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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 137/2023 & CM APPL. 30753/2023 & CM APPL. 30755/2023**
UNION OF INDIA THROUGH THE GENERAL MANAGER

.....Appellant

Through: Mr.Rajan Sood, Ms. Ashima Sood
and Ms.Megha Sood, Mr.Gagan Kumar,
Mr.Gagan Kumar, Ms. Nishtha Kaura
and Mr.Burgula Garima, Advs.

versus

KESAR AND ORS

.....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

ORDER

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22.10.2024

1. Union of India has filed present appeal under Section 23 of the *Railway Claims Tribunal Act, 1987* impugning order dated 02.11.2022 passed by learned Railway Claim Tribunal whereby the claim petition in question has been allowed.
2. There is no qualm with respect to certain admitted facts.
3. Mr. Ram Kishor (hereinafter referred to as '*deceased*') was travelling in Mandore Express (train No. 12461). He bought a ticket for general coach and boarded the above said train from Sarai Rohilla Railway Station with Mr. Brij Mohan Bairva.
4. En-route, on account of some jerk, the deceased, who was sleeping on the luggage rack situated at the top of the general coach, fell down and received injuries, which eventually, proved to be fatal.
5. It was in the above said backdrop that the claim was made.
6. According to learned counsel for appellant, learned Tribunal did not consider one crucial aspect in the desired manner. Though, there is no dispute that the deceased was a *bonafide* passenger, but he had no reason to sleep on *luggage rack* and therefore, any injury suffered by him, while falling from such luggage rack, cannot fall within the scope and ambit of '*untoward incident*'.



7. During course of the arguments, it was brought to fore that the compensation amount has already been disbursed to the LRs of the deceased.
8. The incident in question had taken place way back in the year 2019.
9. Admittedly, Mandore Express would also be having a 3 AC coach during those days and, in case, because of any such jerk, if somebody provided with top berth in such 3 AC coach falls down, the Railway cannot shy away from its responsibility from paying the compensation.
10. Learned counsel for the appellant, however, states that there are adequate safety arrangements in such 3 AC coach which are, generally, not there in a general coach and to a very large extent, the deceased himself was responsible for the unfortunate incident in question as he should not have slept on a *luggage rack* which was not equipped with any safety mechanism.
11. After hearing arguments for some time, learned counsel for the appellant states that he would not press the present appeal, in view of the fact that the compensation has been disbursed but it may be clarified that the above said issue is left open and the present matter should not be taken as a precedent.
12. Keeping in mind the above, present appeal is disposed of as not pressed while leaving the above said issue open. It is also clarified that the present order shall not constitute any precedent.

MANOJ JAIN, J

OCTOBER 22, 2024/sw