

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

+ **FAO 434/2019**

Date of Decision: 09.12.2022

IN THE MATTER OF:

SH. BALLABH PRASHAD & ANR.

..... Appellants

Through: Mr. Rajan Sood, Advocate.

Versus

UNION OF INDIA

..... Respondent

Through: Ms. Nidhi Rama, CGSC with Mr. Zubin Singh, Ms. Charu Modi, Ms. Devika Bajaj, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

CM. APPL. 47932/2019

1. By way of the present application filed under Section 5 of the Limitation Act, read with Section 151 Code of Civil Procedure, the appellants/claimants seek condonation of delay of 01 day in filing the present appeal.

2. Mr. Rajan Sood, learned counsel for the appellants submits that the appellants are the parents of *Sh. Dinesh Chandra* (the deceased), who unfortunately expired on 06.07.2018 in an '*untoward incident*.' It is stated that though the impugned order was passed on 18.07.2019, however a certified copy of the same was only received by the appellants

on a later date. He further submits that the appellants are poor persons and could not seek appropriate legal advice timely for want of funds.

3. In view of the above mentioned facts and circumstances, the delay of 01 day in filing the accompanying appeal is condoned and the application is disposed of.

FAO 434/2019

1. By way of the present appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987 (hereinafter, referred to as '*the Act*'), the appellants have assailed the order dated 18.07.2019 passed by the Railway Claims Tribunal, Principal Bench, Delhi whereby the claim application filed by them was dismissed.

2. Mr. Rajan Sood, learned counsel for the appellants submits that the Tribunal has failed to appreciate the fact that a valid journey ticket was recovered from the person of the deceased in the *Jamatalashi* proceedings. He further submits that the incident was wrongly held not to be an '*untoward incident*' only on the ground that the body of the deceased was found cut in two halves. In support of his contentions, learned counsel has placed reliance on the decisions in Sh. Prempal Singh & Anr. v. Union of India reported as **2018 SCC OnLine Del 9571** and Sushila Devi @ Meera & Ors. v. Union of India reported as **2018 SCC OnLine 8741**.

3. *Per contra*, Ms. Nidhi Rama, learned CGSC for the respondent has supported the impugned order. She submits that the *Jamatalashi* proceeding was carried out on the next day of the incident i.e., 07.07.2018. It is submitted that the recovery of journey ticket has rightly been doubted by the Tribunal as the father of the deceased i.e., appellant No. 1 was a former employee of the Railways and was last posted at

Tughlakabad Railway Station. Learned counsel further submits that from the material placed on record, the Tribunal rightly concluded that the incident had occurred not on the account of a fall from the train but from a run over by the train.

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

5. Briefly, the facts as emanate from the records are that it was claimed that on 06.07.2018, *Sh. Dinesh Chandra* (the deceased) had left his house after informing his parents that he was going to *New Town Faridabad* to meet his friend. *Sh. Dinesh Chandra* undertook the train journey after purchasing a valid journey ticket bearing No. M-43824387 and when the train reached between *Faridabad* and *New Town Faridabad Railway Station*, he accidentally fell from the moving train and died on the spot. The claim petition was contested by the respondent. A written statement was filed on behalf of the respondent wherein besides other contentions, it was specifically contended that the injuries sustained by the deceased were '*self inflicted injuries*'. It was also contended that there was a time gap between when the deceased left his house at 17:30 hours and the time of issuance of journey ticket at 18:48 hours.

The information about the incident was first given on 06.07.2018 by one *Raj Kumar* of RPF, who had informed that a male dead body was lying at Km. 1509/5-3 at *Faridabad Yard Up Main Line between signal Nos. S-45 - S-47*. The said information has been placed on record as per the station master memo dated 06.07.2018.

6. A copy of the 'brief facts' recorded by the Investigating Officer of P.S. GRP, Faridabad on 06.07.2018 and 07.07.2018 have also been

placed on record. It has been mentioned that on receipt of the information about a dead body lying on the main line, *ASI Mahender Singh* had reached the spot. Being night time and due to no arrangement of light at the spot, the dead body was taken to *B.K. Hospital, Faridabad* in a Government Ambulance and was kept overnight in the mortuary. It was further mentioned that rest of the investigation would be done on the next day. On the next day i.e., 07.07.2018, *Jamatalashi* of the body of the deceased was done in the mortuary by the Investigating Officer, P.S. GRP in presence of *ASI Ibrahim Khan*, appellant No. 1 (father of the deceased) and one *Surender Singh*.

