

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

+ **FAO No. 304/2017**

% **9th August, 2017**

HANSRAJ (SINCE DECEASED) THROUGH LR^s AND ORS.

..... Appellants

Through: Mr. Anshuman Bal, Adv.

versus

UNION OF INDIA

..... Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. No one appears for the respondent in spite of service. By this first appeal under Section 23 of the Railway Claims Tribunal Act, 1987 the appellants/claimants impugn the order of the Railway Claims Tribunal dated 19.4.2017, by which the Railway Claims Tribunal has dismissed the claim petition by holding that complaint is abated on account of death *pendente lite* of the original claimant. Impugned order dated 19.4.2017 reads as under:-

“19.04.17

Sh. R.D.Bersena, learned counsel for the applicant is present Sh. A.K.Sharma, learned counsel for the respondent is present. The injured

applicant is reported to have died. The counsel stated that it was a case of natural death. Section 306 of the Indian Succession Act provides for no survival of cause of action for personal injuries. The hospital record shown to us has diagnosed cancer of lungs to the cause of death. The death is not related to the injuries suffered in the alleged incident. The application is accordingly dismissed as having abated with no order as to costs.”

2. The subject claim petition was filed before the Railway Claims Tribunal on account of injuries suffered by late Sh. Hans Raj. Sh. Hans Raj was alive when the claim petition was filed and which was filed for seeking compensation on account of injuries suffered in the train accident which is defined as an ‘untoward incident’ under Section 123(c) of the Railways Act, 1989 and which entitles the injured to compensation on account of an untoward incident as per Section 124-A of the Railways Act.

3. In a case such as the present even if injured dies during the pendency of the proceedings, then right to sue survives because the right to sue in favour of the deceased Sh. Hans Raj crystallizes when the claim petition was filed. Right to sue is crystallized because entitlement of the deceased Sh. Hans Raj was for compensation and an entitlement to compensation being an entitlement to moneys cannot abate on the death of the claimant in the claim petition. Railway

Claims Tribunal has therefore clearly erred in passing the impugned order holding that the claim petition stood abated.

4. In view of the above discussion, the impugned order dated 19.4.2017 is set aside and the claim petition will now be decided by the Railway Claims Tribunal in accordance with law for deciding as to whether or not claimants are entitled to the compensation for the injuries suffered by the deceased Sh. Hans Raj in the train accident and which is pleaded to be an untoward incident.

5. Appeal is accordingly allowed and disposed of in terms of aforesaid observations.

AUGUST 09, 2017
Ne/ib

VALMIKI J. MEHTA, J