

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

+ **FAO 79/2021**

Date of Decision: 01.02.2023

IN THE MATTER OF:

CHARAN SINGH

..... Appellant

Through: Mr. Rajan Sood, Advocate.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Jivesh Kr. Tiwari, Sr. Panel
Counsel.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

CM APPL. 7473/2021

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 705 days in filing the accompanying appeal.

2. Mr. Rajan Sood, learned counsel for the appellant, has submitted that after passing of the impugned judgment, the appellant could not file the accompanying appeal in time on account of paucity of funds and inability to obtain timely legal advice. 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 Shamsulhak Shaikh v. Union of India reported as **2018 SCC OnLine 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.

It is further submitted that in view of the decision of the Supreme Court in In Re: Cognizance for Extension of Limitation, Suo Motu Writ Petition (Civil) No.3/2020, the delay of 166 days from 15.03.2020 to 28.08.2020 stands condoned and there is a net delay of 509 days in filing the appeal.

3. It is worthwhile to note that 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, the appellant claims to have suffered grievous injuries on account of the alleged accident. In fact, he has undergone amputation of one of his legs below knee. It has been specifically averred that he being poor and illiterate, as well as out of work as a result of the injuries sustained, was short of funds and restricted in movement. Thus, he could not seek legal advice in time and instruct a counsel to file the appeal.

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

6. The application is disposed of.

FAO 79/2021

1. The present appeal has been filed under Section 23 of the Railway Claims Tribunal Act, 1987 on behalf of the appellant/claimant seeking setting aside of judgment dated 04.06.2018 passed by the Railway Claims Tribunal, Principal Bench, Delhi in Claim Application No.OA (Ilu) 284/2017, whereby his claim petition seeking injury compensation was dismissed. The appellant further claims interest @ 18% per annum on the compensation amount from the date of filing of claim petition before the Tribunal till realization.

2. Facts, as culled out from the claim petition, are that on 08.08.2017, the appellant/claimant (aged 24 years) was travelling from *Kosi Kalan* to *Tughlakabad, Delhi* in *Intercity Express Train* with a valid ticket bearing No.00660325 for Rs.45/-. When the train reached *Ballabhgarh Railway Station*, he accidentally fell down from the train and received grievous injuries all over his body, particularly his neck. He was taken to *Sarvodaya Hospital, Faridabad* for treatment where, one of his legs, below knee, had to be amputated.

3. On 01.11.2017, the appellant filed the claim petition before the Railway Claims Tribunal, which came to be dismissed vide the impugned judgment. Being aggrieved by the dismissal, the appellant has preferred the present appeal.

4. Mr. Rajan Sood, learned counsel for the appellant, has submitted that though the Tribunal arrived at a conclusion that the accident suffered by the appellant was an '*untoward incident*' as defined under Section 123(c) read with Section 124-A of the Railways Act, 1989, the claim petition was still dismissed by holding that he was not a *bonafide passenger*. It is contended that the only basis for arriving at the said conclusion was that the journey ticket was produced by the appellant's cousin after six days of the accident.

5. On the other hand, Mr. Jivesh Kr. Tiwari, learned Senior Panel Counsel appearing for the respondent, has supported the impugned judgment. He has referred to the spot report dated 08.08.2017 prepared by the RPF to point out that on being enquired about his journey ticket, the appellant had stated that he possessed a Monthly Season Ticket (MST) valid

from 03.07.2017 to 02.08.2017 but the same having been expired, he had purchased a journey ticket on the date of the accident. Yet, the ticket was not produced on the date of the accident, stating that it had been misplaced.

6. I have heard learned counsels for the parties and perused the material on record.

7. Concededly, the accident in question has been held by the Tribunal to be covered under '*untoward incident*' as defined under Section 123(c) read with Section 124-A of the Railways Act, 1989. The only controversy before this Court is whether the appellant was a *bonafide passenger* at the relevant time or not.

