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

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Date of Decision: 03rd January, 2018

+ W.P.(C) 7917/2013

KARAMJIT KAUR & ORS.

..... Petitioner

Through: Ms. Aruna Mehta and Mr. Sanjeev
Mehta, Advs.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. A.S. Dateer and Mr. Gurpreet
Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The petitioners are seeking compensation for the death of late Richpal Singh in the accident dated 03rd October, 2007.
2. Late Richpal Singh was working with the Northern Railways as Senior Loco Inspector. On 03rd October, 2007 at 03:15 hours, late Richpal Singh was of on duty on the steam locomotive engine of the train named '*Palace on wheels*' in which there was a sudden explosion in the boiler of the steam engine which resulted in the fatal burn injuries to Richpal Singh. The deceased was survived by his widow and two children who have filed this petition.
3. Learned counsel for the Railways submits that this writ petition filed after more than six years of the accident is barred by delay and latches. Without prejudice, it is submitted that this writ petition is not maintainable

as the Railways deposited a compensation of Rs. Rs.3,86,757/- (Rs.3,68,340/- along with interest of Rs.18,417/-) under the Employee's Compensation Act, 1923 with the Commissioner, Employees' Compensation and the said amount had been withdrawn by the petitioners. It is further submitted that the Railways paid an ex-gratia amount of Rs.6,13,243/- (Rs.15,000 + Rs.5,98,243) to the petitioners. As such, total compensation of Rs.10,00,000/- (Rs.3,86,757/- as employee's compensation and Rs.6,13,243/- as *ex-gratia* payment) has been made to the petitioners who are not entitled to any further compensation.

4. Learned counsel for the Railways further submits that the Railways have given compassionate appointment to petitioner No.1 as a Clerk and she has now been promoted as a Senior Clerk and is drawing a salary of more than Rs.45,000/-. It is further submitted that Railways paid total amount of Rs.20,36,773/-, including the aforesaid amount of Rs.10,00,000/- mentioned in para 3 above, to the petitioners. The breakup of Rs. 20,36,773/- is reproduced hereunder:-

“1.	<i>Funeral Charges</i>	<i>Rs.2000/-</i>
2.	<i>Ex-Gratia at the time of death</i>	<i>Rs.15000/-</i>
3.	<i>REBF</i>	<i>Rs.25000/-</i>
4.	<i>PF</i>	<i>Rs.1,36,613/-</i>
5.	<i>Insurance</i>	<i>Rs.46424/-</i>
6.	<i>Leave Encashment</i>	<i>Rs.65463/-</i>
7.	<i>DCRG (Death cum Retirement Gratuity)</i>	<i>Rs.3,50,000/-</i>
8.	<i>Arrears Revised DCRG (Revised after Sixth Pay Commission)</i>	<i>Rs.2,81,340/-</i>

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| 9. | <i>Arrears Revised Leave Encashment (difference after Sixth Pay Commission)</i> | <i>Rs.15,400/-</i> |
| 10. | <i>Pension (revised)</i> | <i>@Rs.14762 + DA admissible</i> |
| 11. | <i>Revised Pay arrears of Sixth pay commission</i> | <i>40% = Rs.73550/-
60% = Rs.26221/-</i> |
| 12. | <i>Ex-gratia payment</i> | <i>Rs.5,98,243/-</i> |
| 13. | <i>WCA (Workman Compensation Act)</i> | <i>Rs.3,68,340/-
(interest Rs.18,417/- deposited with CWC)</i> |
| 14. | <i>Appointment</i> | <i>Mrs.Karamjit Kaur w/o Late Sh. Richh Pal Singh ex SLI/SSB has been given appointment as Sr. Clerk on Compensate Ground."</i> |

5. Learned counsel for the petitioner submits that the compensation deposited by the respondent with the Commissioner, Employees' Compensation was withdrawn by the petitioner without prejudice to their right to claim further compensation. However, no document has been placed on record to show that the amount was received without prejudice. It is further submitted that the withdrawal of the compensation under the Employee's Compensation Act does not bar the petitioners for claiming further compensation. With respect to the ex-gratia amount of Rs.6,13,243/- paid by the respondent, learned counsel for the petitioner admits that receipt of the ex-gratia amount and submits that the payment of the ex-gratia amount also does not affect the petitioners right to claim further compensation. Learned counsel for the petitioners further admits the receipt of dues to the tune of Rs.20,36,773/- as well as the compassionate appointment given by the Railways to petitioner No.1. With respect to the plea of delay and laches, it is submitted that the petitioners No.2 and 3 were

minors and, therefore, the petition is not barred by delay and latches.

6. In the present case, the petitioners have received amount of Rs.10,00,000/- in consequence of the accidental death of the deceased in the accident dated 03rd October, 2007. This Court is of the view that the petitioners have received reasonable compensation of Rs.10,00,000/- from the respondent (Rs.3,86,757/- by way of compensation under the Employee's Compensation Act and Rs.6,13,243/- as ex-gratia payment) and they are not entitled to any further compensation in this writ petition. The petitioner's contention that the ex-gratia amount paid by the respondent cannot be treated/adjusted against the compensation is rejected. The law in this regard is well settled that the pecuniary advantage received by them as a consequence of the accidental death is treated as compensation. The petitioners claims for further compensation is not maintainable. Reference be made to ***Helen C. Rebello v. Maharashtra State Road Transport Corp.***, (1999)1 SCC 90, ***United India Insurance Co. Ltd. v. Patricia Jean Mahajan***, (2002) 6 SCC 281 and ***Reliance General Insurance Company Ltd. v. Shashi Sharma***, (2016) 9 SCC 627. This Court also notes that the compassionate appointment has been given by the Railways to the petitioner who is now promoted to the rank of a Senior Clerk.

7. There is no failure of duty on the part of the respondent in view of the employee's compensation Rs.3,86,757/- voluntarily deposited by the Railways with the Commissioner, Employees' Compensation as well as the payment of an ex-gratia amount of Rs.6,13,243/- by the Railways to the petitioners and the compassionate appointment given by Railways to petitioner No.1. There is no merit in this writ petition which is hereby dismissed.

8. Copy of this judgment be given *dasti* to learned counsels for the parties under signature of Court Master.

JANUARY 03, 2018
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J.R. MIDHA, J.

