway Claims Tribunal Ahmedabad Bench

Coram: Shri. Vinay Goel, Member (Judicial)
Shri. Raj Kumar Manocha, Member (Technical)

CASE No. OA(Ilu)/ADI/2020/0080

Date of Institution: **10.08.2020**

Date of Decision: **28.03.2024**

Kirankumar Gordhanbhai Thakore, Aged 32 yrs.

(Injured Applicant)

Resident of: Ambikanagar, Chamundavas, Behind Mahiti Kendra, Idgah Road,
Palanpur, Taluka- Palanpur, District – Banaskantha, Pincode –385001, Gujarat.

....APPLICANT

VERSUS

UNION OF INDIA

Through General Manager,

Western Railway, Churchgate, Mumbai

....RESPONDENT

Rs. 8,00,000-00 CLAIM

MR.K.M. Shah, Ld. Counsel for Applicant.

MR. J.H.Joshi, Ld. Counsel for the Respondent.

JUDGEMENT

This OA has been filed by the Injured/Applicant under section 16 of the Railway Claim Tribunal Act, 1987 read with section 124-A, 125 & 123 (c) (2) of the Railways Act, 1989 for compensation from Respondent Railway on account of alleged Injury of applicant Sh. **Kirankumar Gordhanbhai Thakore, aged 32yrs.** (hereinafter referred to as ‘Injured’) in an alleged untoward incident during alleged train journey.

1. Basic details relating to accident as contained and alleged in the Application:

a) **Date of accident:** **01.02.2020**

b) **Person Injured:** **Kirankumar Gordhanbhai Thakore, aged 32yrs.**

- c) **Train involved and transit details:** The applicant/ injured was travelling by train no.15269 Muzaffarpur – Ahmedabad JanSadharan Express. Journey ticket lost in the incident.
- d) **Untoward incident narrated:** The injured/applicant was travelling from Palanpur to Mehsana with a valid and proper travelling ticket, during de-boarding the train at the platform no.3 of Meshana Railway Station from the general compartment due to sudden jerk and jolt of the train as well as due to heavy rush and push of the passengers in the passage of the general compartment the injured lost his balance and accidentally fell down from the train at Meshana Railway Station. The injured applicant was dragged with the train sustained serious injuries on different parts of his body i.e. right hand at elbow portion was crushed under the wheels of the train.
- (e) **Jurisdiction:** Place of incident was at platform No. 3 at Meshana railway station, this Bench of the Tribunal has territorial jurisdiction as the incident occurred at Meshana Railway Station.

2. Salient features of reply:

a) **Averments in reply:** The respondent denied the incident as “UNTOWARD INCIDENT”. The injured was not a bonafide passenger but an unauthorized tea hawker. No ticket or any travelling authority was recovered from the injured. Injured applicant was trying to de-board the running train fully being aware that to de-board a running train is risky and life endangering. The applicant has fallen from the train due to his own negligence, voluntarily putting himself in danger, and as such Railway cannot be held responsible and this matter does not fall under the ambit of Untoward Incident, hence the applicant is not entitled to alleged amount of compensation.

b) Crux of DRM Report:

“उपरोक्त मामले की जांच के दौरान प्राप्त दस्तावेजों के अवलोकन तथा जांच के विश्लेषण से यह स्पष्ट है कि किरण कुमार ठाकोर सवारी गाड़ी में पालनपुर से मेहसाना तक चाय बेचते हुये बिना टिकट/प्राधिकार के अवेध रूप से यात्रा कर रहा था तथा चलती हुई सवारी गाड़ी से उतरने के प्रयास में गाड़ी से गिरकर गंभीर रूप से चोटिल हुआ था जो स्वयं की गलती और लापरवाही के कारण अप्रिय घटना घटित हुई थी। जबकि चलती हुई रेल गाड़ी में चढ़ना व उतरना रेल अधिनियम के तहत दंडनीय अपराध है और इस संदर्भ में जनजागरण हेतु रेल गाड़ियों के रेल्वे स्टेशनों पर आवागमन के दरम्यान PA System द्वारा उद्घोषणा की जाती है।”

3. From the pleadings, the following issues were framed on 08.12.2020

- 1. Whether injured was travelling on a valid Railway journey ticket and was a bonafide passenger of the train in question at the relevant time?*
- 2. Whether the injured met with an untoward incident due to fall from passenger carrying train, suffered injury as a result thereof and the present case is covered under the definition of Section 123 (c) (2) of the Railways Act 1989?*
- 3. What is the nature and extent of the injuries sustained by the injured?*
- 4. to what Relief?*

4. Applicants Evidence and Respondent Evidence: Applicant no.1 has filed his affidavit as AW/1 and was cross-examined on **13.09.2021**.

