

be further detained in judicial custody. It has not been informed to the Court if any recovery is to be effected from the petitioner or the police requires him for custodial interrogation to achieve any further break-through in the investigation. The argument of learned counsel for the State that the petitioner would tamper with the records if released on bail by misusing his official status is without any foundation inasmuch as the petitioner has already been suspended from the post of Chief Engineer. The files are not in the office but have already been taken into custody by the Investigating Officer.

(17) In the circumstances aforesaid and without commenting upon the merits of the contentions aforesaid we direct that the petitioner be released on bail subject to his furnishing a personal bond in the sum of Rs. 2,00,000 with two sureties of the like amount, to the satisfaction of the concerned Chief Judicial Magistrate/Mlaqa Magistrate. The petitioner shall not leave the territorial jurisdiction of this Court without leave of the trial Court and will not leave the country in any case. He shall not, in any way, hamper or interfere with the progress of the investigation. He shall fully co-operate in the investigation and make himself available as and when directed to appear by the Investigating Officer. In the event the petitioner offends any of the aforesaid conditions, liberty to the State to move for cancellation of bail granted to the petitioner.

J.S.T.

Before J.S. Narang, J

UNION OF INDIA,—*Appellant*

versus

RAJESH KUMAR ALIAS RAJESH KUMAR LHIHA.—*Respondent*

F.A.O. 3271 of 2002

23rd July, 2002

Railways Act, 1989—Ss.123, 124 & 124-A—Amputation of left leg below knee of the respondent due to over-crowding in the train—Claim for compensation—Negligence on the part of the Railways—Railways failing to show that the passengers commensurate to the seats available in the compartment had boarded the train—No infirmity

*in the order of the Tribunal awardng compensation to the claimant—
Appeal dismissed—Treatment by the railways with passengers—
Manner and method, stated.*

Held, that expansion of Railway Department, laying down more railway lines is a commendable work but can it be allowed to be carried out at the cost of respect and dignity of a citizen. He purchases the ticket, pays the money for his travel, but after accepting the money Railway Department is not even bothered as to whether he has to be given a seat or not. It is expected out of the Chairman of the Railway Board that he should look into this aspect in the larger perspective and improvise the method to be followed all over the country so that a passenger when he buys the ticket travels comfortably after having been provided a seat because he has paid for it.

(Para 7)

Further held, that when a passenger pays and after the money, a ticket to board the train is delivered to the passenger and when he reaches the train there is no seat available. Is it not an act of fraud which has been played by the railway authorities upon the poor passenger ? Will it not fall within the ambit and mischief of Section 420 IPC ? This aspect also needs to be kept in mind by the railway authorities. The means of transportation provided by the State is meant for convenience of the citizens but the word 'convenience' is only felt and seen in the cushions but is not allowed to be projected wherever it is necessarily required to be shown and felt. We need to rewrite and re-align ourselves to rise to the convenience of the sovereign.

(Para 8)

Puneet Jindal, Advocate for the appellant.

JUDGMENT

J.S. Narang, J.

(1) I do not find any infirmity in the judgment dated 25th February, 2002 passed by the Tribunal. The claim of the claimant has been granted by making an award of Rs. 2,00,000 and that the interest has been granted with effect from the date of filing of the application.

(2) Learned counsel for the respondent-appellant has argued that in fact the claimant has not proved the negligence on the part of the respondent-appellant and that he is liable on account of his own conduct. The claimant admittedly boarded the train but he came out of the compartment at Ludhiana Railway Station and while re-boarding the train could not get into the compartment and, therefore, he held himself on the steps of the compartment by catching the handle provided outside the compartment. However, due to pressure of rush of the passengers his hands slipped and he fell down from the train and was badly injured. He had to be hospitalised but on account of the injury suffered, left leg below knee had to be amputated. Resultantly, he became unfit for any job.

