

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

+ **FAO 284/2022 & CM APPL. 48870/2022**

Date of Decision: 28.11.2022

IN THE MATTER OF:

SH. AJAY KUMAR AND ANR

..... Appellants

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

versus

UNION OF INDIA

..... Respondent

Through: Mr. Manish Agrawal Narain,
CGSC with Mr. Sandeep Singh
Somaria and Ms. Rakshita Goyal,
Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

CM APPL. 48870/2022

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 378 days in filing the present appeal.

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2. Mr. Rajan Sood, learned counsel for the appellants submits that the appellants are sons of *Sh. Hira Lal* (the deceased), who unfortunately passed away in an '*untoward incident*' on 13.07.2019. It is stated that though the impugned order was passed on 19.07.2021, however a certified copy of the same was received by the appellants only on 31.07.2021. He further submits that the appellants are poor persons and could not seek appropriate legal advice timely 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. This Court also 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. The impugned order was passed on

19.07.2021. Considering the facts and circumstances of the case, the application is allowed and the delay of 378 days in filing the accompanying appeal is condoned.

6. In view of the above mentioned submissions and circumstances, the application is disposed of.

FAO 284/2022

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 seek setting aside of the order dated 19.07.2021 passed by the Railway Claims Tribunal, Delhi whereby the claim application filed by them was dismissed.

2. Mr. Rajan Sood, learned counsel for the appellants submits that the Tribunal erred in arriving at a conclusion that *Sh. Hiralal* (the deceased) was neither a *bona fide* passenger nor the incident could be termed as an '*untoward incident*'. It is submitted that the said conclusion was arrived at despite the fact that a valid journey ticket was recovered from the person of the deceased during *Jamatalashi*, which was conducted on the date of the incident i.e., 13.07.2019.

3. *Per contra*, Mr. Manish Agrawal Narain, learned Standing Counsel for the respondent has supported the impugned order and submits that the place where the dead-body of *Sh. Hiralal* was found lying is at a distance of 300 mtrs. from his residence. It is submitted that the appellants have failed to establish as to why the deceased had purchased the journey ticket from *Firozabad* to *Etawah* when his residence was in *Sarai Bhopat*. It is contended that all the statements

given by appellant No. 1 are contradictory with respect to purpose of travel.

4. Brief facts, as narrated in the claim application are that on 13.07.2019, the deceased purchased second class ordinary ticket bearing No. ACA-18220239 for travel from *Firozabad* to *Etawah* by a passenger train. It was claimed that the deceased fell from the moving train at *Sarai Bhopat* station and died on the spot.

5. It appears from the record that one *Dinesh Singh*, DY.SS/SB reported that a man has been run over at KM No. 1164/30 (Dn) Line at *Sarai Bhopat* railway station. In the *Jamatalashi*, ticket bearing No. ACA-18220239 alongwith other articles was recovered from the person of the deceased. As per the Train Signal Register (TSR), two passenger trains i.e., 64158 and 64160 had passed through *Sarai Bhopat* station. While train No. 64158 (in which the deceased was travelling) arrived at line No. 4 of *Sarai Bhopat* at 18:38 hrs. and departed at 18:39 hrs., the train No. 64160 (stated to be running late) arrived at 00:46 hrs. and departed at 00:47 hrs. on 14.07.2019. The dead-body of the deceased was first noticed by *Sh. Manoj*, luggage porter and memo to this effect was issued by Dy. SS Etawah at 22:40 hrs i.e., after passing of Train No. 64158 and before arrival of Train No. 64160. Thus, the contention raised by learned CGSC to the effect that had the deceased fallen from Train No. 64158, his dead-body would have been noticed immediately thereafter as in the month of July there is broad day light at 6:30 p.m., is erroneous and rejected.

6. In the opinion of this Court, the Tribunal erred in arriving at a conclusion that the deceased was not a *bona fide* passenger merely because his house was located 300 meters away from the site of incident since a valid train journey ticket was recovered from the body of the deceased within four hours of the incident. The appellant No. 1 in his statement had stated that the deceased had left the home five days prior to the incident. While at the first instance, appellant No. 1 had stated that the deceased (his father) was coming back home from *Firozabad* where he had gone for some work, on the other occasion he stated that the deceased was going from *Firozabad* to *Etawah* to meet his maternal uncle. The contention raised on behalf of the respondent that there are material contradictions in the statement of appellant No. 1 with respect to purpose of travel is of no relevance, inasmuch as, validity of recovered journey ticket itself has not been disputed by the respondent. The appellants' claim cannot be defeated only because the purpose of the journey was not spoken about or there are some contradictions in it.

7. The claimants had discharged the initial burden by stating on affidavit that the deceased had fallen from the moving train. It is thus borne out from the discussion that a valid journey ticket was recovered from the body of the deceased during *Jamatalashi* and that the body of the deceased was discovered on the railway line which was on the route of Train No. 64158, for which the journey ticket was purchased. In view of the aforesaid 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 fatal injuries was an '*untoward incident*' as defined under Section 123(c) of the Act.

8. 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 05.12.2022. Let the compensation amount be paid to the appellants/claimants within three weeks thereafter.

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

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 28, 2022

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