5. Description of the documents filed by the Applicants certified copies are as under.

Original certified copy of Inward Vardhi with Order at Exh.A/1, Original certified copy of the Request Letter of GRP to register the Janva Jog at Exh.A/2, True copy of the Occurrence Report at A/3, Original certified copy of the body condition at Exh.A/4, True copy of Discharge card of the Civil Hospital Ahmedabad at Exh.A/5, True copy of Injury Certificate issued by Civil Hospital Ahmedabad at A/6, Aadhar card of applicant at Exh.A/6, Photograph showing injuries sustained in untoward Incident of injured at Exh.A/7, True copy of Election Card of injured at Exh.A/8, True copy of Adhar Card of injured at Exh.A/9, True copy of Bank Pass book details at Exh.A/10. True copy of the Final Investigation Report of GRP, Western Railway, Ahmedabad at Exh.A/11, True copy of the Disability Certificate at Exh.A/12, True copy of the Handicapped Identity Card at Exh.A/13, True copy of the PAN Card at Exh.A/14.

6. Respondent has opted not to adduce any oral evidence but has relied upon its DRM Report & Documents annexed thereof.

FINDINGS

7. We have carefully gone through the pleadings of the parties, material made available on record and evidence adduced on behalf of applicant and heard the

arguments advanced on behalf of rival parties by their counsel. Our findings on the aforesaid issues are as under.

Issue No.1

8. It is case of Applicant that Applicant was travelling from Palanpur to Meshana and during course of travel he accidentally fell down from the running train and sustained injuries. Whereas Respondent has come with a plea that Applicant was not a bonafide passenger but was a hawker as such he is not entitled to any compensation although Respondent has admitted fall from the train. Ld. Counsel Applicant has primarily relied upon pleadings, evidence, examination in chief and cross examination and it is also the argument on behalf of Applicant that the defence that Applicant at time of incident was selling tea, has not been proved by the Respondent. The Applicant also attacked previous charge-sheets regarding illegal vending in train and on platforms and has come with a plea that Respondent has failed to discharge about ticketless travel and travelling without ticket.

9. It is further submitted that Respondent has failed to plead on record any Jama Talashi. Having heard both the sides and after going through the record we are of the considered opinion that earlier charge-sheets issued on 24.05.2019 and 12.07.2019 in case 578 and 956 of 2019 are not sufficient to displace averments of the Applicant about travel, on the fateful day. If a person was earlier caught doing some illegal vending that itself is not sufficient to establish that on the date of accident he was doing illegal vending. So on that aspects, we do not concur the arguments on behalf of Railways.

10. At this juncture we would like to reproduce Inward Vardhi no.-29/2020 dated 01.02.2020.

EXHIBIT : A/1

INWARD VARDHI NO. -29/2020

*At this time, as per instruction of Dr. Shri Akshay Prajapati, the on duty ASI Raymalbhai Vastabhai of Civil Duty is giving the Vardhi that the patient who injured at Mehsana Railway Station named Thakor Kiranji Gordhanbhai, aged 30 year, Resident of Ambikanagar, Chamundavas, Palanpur and his treatment is continue in Trauma Centre who was **selling tea in railway** and met with an accident by Muzzafarpur Express train and for further treatment, referred to the Civil Hospital of Ahmedabad.*

This said Vardhi has been proven on record as exhibit A/1 also Exhibit A/2 and A/3 has the same recital. The said documents have been duly placed and proved on record by the Applicant the recital made in said documents is as under:

EXHIBIT: A/2

Subject:- To register the Janva Jog

With Jai Bharat from Police Head Constable Masiruddin Mohammadali, Buckle No. 1777 of Mehsana Railway Police Station is reporting with request that.....

