

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

+ **FAO 100/2021**

Date of Decision: 11.10.2022

IN THE MATTTTER OF:

SH.SADDAM

..... Appellant

Through: Mr.Rajan Sood, Ms.Ashima Sood
and Ms.Megha Sood, Advocates

versus

UNION OF INDIA

..... Respondent

Through: Mr.Gaurav Sharma, Sr.Panel
Counsel with Mr.Raghav
Rajmalini, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

CM. APPL. No.9420/2021

1. The present application has been filed under Section 5 of the Limitation Act, 1963 read with Section 151 CPC on behalf of the appellant seeking condonation of delay of 685 days in filing the accompanying appeal.

2. Mr. Rajan Sood, learned counsel appearing for the appellant, has submitted that after passing of the impugned judgment/order, the appellant could not file the accompanying appeal in time. In support, learned counsel has placed reliance on the decision of a Co-ordinate Bench of this Court in Mohsina & Ors. v. Union of India & Ors. reported as **2017 SCC OnLine Del 10003**, of the Gujarat High Court in Wasim Shamshulhak Shaikh v. Union of India reported as **2018 SCC OnLine**

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Guj 3330, and of the Bombay High Court in Smt. Kokilabai wd/o Shankarrao Choudhari v. Union of India, thr. its General Manager, Central Railway, Mumbai, FAO 6007/2019.

3. Notably, in Mohsina (Supra), a 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 excerpt 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.”

4. In the present case, it is seen that the appellant suffered grievous injuries and went through a prolonged litigation. Further, it has been averred that the appellant being poor was short of funds, and on this count as well, could not instruct his counsel to file the appeal timely.

5. Considering the facts and circumstances of the case as well as the import of decision rendered by Co-ordinate Bench of this Court, the application is allowed and the delay of 685 days in filing the accompanying appeal is condoned.

6. The application is disposed of.

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1. By way of the present appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987, the appellant/claimant has assailed the judgment dated 27.11.2018 passed by Railway Claims Tribunal, Principal Bench, Delhi in Case No. OA(Ilu)17/2017. The appellant has also sought direction to the respondent to pay compensation as per rules alongwith interest @ 18% p.a. from date of filing of claim application till its realization.

2. Mr. Rajan Sood, learned counsel for the appellant, submits that the Tribunal has held the accident in question to be an 'untoward incident', however, disbelieved the claimant to have been a *bonafide* passenger and dismissed the claim petition. It is contended that the said finding of the Tribunal is contrary to the record and has been arrived at only on the basis that the claimant produced the railway ticket after a delay of about 11 months.

In support of his submission that the claimant was a *bonafide passenger*, learned counsel has submitted that the journey was undertaken on 15.02.2016, when the claimant, alongwith two others, travelled from *Rewari* to *Gajraula* on a joint ticket bearing No. G-47162181. It is further submitted that the incident occurred when the train arrived at *Palam* Railway Station and the claimant suffered injuries on account of a fall which took place due to a hard jerk taken by the train. It is stated that the claimant was immediately taken to *Deen Dayal Upadhyay Hospital, New Delhi*.

Learned counsel has contended that before the Tribunal, the claimant had examined two witnesses, one of whom was a co-passenger and the other-his employer. It is submitted that both the witnesses have

stated that the claimant had purchased a journey ticket and undertaken journey on 15.02.2016 from *Rewari* to *Gajraula*.

3. Per contra, learned Senior Panel Counsel for the respondent has supported the impugned order/judgment. He has submitted that the Tribunal has rightly held that the claimant was not a *bonafide passenger*, since as per statement of one *Sandeep*, Constable, RPF, Delhi Cantt., no railway ticket was noticed on the date of incident.

4. In rejoinder, Mr. Rajan Sood, learned counsel for the appellant, has submitted that neither the statement of *Sandeep*, Constable, RPF, Delhi Cantt. was recorded nor he was examined.

