



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

+ **FAO 252/2020**

Reserved on : 08.05.2023

Pronounced on : 26.05.2023

IN THE MATTER OF:

SHALINI GIHAR@SHANU GIHAR & ANR. Appellants
Through: Mr. Yogesh Swaroop and Mr. Manoj Sharma, Advocates.

versus

UNION OF INDIA Respondent
Through: Mr. Piyush Beriwal, Ms. Damini Garg, Ms. Divya Srivastava, Mr. Rajnish Kumar, Mr. Akshay Amritanshu, Mr. Ashutosh Jain and Mr. Samyak Jain, Advocates for UOI.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

CM APPL. 34981/2020

1. By way of present application file under Section 5 of the Limitation Act read with Section 151 CPC, the appellants seek condonation of delay of 1122 days in filing the present appeal.
2. Learned counsel for the appellants submits the appellants being the sisters of the deceased are the only legal heirs and reside at Kanpur, Uttar Pradesh. After the death of deceased, there is no one to look after them.



Further, the appellants did not receive the certified copy of the impugned order in time. Additionally, it was submitted that due to lockdown imposed on account of COVID-19 pandemic, appellants could not file the present appeal within the stipulated period.

3. Learned counsel for the respondent, on the other hand, has opposed the application.

4. It is worthwhile to note that in Mohsina & Ors. v Union of India & Ors., reported as **MANU/DE/2465/2017**, delay of 804 days in filing of the appeal was condoned by a Co-ordinate Bench of this Court, taking into account poor economic status of the appellants/claimants. Relevant excerpts from the decision is reproduced hereunder:-

"4. The appellants are seeking condonation of delay of 804 days in filing the appeal on the ground that appellant no. 1 is an illiterate and poor lady; she lost her husband in the train accident; her father-in-law was pursuing the case before the Claims Tribunal; her father-in-law expired, whereupon her mother-in-law threw her out from the matrimonial home and she is residing with her father who is also handicapped; she was working as a maid servant to make both ends meet; her cousin came from abroad on 02nd May, 2013 and felt pity over her and made enquiries from the Claims Tribunal and thereafter, helped her in filing the appeal.

5. Considering the extreme poverty and illiteracy of the appellants, the application is allowed and the delay in filing the appeal is condoned subject to the condition that the appellants would not be entitled to interest for the delayed period of 804 days."

5. This Court takes note of the fact that, vide order dated 23.09.2021 passed in Suo Motu Writ Petition (Civil) No. 3 of 2020 titled as In Re:



Cognizance for Extension of Limitation, the Supreme Court has directed that for computing the period of limitation in suit, appeal, application or proceedings, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Considering the facts and circumstances of the case, the application is allowed and the delay of 1122 days in filing the accompanying appeal is condoned.

6. Application is disposed of in the above terms.

FAO 252/2020 and CM APPL. Nos. 34982-83/2020

1. By way of present appeal filed under Section 23 of the Railway Claims Tribunal Act (hereinafter referred to as the 'Act'), the appellants, who were claimants before the Railway Claims Tribunal, challenged the order dated 19.12.2017 whereby claim application filed by them was dismissed.

2. The facts, as culled out from the material placed on record, are that the appellants in application filed before the Tribunal claimed that their brother namely *Late Shri Arjun* had undertaken a train journey on 30.10.2016 from *New Delhi* to *Ghaziabad* after purchasing a second class ordinary train ticket bearing No. K-11195008. It was further claimed that when the train reached near *Shivaji Bridge*, due to sudden jerk/jolt, the deceased accidentally fell from the moving train at the end of the platform of New Delhi Railway Station and died on the spot.

3. Mr. Yogesh Swaroop, learned counsel for the appellants contended that despite recovery of train ticket, the Tribunal opined that the accident could not be categorised as an 'untoward incident'. It was further contended that in reaching such conclusion, the Tribunal did not appreciate the paper slip containing the contact details of the deceased



that was recovered from the person of the deceased.