In the above case mentioned subject, this is to inform you that in the matter of Mehsana Railway Police Station's Inward Vardhi No.29/2020 registered on 01/2/2020 at 08:05 hrs., whereas, PSO Kailashben M. Buckle No. 1050 had forwarded the Vardhi for investigation which is received from Civil Hospital of Mehsana, whereas, the injured person Kiranbhai S/o Gordhanbhai by caste Thakor WAS FALLEN DOWN FROM JANSADHARAN EXPRESS TRAIN and sustained injuries and referred to the Civil Hospital of Ahmedabad for the treatment and while visiting for investigation and further proceedings at the Civil Hospital Ahmedabad, the incident covered under Janva Jog and while taking paper into consideration, please register the Janva Jog and forward the investigation towards us and the particulars of the Janva Jog is as below:

1	Name of informer	On duty ASI Raymalbhai Vastabhai of Civil Hospital of Mehsana
2	Name of the injured	Kiranbhai S/o Gordhanbhai by caste Thakor, aged 30 years, Occupation-Hawking , Resident of Ambikanagar Chamundavas, Palanpur, District –Banaskantha
3	Place, time and date of the incident	On 01/02/2020 before 08:05 hrs. at Mehsana Railway station DUE TO FALLEN DOWN FROM MUZZAFARPUR – AHMEDABAD JANSADHARAN EXPRESS TRAIN while getting down from the running train.
4	Short description of the incident	The incident is happened as such that at time, place and date as mentioned above, the injured person in this matter was DOING HAWKING OF TEA IN THE TRAIN from Palanpur to

			<i>Mehsana and at that time, when Mehsana Railway Station arrived, ACCIDENTALLY FALLEN DOWN FROM THE TRAIN and sustained injuries on the body and etc...Date – 01/02/2020</i>
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EXHIBIT A/3:

Occurrence Report of Mehsana Railway Police Station's Janva Jog No.

01/2020 registered on 01/02/2020

1	Name of Informer	:	On duty ASI Raymalbhai Vastabhai of Civil Hospital of Mehsana.
2	Name of the injured	:	Kiranbhai S/o Gordhanbhai by caste Thakor, aged 30 years, Occupation – Hawking , Resident of Ambikanagar, Chamundavas, Palanpur, Banaskantha.
3	Place, time and date of the incident	:	On 01/02/2020 before 08:05 hrs at Mehsana Railway Station DUE TO FALLEN DOWN FROM THE MUZZAFARPUR – AHMEDABAD JANSADHARAN EXPRESS TRAIN while getting down from the train.
4	Short description of the incident	:	The incident is happened as such that at time, place and date as mentioned above, the injured person was DOING HAWKING OF TEA IN THE TRAIN from Palanpur to Mehsana and at that time, when Mehsana Railway Station arrived, sustained injuries on the body DUE TO ACCIDENTALLY FALLEN DOWN FROM THE TRAIN while getting down from the running train and etc....

11. The above documents Exh. A/1, A/2 and A/3 have been produced by the Applicant himself. Once documents produced by the Applicant are contradictory to the stand taken by the Applicant. The Applicant is required to

explain such contradictions but there is no explanation from the Applicant side either in pleadings, evidence or at the time of arguments to explain recitals about vending appeared in Exh. A/1, A/2 and A/3. The Applicant has set up his case of travel on a valid ticket whereas his own documents are suggesting otherwise. So Applicant has coined a case of travel. The averments made in pleadings cannot be taken as gospel truth and there should be synchronization among the fact pleaded in the O.A., documents and other material on record. Any material contradiction would be sufficient to draw adverse inference. No ticket was recovered from the Applicant and during cross examination Applicant admitted he had not purchased any ticket.

12. It is the case of Applicant that Applicant was travelling from Palanpur to Meshana and alleged incident occurred at Mehsana Railway Station. If he was a passenger on valid ticket and had fallen down from running train how could such narration appear in Exhibit A/1, A/2 and A/3 about vending and hawking. No police authority or railway official would refer a passenger by his profession even nobody was aware of such profession. So story as created by the Applicant about alleged travel appears to be doubtful also the documents produced on records as by Applicant himself as exhibit A/1, A/2 and A/3 and recital made in it are binding on Applicant unless Applicant explains otherwise. The ground of travel as taken are founded on falsehood and we must say that the applicant has failed to approach this Tribunal with clean hands.