(3) The respondent-appellant has not controverted the fact that the claimant did board the train after purchasing the ticket and that there was no light and water in the compartment in which the claimant was travelling. It is at Ludhiana Railway Station, the claimant alighted from the compartment for water and breakfast etc. The factum of the claimant having slipped has also not been controverted. The plea which has been taken is that the application is not sustainable as it does not fall within the mischief of Sections 123, 124 and 124-A of the Railways Act, 1989. It is argued that the act on the part of the claimant is containable under the dictum *Voluntati non fit injuria*. The claimant by virtue of his own act and conduct suffered the injury. Thus, the Tribunal has exceeded its jurisdiction by holding that the aforesaid act fell within the ambit of definition of "untoward incident". I am afraid this argument is not sustainable. Respondent-appellant has not been able to show that there was no over crowding in the train and that the claimant was not required to get down at the Railway Station Ludhiana because there was sufficient water available in the compartment. The respondent-appellant has also not been able to show that the passengers commensurate to the seats available in the compartment had boarded the train.

(4) In view of the stand taken by the respondent-appellant that the application does not fall within the provisions of Sections 123, 124 and 124-A of the Railways Act and that the rest of the averments made by the claimant having been admitted, the Tribunal has correctly awarded the compensaiton to the claimant. The appeal is, therefore, dismissed.

(5) Before parting with this judgment, a reference needs to be made to the manner and method in which a passenger is treated by the railways.

(6) It is a matter of common knowledge that the railway tickets are issued from one station to the other (place of destination) without even having any data as to whether the seats are available in the train for the passenger who is purchasing the ticket. The Department of Railways has never even thought on this aspect that whenever the tickets are to be issued at a railway station for a particular destination asked for by the passenger, the officials at that railway station should have the positive knowledge as to whether the passenger purchasing the ticket would be entitled to occupy a seat in a compartment of the train. The tickets are issued at random without even specifying whether the passenger has to travel by boarding the train on the roof-top or hanging on the steps of the compartment. Be that as it may, the Railway Department cannot be allowed to run away from its responsibility that a human being has to travel and it is not the luggage which is to be carried and dumped. I am sure while transporting the luggage the Railway Department has positive information as to whether the particular luggage can be accommodated in the rail car or not. So far as a human being is concerned, couldn't careless attitude has been adopted. **Is it not obligatory for the railway authorities that after issuing ticket to a passenger they must provide a seat for him and so also the basic amenities such as drinking water, aerated water and/or some eatables ?** It has been seen that while transporting chattels sufficient fodder is provided keeping in view the time to be taken for reaching the destination while loading the chattel. Are the human beings treated by the Railway Department worse than chattel ? The Railway Department can give the figure as to how many passengers have travelled in one year all over the country but it cannot tell how many seats were available at that time ? Is it the system which we have asked for after achieving independence ? It is shameful that the Railway Department is totally unorganised in this regard. We have achieved sovereignty—a unit divided by 100 crores as on date. Such is the diluted form of sovereignty given to a citizen of this country !

(7) Expansion of Railway Department, laying down more railway lines is a commendable work but can it be allowed to be carried out

at the cost of respect and dignity of a citizen. He purchases the ticket, pays the money for his travel but after accepting the money Railway Department is not even bothered as to whether he has to be given a seat or not. It is expected out of the Chariman of the Railway Board that he should look into this aspect in the larger perspective and improvise the method to be followed all over the country so that a passenger when he buys the ticket travels comfortably after having been provided a seat because he has paid for it.

(8) When a passenger pays and after accepting the money, a ticket to board the train is delivered to the passenger and when he reaches the train there is no seat available. Is it not an act of fraud which has been played by the railway authorities upon the poor passenger ? Will it not fall within the ambit and mischief of section 420 IPC ? This aspect also needs to be kept in mind by the railway authorities. The means of transportation provided by the State is meant for convenience of the citizens but the word "convenience" is only felt and seen in the cushions but is not allowed to be projected wherever it is necessarily required to be shown and felt. We need to rewrite and re-align ourselves to rise to the convenience of the sovereign.

(9) Copy of this judgment be sent to the Chariman, Railway Board for adopting/providing the guidelines accordingly in regard to the above.

J.S.T.