7. In the *Jamatalashi*, the journey ticket bearing No. M-43824387 purchased on 06.07.2018 for undertaking the journey from *Tughlakabad* to *New Town Faridabad* along with other articles i.e., one mobile phone, election identity card and cash of Rs.80/- were recovered from the body of the deceased. It is pertinent to note that in the course of proceedings before the Tribunal, the respondent did not deny the genuineness or validity of the journey ticket. However, it was contended that the ticket was produced by appellant No. 1 (father of the deceased) being a former employee of the Railways. Further, the *bona fide* of the journey was doubted as the deceased being resident of *Faridabad* had to only visit *New Town Faridabad* and no occasion arose for him to board the train from *Tughlakabad*. Insofar as contention that it was the appellant No. 1 who had produced the journey ticket, it is pertinent to note that appellant No. 1 in his cross-examination stated that he was a Railways employee and superannuated on 31.12.2017. Concededly, the incident occurred on 06.07.2018 i.e., almost about 07 months of his retirement. It is noted that except the bald contentions, no other material has been placed on record

by the respondent questioning the validity or the genuineness of the ticket.

8. Vide the impugned order, the Tribunal arrived at a conclusion that ‘if the dead body is found in two pieces, it is probable that the deceased was run over by the train.’ In alike facts and circumstances in Sh. Prempal Singh (Supra), a Co-ordinate Bench of this Court discountenanced such a finding and observed thus:

“7. The reasoning in the impugned order that because the deceased was cut into halves: one part found inside the railway tracks and the other outside, the death could not have been caused due to accidental falling from a moving train, is flawed. The impossibility of a passenger being so crushed after a fall from a moving train has not been conclusively established in law, so as to obviate all such claims for compensation. It is possible that the deceased while standing near the overcrowded passenger compartment door, slipped down while holding on to the door-railing, and frantically tried to recover and re-board the train - with his legs flailing violently, and in the valiant and violent melee his legs or his body could have unfortunately come under the wheels of the train leading to his being consumed in the fatal accident. As long as such possibility exists, the claim cannot be ousted or denied on technical assumptions. There is not a divine camera which could replay the actual manner of the fatality, but all factors lead to the inexorable conclusion that a bonafide passenger died in an untoward train accident. There is also no reason why the deceased would be walking the railway tracks in an odd place en-route his destination - his home. It is not that he lived near the site of the accident or that he had any regular business anywhere near the place of the accident. Thus the inference that he died while crossing the tracks, is unwarranted and untenable.”

9. To the similar extent are the observations made by a Co-ordinate Bench of this Court in Sushila Devi (Supra) wherein following passage

from an earlier decision in Dharambiri Devi & Ors. v. Ministry of Railways & Anr. reported as **2008 SCC OnLine Del 348** was relied:

“15. I may further note that the body of the deceased being cut into two halves is not possible if the deceased fell out of the bogie through the exit if the train received a sudden jerk. A person falling of a bogie from the exit would have a trajectory which would drop him, if not a feet or two away from the train, at least 6 to 8 inches from the train and the forward motion would throw the person forward and not laterally. Meaning thereby the body could not be cut into two by the train running over.

16. There is no evidence on record that the railway line had a curvature at the place where body of the deceased was found. I could have appreciated if the railway line had a curvature, in such a situation, it could have been plausible to consider the body being cut into two as a result of the fall and the momentum of the body vis-a-vis the motion of the train.

17. I clarify, the situation could have been akin to a person falling from a moving bus towards left and coming tinder the rear wheel of a bus. When a bus cuts towards the left, a person jerked out from the front gate may come under the rear wheel of the bus for the reason it is well known that the rear wheel of the bus passes over the spot towards the left of the spot where the front wheel passed over.

18. Be that as it may, the settled law is that where on the given evidence view taken by the Court or Tribunal of plenary jurisdiction is plausible, the Appellate Court would not take a contrary view, merely because another view is possible.”

10. It was contended that the injuries sustained by the deceased were ‘self-inflicted injuries’. Insofar as the aspect of self-inflicted injuries is concerned, the law is no longer *res integra*. In Union of India v. Rina Devi reported as **(2019) 3 SCC 572**, the Supreme Court 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)

11. The doubt raised apropos the recovery of the journey ticket from the person of the deceased deserves to be rejected in view of the fact that the *Jamatalashi* by the I.O., GRP was not only conducted in the mortuary of the hospital but also in the presence of an independent police personnel i.e., *ASI Ibrahim Khan*. A copy of the statement of *ASI Ibrahim Khan* is also placed on record wherein it has been stated that *Jamatalashi* was conducted in his presence and the same was counter-signed by him. As noted hereinabove, the appellant No. 1 had superannuated from Railways on 31.12.2017 and the unfortunate incident occurred on 06.07.2018.

12. In view of the aforesaid dicta as well as the foregoing discussion, this Court is of the considered opinion that the deceased was in fact, a *bona fide* passenger and the accident during which he suffered injuries was an ‘untoward incident’ as defined under Section 123(c) of the Act.

13. Consequently, the appeal is allowed and the impugned order is set aside. The matter is remanded back to the Tribunal for awarding the amount of compensation in terms of the Act. The matter shall be listed at the first instance before the Tribunal on 19.12.2022. Let the compensation amount be paid to the appellants/claimants within two weeks thereafter.

14. The appeal is disposed of in the above terms.

15. A copy of this judgement be communicated to the concerned Tribunal for information.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 09, 2022

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