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

Date of Decision: July 20, 2016

+ **FAO 309/2015**

ANIL KUMAR & ARTIAppellants

Through: **Mr. D. Sabharwal, Advocate**

versus

UNION OF INDIA Respondent

Through: **Mr. Hashmat Nabi, Advocate**

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

C.M.21254/2015 (Delay)

There is delay of 11 days' in filing the accompanying appeal.

The delay does not appear to be deliberate or intentional. As such, the application is allowed and the delay stands condoned.

The application is disposed of.

FAO 309/2015

Impugned order of 2nd June, 2015 dismisses the claim petition of appellants by observing that the dead body was cut into two pieces which belies the case of appellants of deceased falling from the running train. It has been also held in the impugned order that no rail ticket was recovered

from the body of the deceased and therefore, he was not a bona fide passenger and that there is contradiction *inter se* the evidence of appellants regarding purchase of railway ticket.

The challenge to the impugned order by learned counsel for appellant is on the ground that the body of the deceased was found without clothes and therefore, there was no question of recovery of railway ticket. It is submitted that the police report reveals that it was a case of fall from the train and, so appellants are entitled to the compensation as claimed by them.

Learned counsel for respondent points out that it is evident from the site plan on trial court record that the recovery of the dead body of the deceased is from railway track and not from the ballast/berm and this belies the case of fall from the train and it appears that deceased was run over while he was illegally crossing the rail tracks and thus, it is submitted that the impugned order does not suffer from any illegality.

Upon hearing and on perusal of the impugned order and the material on record, I find that the case of appellants is contradicted by the site plan of place of the accident which shows that the recovery of the dead body is from the rail tracks and not from the ballast/berm and this clearly rules out the appellants' case of deceased falling from the train.

It is true that when the dead body of the deceased was recovered, it was without clothes, but this by itself is not sufficient to justify non-production of the railway ticket/pass or the platform ticket because there is apparent contradiction *inter se* the evidence of appellants as appellant No.2 had stated in her evidence that the railway ticket for the deceased

was purchased by appellant No.1, who in his evidence denies it. This contradiction goes to the root of the matter and justifies the rejection of claim petition by appellants.

Thus, finding no infirmity in the impugned order, this appeal is dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

JULY 20, 2016
s