4. Mr. Piyush Beriwal, learned counsel for the respondent/UOI, on the other hand, supported the impugned order. He contended that the paper slip had contact details of the deceased, and its recovery from the person of the deceased indicated that the deceased wanted to commit suicide. It was next contended that appellants do not fall under the definition of dependent as defined under Section 123B of the Railways Act, 1989.

5. I have heard the learned counsels for the parties and gone through the entire material placed on record.

6. Indisputably, a journey ticket bearing No. K-11195008 was recovered from the body of the deceased and the same was verified at CRIS as having been issued on 30.10.2016 at 08:05 hrs. from New Delhi Railway Station for a journey upto *Ghaziabad*. Reportedly, the first information of the incident was received from one *Pratap Singh*, Head Constable at RPF Post/New Delhi to the GRP/NR at 08:50 hours on the date of incident. On receipt of the information, *ASI/GRP Ashok Kumar* visited the spot and found a male dead body lying at KM 1536/42 and 1536/42A near Platform No. 16 of Delhi Railway Station towards *Shivaji Bridge Railway Station*. In *Jamatalashi*, alongwith railway ticket one paper slip of J.P. Tent House, Uttam Nagar, New Delhi was also recovered from the person of the deceased. The said paper slip reads as under :-

"8802629128 सूर्या
मेरा नाम अर्जून है
C-406 हस्ताल कलोनी



उत्तम नगर निवास है
शनिबजार समसान गाट रोड़ "

7. A bare reading of the afore-quoted paper slip would show that the contention raised by the respondent that it indicated deceased's inclination to commit suicide, is completely fallacious. Merely because the paper slip contained name and contact details of the deceased would not warrant the assumption as alleged by the counsel for the respondent. A suicide note would show the intention, but no such intention is apparent from the paper slip. On the contrary, a perusal of DRM report would show that no such observation was mentioned in it. Rather, it was opined that the deceased had died due to his negligent and careless act as he was standing near the door of the compartment. In terms of the decision of the Supreme Court in Union of India v. Rina Devi reported as (2019) 3 SCC 572, the issue relating to injuries/death occurring on account of self-negligence is no longer *res integra*. In the captioned case, it has been held as under : -

"25. We are unable to uphold the above view as the concept of 'self-inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. We may in this connection refer to judgment of this Court in United India Insurance Co. Ltd. versus Sunil Kumar laying down that plea of negligence of the victim cannot be allowed in claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will not



fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor.”

(emphasis added)

8. In view of the aforesaid dicta, the contention raised is meritless and the same is rejected.

9. Coming to the second contention raised that the appellants did not fall in the category of dependents, it is noted that the respondent has vaguely denied the averments in the claim application to the extent that the appellants were dependents. While appellant No.1 appeared as AW1 however, no question was put to her in the cross-examination on the aforesaid aspect. A reading of the evidence by way of affidavit by appellant No. 1 would show that in the said affidavit it was categorically stated that the appellants were the unmarried sisters of the deceased and were totally dependent upon his earnings and were living with him since birth. The parents of the deceased had already expired and as such the contention raised has no legs to stand on and the same is also rejected.

10. Keeping in view the aforesaid discussions, the appeal is allowed and the impugned order is set aside. The matter is remanded back to the concerned Tribunal for awarding the compensation in terms of the Act within two weeks, and for which purpose the matter shall be listed before the Tribunal on 02.06.2023

11. Appeal is disposed of in the above terms alongwith miscellaneous applications.

(MANOJ KUMAR OHRI)
JUDGE

MAY 26, 2023

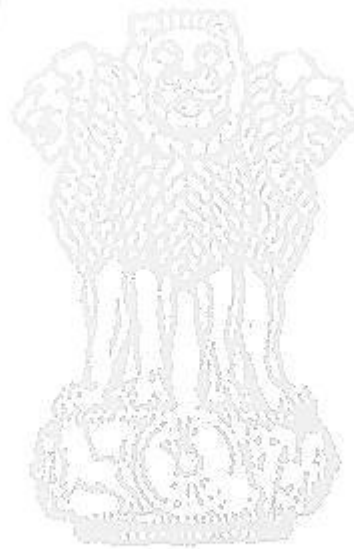
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