

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

FAO 110/2021

Reserved on : 10.10.2022

Date of Decision: 18.10.2022

IN THE MATTER OF:

SH. RAJAT GUPTA & ORS.

..... Appellants

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

versus

UNION OF INDIA

..... Respondent

Through: Ms.Jatinder Kaur, Sr.PC.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. By way of the present appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987, the appellants/claimants have sought modification of order dated 16.09.2020 passed by the Railway Claims Tribunal, Principal Bench, Delhi in Case No. OA/(IIu)/DLI/53/2019. The appellants have also sought direction to the respondent to pay the compensation awarded alongwith interest @ 18% per annum from the date of filing of claim application till its realization.

2. Mr. Rajan Sood, learned counsel for the appellants, submitted that *Sh. Suresh Gupta* died in an '*untoward incident*' on 06.09.2018, when he fell at the railway station and sustained injuries, to which he succumbed on 22.10.2018. It was contended that while awarding compensation, the Tribunal erroneously held

that in absence of post-mortem report, the death was not relatable to the injuries sustained by *Sh. Suresh Gupta*.

In support of his contentions, learned counsel referred to the medical documents placed on record as well as the decision in New India Assurance Co. Ltd. v. Noorjahan and Another reported as **2004 SCC OnLine Utt 246**.

3. Per contra, Ms. Jatinder Kaur, learned Senior Panel Counsel for the respondent, opposed the prayer for enhancement of compensation awarded by contending that there was a gap of more than one and half month between the date when injuries were sustained by deceased-*Sh.Suresh Gupta* and his death. She also submitted that the deceased was about 70 years of age.

4. I have heard learned counsels for the parties and have also gone through the entire case record.

5. Vide the impugned order, the Tribunal held the deceased to be a *bonafide passenger*, who suffered injuries in an '*untoward incident*' which took place on 06.09.2018. While considering the contentions raised, it was observed that it cannot be inferred that the said '*untoward incident*' had resulted into injuries causing death of *Sh. Suresh Gupta*.

6. A perusal of the medical record of the deceased would show that on 06.09.2018, an MLC was prepared at *Guru Teg Bahadur Hospital, Shahdara, Delhi*, wherein it was recorded that the injuries suffered were on account of fall from the train and the injured complained of pain in right side of the chest. Tenderness in right shoulder was also noted and the patient was referred to *surgery, neurosurgery and Ortho Department*.

The deceased remained admitted in the *Lok Nayak Hospital, Jawahar Lal Nehru Marg, New Delhi* (LNJP) from 08.09.2018 to 13.09.2018. In the

discharge slip, it was noted that the injured had suffered *blunt trauma chest B/L, hemoperitoneum, B/L subcutaneous emphysema* and *right inferior dislocation of shoulder*. It was also noted that the deceased had undertaken *B/L Tube Thoracostomy* on 07.09.2018. At the time of discharge, *Sh. Suresh Gupta's* condition was noted as *conscious and oriented*.

7. The deceased had visited *Dr. Pankaj Anand*, Consultant Orthopaedics & Joint Replacement Surgeon, on 19.09.2018, who had advised certain medications. Thereafter, on 13.10.2018, the deceased had again visited *Deep Chand Bandhu Hospital, Ashok Vihar, Delhi* on OPD-basis, where he complained of chest pain and was advised X-ray.

8. On 22.10.2018, *Sh. Suresh Gupta* was taken to *Maharaja Agrasen Hospital, West Punjabi Bagh, New Delhi* in casualty in unconscious state, where no respiratory and heart activity was seen. The ECG showed straight line and *Sh. Suresh Gupta* was declared as brought dead.

9. In the present case, the Tribunal decided the issues of deceased having been a *bonafide passenger* and the accident having been an *untoward incident* in favour of the claimants. However, holding that the injuries sustained by the deceased in untoward incident could not be said to be the cause of his death, it granted compensation only for non-scheduled injuries (fractures of ribs and dislocation of shoulder) and denied death compensation.

10. The Tribunal based its conclusion primarily on the fact that no post-mortem was conducted and that discharge slip of the deceased by *LNJP Hospital* recorded that he was 'conscious and oriented' at the time of discharge.

11. From the discharge slip of the deceased placed on record, it is apparent that he suffered *blunt trauma chest B/L, hemoperitoneum*, dislocation of

shoulder, and *subcutaneous emphysema (seen in B/L lateral chest wall)* in the *untoward incident*. The Tribunal failed to appreciate that after suffering the injuries in the *untoward incident*, the deceased remained admitted from 08.09.2018 to 13.09.2018 and even though at the time of discharge, he was declared 'conscious and oriented', he had to repeatedly visit the hospitals with complaints of chest pain. Suffice it to say, in the facts of the case, absence of a post-mortem report alone does not belie the fact that the deceased in fact suffered all the aforesaid injuries in the *untoward incident* and died soon after.

12. Moreover, the deceased had not died in a hospital, but was rather declared 'brought dead'. Given the beneficial nature of the provisions of the Railway Claims Tribunal Act, the claimants cannot be deprived of just compensation solely on the ground that post-mortem report of the deceased was not placed on record. Besides, no material has been placed on record on behalf of the respondent to counter the claim of the appellants that the deceased in fact died on account of injuries sustained in untoward incident.

13. In view of the foregoing discussion, the prayer made in the appeal for modification of the compensation amount awarded is allowed. The matter is remanded back to the Tribunal to decide the amount of compensation and interest to be awarded in view of the above decision. Let the matter be listed before the concerned Tribunal on 04.11.2022.

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

(MANOJ KUMAR OHRI)
JUDGE

OCTOBER 18, 2022