

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

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FAO 219/2019

Reserved on : 08.12.2022

Pronounced on : 22.12.2022

IN THE MATTER OF:

SMT. KASTURI & ORS.

..... Appellants

Through: Mr. Rajan Sood, Advocate

versus

UNION OF INDIA

..... Respondent

Through: Mr. Harshit Manchanda for
UOI/Railways.
Mr. Arnav Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

CM APPL. 25129/2019 (Delay)

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 97 days in filing the present appeal.

2. Mr. Rajan Sood, learned counsel for the appellants submits that the appellants are the wife, son and daughters of *Late Sh. Jeevan Lal* (the deceased), who unfortunately passed away in an '*untoward incident*' on 25.12.2016. It is stated that though the impugned order was passed on 15.11.2018, however a certified copy of the impugned order was only

received by the appellants much later. He further submits that the appellants are poor persons and could not seek appropriate and timely legal advice for want of funds. In support of his submissions, he has placed reliance on the following decisions, firstly, a decision passed by a Co-ordinate Bench of this Court in Mohsina & Ors. v. Union of India & Ors. reported as **2017 SCC OnLine Del 10003**; a decision of the Gujarat High Court in Wasim Shamshulhak Shaikh v. Union of India reported as **2018 SCC OnLine Guj 3330**; and lastly, a decision 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 considering the poor economic status of the appellants/claimants.

4. In alike facts and circumstances, this Court in **FAO 100/2021** titled as Sh. Saddam v. Union of India condoned delay of 685 days.

5. In view of the above-mentioned submissions and circumstances, the application is disposed of and the delay of 97 days in filing the accompanying appeal is condoned.

FAO 219/2019

1. By way of 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 15.11.2018 passed by the Railway Claims Tribunal, Delhi in Claim Application No. OA (IIU)269/2017 whereby the claim petition filed by them was dismissed.

2. Mr. Sood, learned counsel for the appellants submitted that on 25.12.2016, the appellant No. 2 (son of the deceased) and *Jeevan Lal* (the deceased) had undertaken train journey from *Bahadurgarh* to *Nangloi, Delhi* after purchasing joint second class journey ticket bearing No. 04982414. He further submitted that despite the recovery of the journey ticket during the *Jamatalashi* & the ticket verification report, the Tribunal erred in holding that the deceased was not a *bona fide* passenger. It is submitted that the appellants' have also assailed the observation made by the Tribunal wherein it was held that the incident could not be termed as an '*untoward incident*' under the Act and in this regard, reference is made to the testimony of appellant No. 2 wherein it was categorically stated that the deceased had suffered injuries on account of '*fall from the train*' and not from a '*hit by train*' while trying to cross over the railway line.

3. *Per contra*, learned counsel for the respondent has supported the impugned order. It was contended that the testimony of appellant No. 2 is not reliable as he had contradicted his own statement earlier given to the GRP. It was further submitted that the testimony suffered from other material contradictions as well. While before the GRP, it was claimed that the journey ticket was with the deceased, but at the time of examination it was stated otherwise. Similarly, in his affidavit, appellant No. 2 stated that he had identified the body of the deceased by a photograph shown to him, however in the cross-examination it was stated that identification was done at the site of the incident which is also contrary to D.D. No. 10B as per which the body was identified by other persons present on the spot. It was also contended that while in the affidavit it was stated that the ticket was purchased at 1:15 hours, at

another place it was stated to be purchased at 02:15. Lastly, it was contended that the body of the deceased was found in middle of the track and in view of the observations recorded in the post-mortem report that the clothes were smeared with blood and grease stains, it was rightly held that the present case falls in the category of '*hit by train*' and not a case of '*fall from train*'. In this regard, learned counsel also placed reliance on Shobhabai w/o Ganesh Gaikwad and Another v. Union of India reported as **2017 SCC OnLine Bom 8426**.

