

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

+ **FAO 462/2019**

Reserved on: 09.05.2023

Pronounced on: 18.05.2023

IN THE MATTER OF:

ESMAIL SHEIKH AND ANR.

.... Appellants

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

versus

UNION OF INDIA

.... Respondent

Through: Mr.Vineet Dhanda, CGSC with
Mr.Hussain Taqvi and Ms.Gurleen
Kaur, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

CM APPL. 50533/2019 (Delay)

1. The present application has been filed under Section 5 of the Limitation Act read with Section 151 CPC on behalf of the appellant seeking condonation of delay of 263 days in filing the appeal.
2. Learned CGSC appearing for the respondent/UOI fairly does not oppose the present application.
3. In view of the above, the application is allowed and the delay of 263 days in filing the appeal is condoned.
4. The application is disposed of.

FAO 462/2019

1. By way of present appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987, the appellants have impugned the order dated

26.11.2018 passed by Railway Claims Tribunal, Principal Bench, Delhi in Case No. OA (IIU) No.40/2018 whereby the claim petition filed by them came to be dismissed.

2. The relevant facts are that in the claim petition, it was claimed by the appellant No. 2 that on 30.08.2017, her husband *Ehesan Ali* after purchasing a valid journey ticket undertook train journey from *Delhi Junction* to *Bardhaman Junction* by *Sealdah Sampark Kranti Express Train*. It was also claimed that while boarding the train, he accidentally fell and suffered grievous injuries all over his body. He was removed to Lok Nayak Hospital where he succumbed to his injuries.

The Tribunal while noting the aforesaid facts dismissed the claim petition by disbelieving the recovery of journey ticket.

3. Learned counsel for the appellants contended that the Tribunal arbitrarily dismissed the claim petition by raising presumptions. It was submitted that the journey ticket being recovered and verified, the Tribunal ought to have allowed the claim petition.

4. *Per contra*, learned CGSC for the respondent/UOI defended the impugned order by submitting that the journey ticket was not recovered in the initial search. It was submitted that the recovery is doubtful as a relative of the deceased namely Bilal, who is cousin of the son of the deceased being a Railway employee working at Howrah Division, West Bengal might have procured a ticket for the said journey and planted the same.

5. Indisputably, the incident in question took place on 30.08.2017, at Platform No.13 of Delhi Junction resulting in death of *Ehesan Ali*. The Tribunal though concluded that said incident was an 'untoward incident' however, opined that the deceased was not a *bona fide* passenger. The

first information about the incident came to be recorded vide DD No.17A at 21.05 hours on 30.08.2017 wherein it was recorded that PCR had informed that a person was lying in injured condition. The said DD was marked to *ASI Mohd. Asif Khan* who reached the spot. Vide DD No.20-A recorded at 22.40 hours on 30.08.2017, it was mentioned that the injured was taken to the Trauma Centre, Civil Line Hospital, where he was declared 'brought dead'. The identity of the person was unknown at that time. *ASI Sukhpal*, the investigating officer who made initial search recovered two mobile phones as well as a paper slip from the bag amongst other articles. He informed the appellant no.1, who was in West Bengal.

Appellant No.1 examined himself and deposed that he received information about the incident about 5:00 am on 31.08.2017 when he was in his village in Murshidabad, West Bengal. He left his village at about 8:30 am and after traveling for 6 hours reached *Kolkata* from where he took a flight to Delhi at about 8 p.m. and reached Delhi at about 11:30 pm and arrived to the office of GRP Police Station at Old Delhi Railway Station. While being there, he was handed over the bag of his father and on search, a journey ticket was found which he handed over to the police personnel. He stated that he was accompanied by his cousin *Bilal*. In cross-examination, he clarified that the seizure memo for recovery of the journey ticket was prepared on the night of 31.08.2017 itself. Although a suggestion was given that the journey ticket was planted, it was denied.

6. Investigating Officer/*ASI Sukhpal Singh* was also examined. He deposed that he was on duty on 30.08.2017 when after receiving the information of the incident, he reached at Platform No.13 where he found

the injured. He brought the bag which was found to the Police Station and upon opening the same, found some money and paper slips in it. He further deposed that on the night of 31.08.2017, the relatives of the deceased reached the police station and when they opened the bag, two old tickets as well as the journey ticket in question were taken out and seized. He prepared the seizure memo on 01.09.2017. He clarified that inadvertently, he had put the date of 30.10.2017 on the seizure memo whereas the actual date was 01.09.2017. In the proceedings, the journey ticket was verified to be issued at 02:32 p.m. on 30.08.2017 from Delhi Junction Railway Station for travel in *Sealdah Sampark Kranti Express Train* from Delhi to *Bardhaman*.

7. A perusal of the impugned order would show that the Tribunal found issuance of journey ticket at 02.32 p.m. as a suspicious circumstance since the scheduled departure time of the train was 07.10 p.m. Coupled with the fact that the journey ticket was not recovered in the initial search, the claim petition was dismissed. The Tribunal also raised a presumption that Bilal being a Railway employee at Howrah Division, West Bengal might have procured the journey ticket.

8. After carefully going through the entire material placed on record, this Court is of the considered opinion that the reasoning given by the Tribunal is not only based on assumption, but is also fallacious.

9. Concededly, the first information about the incident was recorded at 09.05 p.m. on 30.08.2017 vide DD No.17A. The deceased was carrying a bag which was recovered on the night of the incident itself. *ASI Sukhpal Singh* in his deposition categorically stated that the son of deceased had arrived at the Police Station in the night of 31.08.2017, who while searching the bag, found not only two old tickets, but also the

ticket in question. Appellant No.1 has explained that after receiving information at about 5:00 am, he travelled for about 6 hours and reached Kolkata from where he took a flight to Delhi at about 8:00 pm. When he reached Delhi, he went to the police station. It has also come on record that the scheduled departure time of the said train was at 07.10 p.m. on 30.08.2017 and the total travel distance was 1347 kms. The scheduled arrival time in *Bardhaman* was 5:00 pm of the next day. In these facts, it is unbelievable that instead of rushing to Delhi from *Kolkata*, the appellant would have schemed to procure a journey ticket of the train which had not even arrived in *Kolkata* by the time he had left.

Merely because appellant No.1 was accompanied by his cousin *Bilal*, who was employed at Howrah Division, West Bengal would not lead to an inevitable conclusion that before the subject train could reach Bardhaman, the appellant who had initiated his journey would secure a ticket and planted the same by the night of 31.08.2017.

10. In view of the above, the recovery of journey ticket ought not to have been doubted by the Tribunal for denying the compensation. Accordingly, the appeal is allowed and the impugned order is set aside and the matter is remanded back to the Tribunal to award compensation within two weeks from today in terms of the Railway Claims Tribunal Act, 1987. The matter be listed before the Tribunal on 31.05.2023.

(MANOJ KUMAR OHRI)
JUDGE

MAY 18, 2023/v