5. I have heard learned counsels for the parties and have also gone through the Tribunal's Records.

6. A perusal of the case records would show that a joint ticket is claimed to have been purchased on 15.02.2016 i.e., when journey was undertaken by the claimant from *Rewari* to *Gajraula*. The said journey ticket was sent for verification vide letter dated 08.10.2016 by Inspector Incharge, RPF Post, Delhi Cantt. to Chief Booking Supervisor, North West Railways, Rewari. The same was verified in report dated 12.07.2017 as having been issued on 15.02.2016 from Window No. 7 between the shift of 2:00 PM to 10:30 PM.

7. The claimant/AW1 stepped into the witness box, where he reiterated the averments made in the claim petition. He further examined one *Sabab* as AW2, who stated that he had undertaken the journey alongwith with the claimant on 15.02.2016, after purchasing a ticket at collective cost of Rs.120/-. The witness further stated that he, alongwith the claimant and one other person, had travelled from *Rewari* to

Gajraula and when the train reached at *Palam* Railway Station, the claimant fell from the train on account of a sudden jerk.

One more witness, namely *Om Prakash*, appeared as AW3, who stated that the claimant, *Sabab* and other persons were employed with him and on 15.02.2016, he had gone to drop the claimant to *Rewari* Railway Station as he had to go to his native place in *Uttar Pradesh*. It was also stated by AW3 that a joint journey ticket was purchased by the claimant and the others.

8. The medical evidence placed on record would show that the claimant suffered amputation of his left arm above elbow upto shoulder. The only reason assigned by the Tribunal for disbelieving the claimant to have been a *bonafide passenger* was that no journey ticket was seen by the RPF Constable on the date of incident.

9. At this stage, reference may be made to the decision in Union of India v. Rina Devi reported as (2019) 3 SCC 572, where the Supreme Court held thus:-

“29. We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

(emphasis added)

10. In the present case, the claimant had mentioned in his evidence filed by way of affidavit that on 15.02.2016 (i.e. the date of the alleged incident), he had undertaken journey by way of a passenger train from

Rewari (Haryana) for coming to Delhi and the same started at 07:00 p.m. In the Station Master Memo prepared on 15.02.2016, report of the accident by some passengers was recorded thus - *“one unknown person injured by 54420 Dn passenger. one hand broken of injured person”*.

Insofar as it was noted by the Tribunal that train No. 54420 (Rewari-Delhi passenger) had a scheduled departure from Rewari Railway Station on 15.02.2016 at 07:25 p.m., it failed to appreciate the Station Master Memo and the evidence of the claimant in right perspective.

11. The entire premise of rejection of the claim petition by the Tribunal lay on the observation that no journey ticket was recovered during the inquiry proceedings, but the same proves to be baseless in light of the fact that not only the journey ticket bearing No. G-47162181 was filed alongwith the claim petition before the Tribunal, but also the same was verified in the DRM Report as having been issued on 15.02.2016 between 02:00 p.m. and 10:30 p.m. from Rewari Railway Station.

12. Indisputably, in the claim petition, the claimant did not mention the train No. or the train name by which he travelled, but it is apparent from the attending facts and circumstances that he was injured on account of travelling in train No.54420 (Rewari-Delhi passenger). The ticket relied upon by the claimant has been verified in the DRM Report to have been issued on 15.02.2016 from Rewari Railway Station, i.e. the date on which train No.54420 had a scheduled departure from Rewari Railway Station at 07:25 p.m. Moreover, the claimant and AW2 consistently stated before the Tribunal that their journey began from Rewari Railway Station at 07:00 p.m. It is pertinent that on the question

of accident being an 'untoward incident', the Tribunal has returned a finding in favour of the appellant.

13. It is also worthwhile to note that the claimant has claimed to have been employed as a welder and has indisputably suffered grievous injuries. He has lost his left arm above elbow (upto shoulder) on account of the '*untoward incident*'.

14. Accordingly, the present appeal is allowed and the impugned order, to the extent that the appellant was held to not have been a *bonafide passenger*, is set aside. The matter is remanded back to the Tribunal to determine the amount of compensation and interest to be awarded to the appellant/claimant. Let the parties appear before the Tribunal on 01.11.2022.

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

16. A copy of this judgment be communicated to the concerned Tribunal for information.

(MANOJ KUMAR OHRI)
JUDGE

OCTOBER 11, 2022/v