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

+ **FAO 308/2015**

SONA & ANR

..... Appellants

Through: Mr Anshuman Bal, Adv.

versus

UNION OF INDIA

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **28.09.2015**

CM No. 21252/2015 (Exemption)

1. Allowed subject to just exceptions.

FAO 308/2015 & CM No. 21253/2015 (Condonation of delay)

2. This is an appeal whereby challenge is laid to the order of the Railway Claims Tribunal (in short the Tribunal) dated 12.03.2015. It is the case of the appellants before this court that, on 15.02.2011, the husband of appellant no.1, one, Balbir Singh, was travelling from Ismaila to Rohtak by 3 DJ Passenger train. Due to heavy rush in the train, he was standing near the gate, and on account of a sudden jerk, he fell and received fatal injuries. Consequently, the husband of appellant no.1 (i.e. Balbir Singh) succumbed to his injuries.

3. It is in this background, that appellant no.1 and appellant no.2, the son of the deceased (i.e. Mr Balbir Singh) filed a petition before the Tribunal. Though, according to the respondents, no railway ticket was discovered, appellant no.1 had filed a copy of the ticket (Ex. AW1/12) before the Tribunal.

4. To be noted, in the DRM report generated by the respondent, at page 5, it was indicated that ticket no. 90911 dated 15.02.2011, was issued for the journey from Ismaila to Rohtak.

5. The Tribunal, on its part, vide the impugned judgement, essentially, rejected the claim made by the appellants before it based on the statement of the train driver, one, Mr Niyamat Singh, and that of the guard, namely, Mr Thakurdeen.

5.1 The statement of Mr Niyamat Singh, which is dated 15.02.2011, and that of Mr Thakurdeen, which is dated 16.03.2011, and are recorded at pages 30 and 31 of the DRM report, are suggestive of the fact that the husband of appellant no.1 (i.e. Balbir Singh), committed suicide. The extracts of the statements made are recorded verbatim, as appearing in vernacular language, in paragraphs 9 & 10 of the impugned judgement.

6. Learned counsel for the appellant says that these are statements recorded one month after the death of Mr. Balbir Singh and, therefore, cannot be relied upon. It is further submitted that the statement of the guard Thakurdeen is based on the information given by the driver.

7. According to me, in so far as the statement of the driver is concerned, it can be relied upon as it is an eye witness statement. The period between the date of the death and the date on which the statement of the driver was recorded, is exactly one month. That period cannot be said to be a period which would have dimmed his memory, especially, when, it relates to an act of suicide.

7.1 Furthermore, no animus can be attributed to the driver in making the statement, which he did, before the relevant authority.

8. Faced with this, the learned counsel for the appellants, during the course of the argument, did concede that the appellants should have asked for the production of the witness if they wished to cross-examine him. Admittedly, no such application was moved.

9. In these circumstances, I find no error in the judgement of the Tribunal. The appeal is, accordingly, dismissed. The application for condonation of delay is, accordingly, rendered infructuous. The said application is also, therefore, dismissed.

RAJIV SHAKDHER, J

SEPTEMBER 28, 2015

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