

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

+ **FAO 363/2019**

Date of Decision: 01.02.2023

IN THE MATTER OF:

NARESH SAO & ORS.

..... Appellants

Through: Mr. Shyam Singh Sisodia,
Advocate.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Balendu Shekhar, CGSC with
Mr. Krishna Chaitanya, Mr. Sriansh
Prakash and Mr. Raj Kumar
Maurya, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

CM.APPL No.39966/2019 (Delay)

1. The present application has been filed under Section 5 of the Limitation Act on behalf of the appellants seeking condonation of delay of 79 days in filing the appeal.
2. Issue notice.
3. Mr. Balendu Shekhar, learned CGSC for respondent, accepts notice.
4. In view of the averments made in the application, the same is allowed and the delay of 79 days in filing the appeal is condoned.
5. The application is disposed of.

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1. By way of the present appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987, the appellants/claimants have assailed judgment dated 12.03.2019 passed by the Railway Claims Tribunal, Principal Bench, Delhi in Claim Application No. OA(IIu)72/2018, whereby their claim petition seeking death compensation in respect of *Late Sh. Basudev Saw* was dismissed.

2. Mr. Shyam Singh Sisodia, learned counsel for the appellants, submits that the Tribunal failed to appreciate the fact that deceased-*late Sh. Basudev Saw* had to undertake train journey along with some family members on 27.04.2017 from *New Delhi Railway Station* to *Jasidih Junction* by Train No.12304 (Poorva Express), however, he did not board the said train and rather boarded some other train from the Station. It is stated that the body of the deceased was recovered/found on 16.05.2017 near *Dabar Farm*, under the jurisdiction of Police Station Kadauna, District Hardoi and as per the post-mortem report, the time since death has been opined as 14 to 20 days.

Learned counsel further submits that son-in-law of the deceased, viz. *Shri Sanjay Kumar*, had lodged a missing person's report on 10.05.2017 vide DD No.20A at Police Station New Delhi Railway Station. In these circumstances, it is contended that the deceased was a *bonafide passenger* and as such the claim petition ought to have been allowed.

3. Mr. Balendu Shekhar, learned CGSC, on the other hand, has disputed the submissions made on behalf of the appellants and supported the impugned judgment.

4. A perusal of the case records would reveal that in the claim petition, it was claimed that the deceased-late *Sh. Basudev Saw* alongwith three other persons booked a train journey for 27.04.2017 from *New Delhi Railway Station* to *Jasidih* in Coach S-1, berth Nos.62, 61, 72 and 64. Though the other persons undertook the said journey, the deceased strayed away from the group at New Delhi Railway Station and possibly boarded a wrong train. The other persons reached the destination on 28.04.2017, but the deceased did not.

5. Be that as it may, no missing person's report was lodged, and in fact, no material has been placed on record to show that the other persons or family members of the deceased lodged a missing person's report either at the boarding or at the destination station until many days later.

6. Purportedly, the first complaint came to be lodged on 10.05.2017 at New Delhi Railway Station, i.e. after a lapse of 13 days since the date of travel. On 16.05.2017, the body of the deceased was found within the premises of *Dabar Farm Factory* under the jurisdiction of Police Station Kadauna, District Hardoi. His body being badly mutilated could not be identified at first. Subsequently, a Voter Identity Card was recovered from the person of the deceased through which he was identified and information was sent to his family members.

7. Reference has been made to the post-mortem report of the deceased to connect the incident with the date of travel. However, considering the facts that no journey ticket was recovered during *jamatalashi*, that no missing person's report was lodged in respect of the deceased for a period of 13 days, and that the body of the deceased was found within the premises of *Dabar Farm Factory*, the reliance on the

post-mortem report, where time since death is alluded to as 14 to 20 days, does not weigh with this Court.

8. As there is no evidence on record which connects the death of the deceased with the train in question, this Court find no merit in the submission that the deceased was a *bonafide passenger* and the death occurred on account of an *untoward incident*.

9. Accordingly, in view of the discussion made hereinabove, the impugned judgment is upheld. The appeal is dismissed, being devoid of merit.

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

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 01, 2023/v

नस्यमेव जयते