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

RESERVED ON : NOVEMBER 23, 2017

DECIDED ON : JANUARY 09, 2018

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FAO 369/2014

ASMA & ORS

..... Appellants

Through : Ms.Navneet Goyal with Ms.Kavita
Tyagi, Advocates.

versus

UNION OF INDIA

..... Respondent

Through : Ms.Shipra Shukla, Advocate.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P GARG, J.

C.M.No.19017/2014 (delay)

1. For the reasons mentioned in the application, delay of 322 days in filing the appeal is condoned.
2. The application stands disposed of.

FAO 369/2014

1. The present appeal has been preferred by the appellants under Section 23 of the Railways Claims Tribunal Act, 1987 to challenge the legality and correctness of an order dated 25.09.2013 whereby the claim

petition to award compensation was dismissed. The appeal is contested by the respondent.

2. I have heard the learned counsel for the parties and have examined the file. It is not in dispute that the deceased Nurulais died on account of injuries sustained by him in a rail incident of 16.10.2011 at Hazrat Nizammuddin Railway Station. The case of the complainant is that on that day Nurulais was travelling from New Delhi to Mathura by Andaman Express. He accidentally fell down from the crowded compartment of the running train due to jostling of passengers and sudden jerk at Hazarat Nizammuddin station and died at the spot. Nurulais lost his bag containing the rail ticket, money and other articles. The claim was contested by the respondent. It was urged that Nurulais was not a bonafide passenger and did not sustain injuries in an 'untoward incident'. Ticket for performance of the journey was not recovered. The victim had sustained injuries due to his own negligence. It was a case of run over by the train and not an accidental fall.

3. The appellant No.1 examined herself as AW-1 before the Tribunal and relied upon several documents. The respondent did not examine any witness but placed on record 29 enclosures (Mark 'R-1' collectively). After hearing the learned counsel for the parties and on appreciating the evidence and documents, the learned Tribunal came to the conclusion that it was a case of run over and the claimants were not entitled for the compensation.

4. Undisputedly Nurulais died on 16.10.2011 at Platform No.6, Hazarat Nizammuddin. The incident was reported promptly and DD No.15/A (Ex.AW1/2) came to be recorded at Police Station Hazarat

Nizammuddin at 2.50 p.m. The information was specific that an individual travelling by Andaman Express train in a general compartment had fallen from the running train and died after being run over by the said train. The inquiry conducted by Railways records that on 16.10.2011, Andaman express train No.16032 had arrived at Platform No.6 at 2.30 p.m. and had departed at 2.50 p.m. Apparently, the incident was reported to the police station promptly without any delay. There was no occasion for the informer to concoct a false story at that juncture when the victim was an unknown individual and no relative was present at the spot. The inquiry conducted by the Railways further records that when the train was moving, one unknown individual who was travelling on the footboard of the general compartment fell down and was run over by the said train. It falsifies the respondent's claim that the victim's death was not due to fall but because of being run over by the train.

5. Statement of R.K.Saini RPF/Const. recorded on 16.10.2011 (Ext.A-5 & R-1/12) is specific. Similar is the statement of other security personnel Dharamveer Singh of GRP/NZM. Both of them were categorical to claim that the victim had sustained injuries due to fall from the running train. There were no sound reasons for the learned Tribunal to suspect their version as they were not related to the victim to concoct a false story to benefit them. Mere non-recovery of the ticket is not enough to suspect the claimant's claim. No personal search memo is on record. It is unbelievable that the victim won't have any article, whatsoever, in his possession at the time of incident particularly when a mobile phone was recovered from his possession. The findings

of the learned Tribunal that it was a case of run over are based upon surmises and conjectures. The respondent did not examine any witness to prove if the victim had sustained self-inflicting injuries or that it was a case of run over. The respondent did not examine the post-mortem examination doctor to ascertain if the injuries found on the victim's body were possible due to fall or not. Even as per the investigation by the Railways, the death was due to the victim's fall while travelling on the footboard of the train. There were no findings that it was a case of 'run over'. The findings of the Tribunal are contrary to the case of the parties and cannot be sustained.

6. Consequently, the appeal filed by the appellants is allowed and the impugned order dated 25.09.2013 is set aside. The appellants being the legal heirs of the deceased Nurulais shall be entitled to have a statutory compensation of ₹8,00,000/- with interest @ 6% per annum from the date of filing of the claim application till the date of the order

7. List the matter before Roster Bench on 1st February, 2018 for disbursement of the claim to the legal heirs of the deceased in a specific proportion. For that purpose the claimants shall appear before the Roster Bench on the said date and shall produce the proof regarding their age to ascertain as to how the claim is to be apportioned amongst them.

**S.P.GARG
(JUDGE)**

JANUARY 09, 2018/sa