We can rely on the judgment of Hon'ble Supreme court in the case of V. Chandrasekaran v. Administrative Officer reported in [2012\(4\) R.C.R.\(Civil\) 588](#) is fully applicable to present case.

*34. The appellants have not approached the court with clean hands, and are therefore, not entitled for any relief. Whenever a person approaches a Court of Equity, in the exercise of its extraordinary jurisdiction, it is expected that he will approach the said court not only with clean hands but also with a clean mind, a clean heart and clean objectives. Thus, he who seeks equity must do equity. The legal maxim "Jure Naturae Aequum Est Neminem cum Alterius Detrimeto Et Injuria Fieri Locupletiolem", means that it is a law of nature that one should not be enriched by causing loss or injury to another. (Vide: **The Ramjas Foundation & Ors. v. Union of India & Ors.**, AIR 1993 SC 852; **Nooruddin v. (Dr.) K.L. Anand**, 1995(2) R.R.R. 556 : (1995) 1 SCC 242; and **Ramniklal N. Bhutta & Anr. v. State of Maharashtra & Ors.**, AIR 1997 SC 1236).*

35. The judicial process cannot become an instrument of oppression or abuse, or a means in the process of the court to subvert justice, for the reason that the court exercises its jurisdiction, only in furtherance of justice. The interests of justice and public interest coalesce, and therefore, they are very often one and the same. A petition or an affidavit containing a misleading and/or an inaccurate statement, only to achieve an ulterior purpose, amounts to an abuse of process of the court.

36. In **Dalip Singh v. State of U.P. & Ors., (2010) 2 SCC 114**, this Court noticed an altogether new creed of litigants, that is, dishonest litigants and went on to strongly deprecate their conduct by observing that, the truth constitutes an integral part of the justice delivery system. The quest for personal gain has become so intense that those involved in litigation do not hesitate to seek shelter of falsehood, misrepresentation and suppression of facts in the course of court proceedings. A litigant who attempts to pollute the stream of justice, or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

37. The truth should be the guiding star in the entire judicial process. "Every trial is a voyage of discovery in which truth is the quest". An action at law is not a game of chess, therefore, a litigant cannot prevaricate and take inconsistent positions. It is one of those fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings. (Vide: **Ritesh Tewari & Anr. v. State of Uttar Pradesh & Ors., (2010) 10 SCC 677**; and **Amar Singh v. Union of India, 2011(5) R.C.R.(Civil) 386 : (2011) 7 SCC 69**).

38. In **Maria Margarida Sequeria Fernandes & Ors. v. Erasmo Jack de Sequeria (dead), 2012(2) Recent Apex Judgments (R.A.J.) 6 : 2012(2) R.C.R.(Civil) 441 : (2012) 5 SCC 370**), this Court taking note of its earlier judgment in **Ramrameshwari Devi v. Nirmala Devi, 2011(3) R.C.R.(Civil) 932 : 2011(4) Recent Apex Judgments (R.A.J.) 390 : (2011) 8 SCC 249** held:

"False claims and defences are really serious problems with real estate litigation, predominantly because of ever- escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our courts. If pragmatic approach is adopted, then this problem can be minimised to a large extent."

The Court further observed that wrongdoers must be denied profit from their frivolous litigation, and that they should be prevented from introducing and relying upon, false pleadings and forged or fabricated documents in the records furnished by them to the court.

39. In view of the above, the appellants have disentitled themselves for any equitable relief

13. In the light of above judgment it is crystal clear that a litigant is required to approach court with clean hands and any manipulation, concealment or material addition or silence on the part of litigant and non-disclosure of material fact would lead to an inference that a person has not come to court with clean hands. In fact by doing so, a litigant attempts to tarnish the sanctity of the judicial system. In this case also person has tried to set up his case of travel with plea that his ticket has been lost during incident whereas there is ample material on record that in fact this person was a hawker and while vending he met with the incident. So as per above judgment strict approach is required to be adopted and Applicant would not be able to get any concession on account of welfare legislation.