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

5. In the claim petition, it was claimed that on 25.12.2016, the deceased alongwith his son i.e., *Sonu*/appellant No. 2 undertook the train journey from *Bahadurgarh* to *Nangloi* after purchasing a joint second-class unreserved journey ticket bearing No. 04982414. *Sonu*/appellant No. 2 appeared as a witness. He stated that while both boarded the same train but travelled in different compartment on account of the train being crowded. When the train reached between *Ghevra Railway station* and *Nangloi Railway Station*, the deceased accidentally fell as a result of which he sustained grievous injuries and died on the spot. The appellant No. 2 being unaware of the incident, reached his home and not finding his father, came back. When he saw crowd gathered near the Railway lines, he came to know about the incident and identified the body of his father.

6. It is borne out from the record that the first information about the incident was received vide DD No. 12 P.P. recorded at 03:25 pm on 25.12.2016. It was recorded that one *Sh. Rakesh Kumar, Assistant Railway Station Master* from *Nangloi Railway Station* has informed that

between *Ghevra* and *Nangloi Railway Station* on DN Line at Km No. 18/89, one dead body was lying in between the railway track. On the same day at 08:10 pm, an *Itala wapsi* report vide DD No. 10B was recorded. As per the Report, *ASI Ombeer Singh*, GRP after receipt of information reached at the spot of the incident and found one dead body lying upside down between the railway lines. Thereafter, proceedings under Section 174 Cr.P.C. were conducted and the body was identified of *Jeevan Lal S/o Ghasi Ram*. In the *Jamatalashi* nothing was recovered. The body was then removed to the mortuary. As per brief facts recorded on 26.12.2016, it was noted that in the mortuary, appellant no. 2 had identified the body of his father and produced the journey ticket bearing No. 04982414 which was issued for travel from *Bahadurgarh* to *Nangloi* railway station for Rs.20/-. During the proceedings before the Tribunal, the subject ticket was sent for verification and as per verification report dated 06.03.2018, it was found to be issued from *Bahadurgarh Railway Station* on 25.12.2016 at 14:15 hours.

A 'train signal report' has also been placed on record as per which the information about the incident was given by the loco pilot of train DSL/SSB 16122.

7. It was contended on behalf of the appellants that since the first information about the incident was given at 03:25 PM, the accident could have only possibly occurred when the deceased was travelling in passenger train No. 64914 as it arrived at 15:03 hours and left at 15:15 hours. In between, as per the material placed on the record, no other train had passed. It has been submitted by both the counsels that as per the accepted procedure once a body is found in the middle of tracks, no train is allowed to cross over it. It is pertinent to note that even as per the

DRM Report, prior to arrival of train DSL/SSB 16122, only train No. 64914 had arrived. Thus from the aforesaid discussion, it can be concluded that the deceased alongwith appellant No. 2 had travelled in passenger train No. 64914.

Although some minor contradictions appear with respect to the time of purchase of train ticket and its possession however, in view of the fact that the appellant No. 2 in his testimony denied stating to the RPF about the ticket being in possession of his father. He rather stated that the journey ticket was with him which was handed over by him to the GRP on 26.12.2016. As noted above, the journey ticket produced by the appellant No. 2 was found to be valid and issued at *Bahadurgarh Railway Station* on 25.12.2016 at 14:15 hours. Though learned counsel for the respondent has placed reliance on the decision in Shobha (Supra), however the said case is of no relevance as in the captioned case, the journey ticket was not recovered.

8. Insofar as the contention relating to body of the deceased being found in the middle of railway track is concerned, it was contended on behalf of the respondent that such a situation occurs only when a person is 'hit by train'. This issue has arisen earlier before this Court in Sh. Prempal Singh & Anr. v. Union of India reported as **2018 SCC OnLine Del 9571**. While discussing all the possibilities, it was observed as under:-

“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. Similarly, in Sushila Devi @ Meera & Ors. v. Union of India reported as **2018 SCC OnLine 8741**, it has been held as under :-

“3. The impugned order relied upon the judgment of this Court in Dharambiri Devi v. Ministry of Railways, 149 (2008) DLT 435.

“14. 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.

15. 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 into two as a result of the fall and the momentum of the body vis-a-vis the motion of the train.

16. I clarify, the situation could have been akin to a person falling from a moving bus towards left and coming under 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.

17. 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. 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.

11. 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 06.01.2023. Let the compensation amount be paid to the appellants/claimants within two weeks thereafter.

12. The appeal is disposed of in the above terms.
13. A copy of this judgment be communicated to the concerned Tribunal for information.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 22, 2022

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