

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

+ **FAO 27/2022**

Date of Reserve: 18.10.2022

Date of Decision: 18.11.2022

IN THE MATTTTER OF:

SMT. BINDA DEVI

..... Appellant

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

versus

UNION OF INDIA

..... Respondent

Through: Ms. Pratima N. Lakra, CGSC for UOI with Ms. Vrinda Barati, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

CM APPL. 7185/2022

1. By way of the present application filed under Section 5 of the Limitation Act, read with Section 151 Code of Civil Procedure, the appellant seeks condonation of delay of 724 days in filing the present appeal.

2. Mr. Rajan Sood, learned counsel for the appellant submits that the father of the deceased had pre-deceased him. He further submits that after passing of the impugned order dated 14.08.2019, the appellant, who is mother of the deceased, aged about 60 years, is an illiterate and poor lady on the basis of which, could not instruct her counsel to file the appeal timely. 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 Shamsulhak 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 like facts and circumstances, this Court in **FAO 100/2021** titled as Sh. Saddam v. Union of India condoned delay of 685 days in filing of the appeal against the impugned order and remanded the matter back to the Tribunal to determine the amount of compensation and interest to be awarded to the appellant therein.

5. The impugned order was passed on 14.08.2019. Although, delay of 724 days is noted, 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 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. Even though, in the present case, the period of limitation already expired prior to 15.03.2020, however, considering the facts and circumstances of the case, the application is allowed and the delay of 724 days in filing the accompanying appeal is condoned.

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

FAO 27/2022

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 appellant has assailed the order dated 14.08.2019 passed by the Railway Claims Tribunal, Principal Bench, Delhi.
2. Briefly, the facts as noted by the Tribunal are that the appellant, in the claim petition stated that on 08.10.2017, her son *Dharmender* (deceased) was travelling from Saharanpur to Delhi on a valid ticket bearing no. 56549983 and when the train reached near Delhi, Shahdara Station, he fell from the moving train and sustained grievous injuries. He was taken to *GTB Hospital* where he succumbed to the injuries.
3. Mr. Sood, learned counsel for the appellant contended that while passing the impugned order, the Tribunal failed to appreciate that deceased was a *bonafide* passenger as the journey ticket was recovered and in terms of the first statement given by appellant as well as that of *Jitender* (Brother of deceased), the deceased suffered fatal injuries in the untoward incident, when he accidentally fell from the moving train. It was further contended that the Tribunal wrongly relied upon the subsequent statements recorded during DRM proceedings, which itself was conducted after a substantial delay.
4. Per contra, Ms. Lakra, learned CGSC appearing for the Respondent has supported the impugned order by submitting that the deceased did not travel on the train route that he was authorised to take in terms of the journey ticket, which specified that the travel was from *Saharanpur Railway Station to Delhi Junction via Meerut City and Delhi Shahdara*. The body of deceased was found on a completely different

train route and thus, he cannot be held to be a *bonafide* passenger and the accident does not fall within the realm of an 'untoward incident'.

5. It is pertinent to note that the journey ticket bearing no. 56549983 which was claimed to be purchased by the deceased on 08.10.2017 from the Saharanpur Railway Station, was recovered from the body of deceased in the *Jamatalashi*. A copy of the ticket was placed on record before the Tribunal. It mentions that it was issued on 08.10.2017 at 08:08 hours at Saharanpur Railway Station for travel from *Saharanpur Railway Station to Delhi Junction via Meerut City and Delhi Shahdara*. The ticket was also verified to be genuine and valid.

6. It is worthwhile to note that in the inquest proceedings, statement of brother of the deceased i.e., *Jitender* was recorded wherein he stated that the deceased had gone out on 07.10.2017 to Saharanpur, U.P. to meet his friend and while coming back on 08.10.2017, he accidentally fell at *Meet Nagar Phatak near Cremation ground, Delhi* from the moving train and later, was taken to GTB Hospital, where he succumbed to his injuries.

7. The objection taken on behalf of the respondent is that a different train route was taken by the deceased while coming from *Saharanpur* to *Delhi* and the journey ticket found with the deceased was in fact a stolen one.

8. Admittedly, the body of deceased was found on the railway line. It was submitted on behalf of the appellant that there are two alternate routes for travelling from *Saharanpur Railway Station* to *Delhi Railway Station*, and while one route passes from Meerut City, the other, route, that is a shorter one passes from *Loni, District, Ghaziabad*. It is further submitted that the deceased while travelling on this route fell from the

moving train. It is noted that there is neither any contentions raised nor any material placed on the record stating that there was any price difference in the journey ticket for the two alternate routes. A similar contention was raised before the Madhya Pradesh High Court in Sumitra Pandit v. Union of India reported as MANU/MP/1460/2014. While rejecting the contention, it was held that:

"16. In this context reference can also be had of the decision in Sanjulata (supra) wherein while relying on the judgment in Union of India through the General Manager Northern Railways v. Sanja Paswan reported as 2005 ACJ 823 and Smt. Parisa Anjali and others v. Union of India AIR 2010 AP 67 it has been held-

