

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 442/2018 & CM APPL.38848/2018**

Reserved on: 23.02.2023
Pronounced on :24.05.2023

IN THE MATTER OF:

OM PARKASH & ANR.

..... Appellants

Through: Mr. Siddharth Chauhan, Advocate.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Ruchir Mishra, Mr. Mukesh Kumar Tiwari, Ms. Reba Jena Mishra and Mr. Sanjiv Kr. Saxena, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

CM APPL.38848/2018 (Delay)

1. The present application has been filed under Section 5 of the Limitation Act read with Section 151 CPC on behalf of the appellants seeking condonation of delay of 30 days in filing the appeal.
2. It is submitted that upon receiving the certified copy of the impugned judgment, the appellants' counsel sought some additional documents, which took some time to arrange. Consequently, there was a delay of 30 days in filing the appeal.

3. For the reasons stated in the application, the same is allowed and the delay of 30 days in filing the appeal is condoned.

4. The application is disposed of.

FAO 442/2018

1. The appellants have preferred the present appeal under Section 23 of The Railway Claims Tribunal Act, 1987 (hereinafter referred to as the 'Act') thereby seeking setting aside of the order dated 12.01.2018 passed by Railway Claims Tribunal, Principal Bench in case No.OA(IIu)66/2017 whereby the Claim Petition filed by them was dismissed.

2. In the application filed before the Tribunal, the appellants' claimed that on 04.01.2017, *Gaurav Kumar*, the deceased, was traveling from *Moradabad Railway Station* to *Delhi Junction* using a valid journey ticket bearing No. 06623820. The incident came to light when one *Mukesh Kumar* reported discovering the body of the appellants' son at 8:40 am on 05.01.2017 on the railway track between *Sahibabad* and *Vivek Vihar* at kilometer number 12/11-13. The body was subsequently sent for post-mortem examination at Government Hospital, Ghaziabad. In the post-mortem report, five injuries were noted. The death of the deceased was opined to be on account of ante-mortem injuries. In the Post-Mortem Report (Ex.A-9), the time of death was recorded to be approximately half a day earlier.

3. Learned counsel for the appellants contended that the journey ticket was verified to have been issued at 11:45 am on 04.01.2017 from *Moradabad Railway Station*. He further contended that in spite of recovery of ticket, the claim petition was arbitrarily dismissed by the Tribunal.

Per contra, learned counsel for the respondent contended that the ticket, which was produced, could not be used for the travel and it was rather planted at a later time. It was further contended that there was delay in reporting the incident.

4. During proceedings before the Tribunal, a DRM (Divisional Railway Manager) report was submitted raising doubts about the occurrence of the incident. The report stated that the deceased had completed his journey on 04.01.2017 however, on 05.01.2017, he came at the spot for some reason and met with an accident. Consequently, the Tribunal dismissed the claim petition, citing the appellant's failure to provide the name of the train used by the deceased for the journey.

5. As mentioned previously, the first information regarding the incident was given by *Mukesh Kumar*. It was reported at around 8:40 am on 05.01.2017. The post-mortem examination was conducted at about 3:45 pm wherein it was opined that the incident had occurred about half day earlier. The Inquest proceedings were conducted around 8:55 am on 05.01.2017, which mentions the recovery of a journey ticket dated 04.01.2017. However, the Tribunal discredited the journey ticket due to the time gap between the recovery of the body and the ticket.

6. After reviewing the train schedules of various trains, the Tribunal reached the conclusion that it was highly improbable for the deceased to have travelled on any of those trains. The Tribunal further suspected that the journey ticket was planted at a later time.

During the proceedings, appellant No.1 testified before the Tribunal and stated that he was informed about the incident on the morning of 05.01.2017 by the concerned contractor. It is worth noting that both the appellant and the deceased were residents of *Dehri village*,

Distt. Muradabad. Pertinently, neither the issuance of the ticket from the *Moradabad Railway Station* nor the factum that the body was found on the *Moradabad – Delhi* railway track, are disputed. The mere delay in noticing and reporting the incident by a third party ought to have been appreciated in light of the fact that the incident statedly took place in the month of January, a winter month when there might be lesser chances of any passerby discovering the body particularly when the journey ticket has been verified. In such circumstances, the Tribunal ought to have inclined in favour of the claimant.

7. Consequently, the appeal is allowed and the impugned order is set aside. The matter is remanded back to the Tribunal for awarding compensation in terms of the Act and for which purpose the matter shall be listed at the first instance before the Tribunal on 30.05.2023. Let the compensation amount be paid to the appellants/claimants within two weeks thereafter.

8. The appeal is disposed of in the above terms.

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

(MANOJ KUMAR OHRI)
JUDGE

MAY 24, 2023/sa