8. It has been claimed that the appellant was a regular passenger between *Kosi Kalan Railway Station* and *Ballabgarh Railway Station*, for which he had an MST (issued at *Kosi Kalan Railway Station*) which was valid from 03.07.2017 to 02.08.2017 for journey between *Kosi Kalan* and *Faridabad New Town*. On 08.08.2017 i.e. the date of the accident, the MST having expired, he had statedly purchased a journey ticket from *Kosi Kalan* to *Tughlakabad* at 06:33 hrs. to travel in the *Intercity Express Train*.

At this juncture, it is worthwhile to record that in the impugned judgment, it has been noted by the Tribunal that as per the railway time table, *Agra-New Delhi Intercity Express* (Train No. 14211) was the first train to stop at *Kosi Kalan* and *Ballabgarh Railway Stations* after 06:33 hrs. and it had a scheduled arrival at *Kosi Kalan Railway Station* at 07:37 hrs.

9. In support of his case, the appellant has produced relevant medical records, including the discharge summary prepared by *Sarvodaya Hospital*, which reveal that he was admitted in *Sarvodaya Hospital* on 08.08.2017 at 11:03 a.m. and discharged from it on 14.08.2017. The summary further reveals that the appellant had suffered amputation (below knee) in one leg.

10. The journey ticket, as per the appellant's claims, was handed over to the respondent on the date of discharge i.e. 14.08.2017. The respondent has neither disputed the factum of issuance of the journey ticket on 08.08.2017 at *Kosi Kalan Railway Station* nor its production on 14.08.2017.

No objection has been raised by the respondent to the claim that the accident in question took place at *Ballabgarh Railway Station* either. The factum of the accident occurring at *Ballabgarh Railway Station* in fact stands verified. It is also admitted that immediately after the accident, the appellant was taken to *Civil Hospital, Ballabgarh*, wherefore he was shifted to *Sarvodaya Hospital, Faridabad*.

11. In deciding the issue as to whether the appellant was a *bonafide passenger* or not, the Tribunal was apparently misguided in taking a view that the journey ticket produced by the appellant was rendered suspicious on account of the fact that the same was purchased at 06:33 hrs., while Train No.14211 was scheduled to arrive at *Kosi Kalan Railway Station* about an hour later. The observations made by the Tribunal were based on conjecture. Insofar as it was observed that the appellant had no business arriving at *Kosi Kalan Railway Station* an hour before the scheduled arrival of *Agra-New Delhi Intercity Express*, note is taken of the fact that the early arrival at *Kosi*

Kalan Railway Station was explained by the appellant by citing the need to get his MST renewed.

12. Having heard both the parties and perusing the records of the Tribunal, this Court is of the opinion that mere factum of journey ticket having been produced after 6 days of the accident does not cast doubt on the case of the appellant that he was a *bonafide passenger* on 08.08.2017 when he suffered an *untoward incident*, especially as he has placed on record sufficient material from *Sarvodaya Hospital* to prove that he remained admitted from 08.08.2017 to 14.08.2017.

13. At this stage, reference may also 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)

14. As the appellant in the present case had filed his evidence by way of affidavit, wherein it was claimed that he had travelled on the date of accident, i.e. 08.08.2017 in *Intercity Express Train* on a valid ticket bearing

No.00660325, the initial burden on him to prove that he was a *bonafide passenger* stood discharged. Thereafter, the onus was upon the respondent to prove that the appellant was not a *bonafide passenger* in the aforesaid train on 08.08.2017, which it has failed to discharge.

15. Considering the above, this Court finds that the concerned Tribunal erred in holding that the appellant was not a *bonafide passenger* at the time of the accident. Accordingly, the appeal is allowed and the impugned judgment is set aside. The matter is remanded back to the Tribunal to award compensation in accordance with law within two weeks from today, for which purpose the matter be listed before the Tribunal at the first instance on 06.02.2023.

16. Appeal is disposed of in the above terms.

17. A copy of the judgment be communicated to the concerned Tribunal forthwith for information.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 01, 2023

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