14. The arguments advanced on behalf of Applicant and pleading on behalf of Applicant are not tenable. The Applicant has failed to discharge initial burden regarding purchase of ticket and Applicant would not get benefit as the documents produced by Applicant is, itself, contradicting possibility of travel as passenger on a ticket. The pleadings made in the O.A. cannot be taken as gospel as gospel truth. The Applicant was required to prove its own case but Applicant has failed to explain recital made in documents proved by, himself. Applicant cannot be allowed to take benefit of weakness of defence. The Applicant himself has produced documents having recital that Applicant was vending tea etc at the time of incident. So the question of purchase of ticket and in case of not recovery of ticket that Railway has failed to catch Applicant being ticketless traveller does not arise. The contention of Applicant that Respondent has failed to produce eyewitness also would not be helpful to Applicant because the documents produced by Applicant are against the alleged story of travel on ticket. The following are the Case Law has been produced by the Applicant in support of his contentions:

Sr No	Citation/case No.	Hon’ble Court	Name of the Parties
1	MA No.582 of 2012	High Court of Patna	Sumintra Devi W/o Late Ramchandra Sao @ Chando Sao Vs. UOI, GM, ER, Kolkatta

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2	F.M.A.T.No. 616 of 2008 with C.AN 4715 of 2008.	High Court of Calcutta	Asharani Das Vs. UOI
3	2018 ACJ 1441	Supreme Court of India	UOI Vs. Rina Devi
4	2023 ACJ 2009	Supreme Court of India	Sanyokta Devi Vs. UOI
5	2017(3) GLR 2632	Gujarat High Court	UOI Vs Laxmiben Bhavrav Sendhane
6	2001 ACJ 871	High Court of Orissa	UOI Vs Jshna Kanhar
7	2019 ACJ 86	Madras High Court	M. Santha and others V/s. UOI
8	2016(1) T.A.C. 830	Bombay High Court	UOI Vs Nandabai And Others
9	2013 ACJ 635	Kerala High Court	UOI Vs Parameswaram Pillai
10	2008 ACJ 822	Rajasthan High Court at Jaipur Bench	UOI Vs Hari Naryan Gupta & another
11	2006(1) T.A.C. 29 (Ori.)	Orissa High Court	Sakhia Naik & Another Vs. UOI
12	2010 ACJ 2777	Calcutta High Court	Asharani Das Vs UOI
13	2023 ACJ 1659	Supreme Court of India	Kamukayi Vs. UOI

15. We have gone through the above judgment, and said judgment are on different footings because, in the cases relied upon by the Ld. Counsel of Applicant the documents were not in contradiction with the pleadings made by the claimant. In none of the case story of travel as made in the O.A. had been negated by the document produced by the claimant. The Applicant has failed to prove on record any purchase of ticket or travel as a passenger so Applicant was not a bonafide Passenger. Hence issue no.1 is against the Applicant.

Issue No.2,3 & 4

16. Railway has admitted accident fall. The applicant has failed to prove bonafide passenger status. So this issue does not require any more discussions in view of findings that Applicant was not a bonafide passenger.

17. In view of our findings on main issue no. 1 which has been decided against the Applicants, it is held that Applicant is not entitled of any relief or compensation as prayed for, we pass the following order:

ORDER

18. In view of the negative finding on issue no. 1 the claim application stands dismissed on merits.

19. The Registry is directed to send a free certified copy of this judgment directly to the Respondent and the Applicant(s) at his/her/their postal address mentioned in the claim application by Register A.D. in view of Rule 34(3) of the Railway Claims Tribunal (Procedure) Rules, 1989.

20. In terms of the above, the present claim application is disposed of. Let this case file be consigned to the Records Room. No order as to costs.

[R.K. Manocha]

[Vinay Goel]

Member (Technical)

Member (Judicial)

Judgment pronounced and signed in open court today i.e. on.

28.03.2024.

Place: Ahmedabad

Date: **28.03.2024.**

[R.K. Manocha]

[Vinay Goel]

Member (Technical)

Member (Judicial)

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