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IN THE HIGH COURT OF DELHI

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FAO No.108/2008

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..... Appellant
through: Mr.V.S.R.Krishna, Adv.

VERSUS

Maimum Nisha & Ors.

..... Respondent
through : None

DATE OF DECISION:

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26.03.2008

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether judgment should be reported in Digest? Yes

: **PRADEEP NANDRAJOG, J.** (Oral)

CM No.4440/2008

1. There is a 93 days delay in filing the appeal. Vide CM No.4440/2008 delay in filing the appeal is prayed to be condoned. I am considering prima facie the merits of the appeal while considering condonation of delay for the reason law is that if a claim is otherwise meritorious it should not be thrown out on account of limitation. I am also considering the cause shown for delay to be condoned.

2. Law pertaining to condonation of delay as it has

grown in this country has inter mingled with prima facie case to be considered while considering the sufficiency of the cause shown for delay to be condoned.

3. Mohd. Aarif, held to be a bona fide passenger in a train, a finding not challenged in the instant appeal, had boarded a train to undertake journey from Sarai Rohilla Railway Station to Barauni Junction. The journey was undertaken by the young boy on 6.4.2005.

4. The next date i.e. on 7.4.2005 the train reached Dalsinghsarai Station. He fell off the train. He received grievous injuries. Unfortunately, he died. AW-2, a stated eyewitness and a fellow passenger entered the witness box and gave a graphic version of as to what happened when Mohd. Aarif fell from the compartment when the train was in motion. AW-2 stated in his testimony that he and the deceased were co-passengers in the same compartment. That the compartment was over crowded and when it was about to reach Dalsinghsarai Railway Station he got off from the seat to go near the door as the train was to halt at the said station only for a minute. When he reached near the door the train suddenly jerked and the deceased who was near the door fell down from the train. He stated that he informed the said fact to the Station Master.

5. After noting the testimony of AW-2, the Tribunal has returned a finding that AW-2 was cross-examined but nothing could be elicited from the said witness which could detract from his creditworthiness. The Tribunal has also recorded that the contemporary record produced by the applicants i.e. the investigation report etc. substantially supports the version of AW-2.

6. The Tribunal has further noted Section 123 of the Railways Act, 1989. Suffice would it be to note that under Clause 2 of Sub-clause 'c' of Section 123 the accidental falling of a passenger from a train carrying passengers is treated as an untoward incident and compensation for death or injury relating to an untoward incident is provided under Section 124-A of the Railways Act, 1989. The Tribunal has accordingly held that once a bona fide passenger of a train is proved to have suffered injuries or death as a result of fall from a train, prima facie case would be made out to hold that the injury or the death is as a result of an untoward incident and hence compensation is payable under Section 124-A.

7. The appellant had projected a defence under the Proviso to Section 124-A. The defence projected was that if it is established that the injury was self inflicted or the death was a result of an act of the deceased, under the proviso no

compensation would be payable.

8. The learned Tribunal has held that in the instant case the respondent (appellant) did not adduce any evidence to show that the incident in question is covered by the proviso to Section 124-A.

9. Learned counsel for the appellant urges that the said finding of the Tribunal is wrong for the reason evidence has come on record that the deceased was standing at the door of the bogey. Meaning thereby, he was negligent on said account the inevitable conclusion has to be that the deceased died due to his own act of negligence.

10. No doubt, the Tribunal has not dealt with the submission as is projected at the hearing today but that does not vitiate the impugned order for the simple reason in his testimony, AW-2 has clearly deposed that the train was over crowded and that the train was to halt for only one minute at Dalsingsarai Station. The inevitable conclusion from the said testimony of AW-2 (which has not been challenged in cross-examination) has to be that passengers who had to disembark got hardly a minute to do so. Within the same time the passengers who had to board the train had also to do so. Obviously, there would be jostling.

11. Thus it would be the duty of the Railway authorities

to ensure that only such number of passengers enter a bogey who can be accommodated. It is a matter of common knowledge that tickets are issued in unreserved bogies to one and all. Even in reserved bogies passengers having no valid tickets entitling them to travel in the reserved compartments do enter in the compartment. Further, why should the Railways run trains where doors can be opened when the train is in motion? Pneumatic doors are currently in vogue all over the world in not only trains but all passenger transport vehicles. It is thus a case of deficiency in service and also lack of reasonable foresight on the part of the railways.

12. In any case, a passenger in an over crowded bogey cannot be fastened with the act of self inflicted injury if he falls from the over crowded bogey when the train is approaching the Railway station and people have to jostle to de-board on account of inadequate time provided for de-boarding.

13. Looked at from any angle prima facie no case exists in favour of the appellant and hence by not condoning the delay it cannot be said that a meritorious claim is being thrown out.

14. With respect to the delay, suffice would it be to note that the delay is of 93 days. The usual explanation given is that the file had to move from desk to desk before

administrative decision was taken to file the appeal. The only worthwhile averments are in para 3 and 4 of the application which reads as under :-

“3. That in this connection it is submitted that immediately on receipt of the impugned order from the learned Tribunal the concerned opinions were taken from the respective persons as is the vogue in railway departments.

4. That the matter was examined in the office of the petitioner in consultation with the legal advisers and it was later on decided to challenge the impugned order by way of a First Appeal Order. The petition was accordingly got drafted and filed. The above process of the consideration of the orders of the learned Tribunal which process is mandatory in a government department like the Railways led to 93 days delay in filing the present FAO. The delay thus caused is purely bonafide and is due to administrative formalities to be gone into before the filing of the FAO.”

15. No particular of the officer who dealt with the file has been disclosed. On what date was the file dealt with? None has been disclosed. What is the administrative hierarchy in the Railways to deal with legal matters? None has been disclosed. The sufficient cause is as vague as vagueness can be.

16. Thus, no sufficient cause has been shown entitling appellant to have the delay condoned.

17. The application is accordingly dismissed in limine.

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Since delay in filing the appeal has not been condoned the appeal is dismissed as not maintainable.

March 26, 2008
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PRADEEP NANDRAJOG, J.