"8- On bare perusal of the Section 124A of the Railways Act and also paying heed to the explanation where the term of passenger has been explained is clear that a person who had purchased a valid ticket for travelling by a train carrying passengers on any date or a valid platform ticket and becomes a victim of an untoward accident, I am of the opinion that merely because deceased was carrying a ticket from Itarsi to Mhow via Khandwa and instead of Boarding train of that route if he had boarded different train, it cannot be said claimant is not entitled for compensation. Although the respondents in the written statement has denied the factum of death as has been pleaded by the appellant the application for compensation, but no witness has been examined by the Railway Administration in that regard in rebuttal to the evidence of the claimant. Hence according to me the evidence of claimant stands unchallenged."

9. Further, the contention about the recovered journey ticket recovered being a stolen one needs to be rejected outrightly as admittedly, the journey ticket was recovered from the body of deceased in during the *Jamatalashi*.

10. Another contention raised on behalf of the respondent pertains to variance in the statement of the appellant and that of *Jitender*, made in the DRM proceedings regarding the date of travel. This contention has no merit, as in his initial statement recorded during inquest proceedings, *Jitender* had clearly stated that the deceased travelled to Saharanpur, U.P. on 07.10.2017 to meet his friend and while coming back on 08.10.2017 by train, he died on account of suffering a fall at *Meet Nagar Phatak near Cremation ground, Delhi*. In this regard, it is also worthwhile to note the DRM proceedings itself were conducted belatedly i.e., nearly after 19 months of the incident and the report was filed on 19.03.2019 and such the claim ought not to have been denied on this count. The aspect of belated filing/preparation of DRM report had come up before the Supreme Court in Kalandi Charan Sahoo and Ors. v. General Manager, South-East Central Railway reported as **(2019) 12 SCC 387** wherein while holding the appellants entitled to compensation, it was observed as under:-

“2. Though Rule 7 of the Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003 (hereinafter referred to as 'Rules') mandates the railway authorities to investigate into such an untoward incident. Admittedly, no such inquiry was conducted immediately after the incident. It is only when the Appellants filed the claim before the RCT on 27.2.2009 that investigation into the incident was ordered on 23.4.2009. ...

3. ...Going by the aforesaid provisions and in the peculiar facts of this case, where no inquiry as mandated by the Rules was conducted immediately after the incident had occurred, we are of the view that the Appellants shall be entitled to compensation payable Under Section 124-A of the Railways Act, 1989.”

11. This Court, in Bhola v. Union of India reported as **(2018) SCC Online Del 13486**, has held delay in initiation of DRM Inquiry to be fatal to the facts of the case, as what needs to be essentially gathered is what happened on the date of the accident. In the captioned case, it has been opined as follows:-

“4. The claim petition was filed on 27.07.2014, the DRM Inquiry was initiated thereafter and a report was filed 7 months later. The delay in initiating an inquiry is fatal to the facts of the case because what essentially needs to be gathered is what happened on the date of accident. The medical reports and the police records show that an accident happened on 08.10.2012 and the cause of the accident was, the appellant having been fallen from a moving train. The DRM Report does not address any of these aspects. On the contrary it says that since no ticket was produced to support the claim of the appellant, of him being a bona fide passenger, therefore by conjecture, he could have well suffered a self-inflicted injury while crossing the railway tracks. Reliance was placed upon the judgment of the Supreme Court in Kalandi Charan Sahoo and Anr. vs. General Manager, South-East Central Railways, Bilaspur in Civil Appeal No. 5608/2017.

5. The delay in intimation of the DRM Inquiry, the silence about the specifics of the accident makes the DRM Report of no consequence.”

12. In alike facts and circumstances in Vikrant & Ors. v. Union of India, reported as **2022 SCC OnLine Del 3439** wherein reliance was sought to be placed on the DRM Report which was filed after a period of about 05 months, this Court while setting aside the impugned order observed that such a Report is of no avail.

13. In view of the aforesaid discussion, this Court is of the opinion that the deceased at the time of incident was a *bonafide* passenger and suffered the accident, in an untoward incident.

14. 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 25.11.2022.

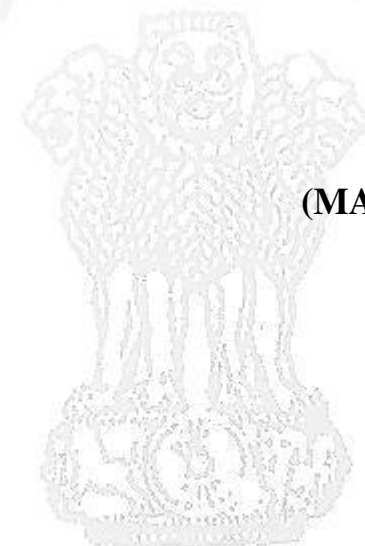
15. Miscellaneous applications, if any are disposed of.

16. A copy of this order along with the records, if any, be sent to the Tribunal.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 18, 2022

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