

\$~

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

+ **FAO 90/2021**

Reserved on: 16.03.2023

Decided on : 12.04.2023

IN THE MATTER OF:

KALPANA DEVI AND ORS. Appellants

Through: Mr.Manoj, Advocate

versus

UNION OF INDIA Respondent

Through: Mr.Chiranjiv Kumar and
Mr.Mukesh Sachdeva, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

CM APPL. 8245/2021 (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 258 days in filing the appeal.
2. Learned counsel for the respondent fairly does not oppose the present application.
3. It is worthwhile to note that in Mohsina & Ors. v Union of India & Ors., reported as **2017 SCC OnLine Del 10003** 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 that the appeal could not be filed on account of prolonged lockdown owing to COVID-19.

5. Considering the facts and circumstances of the case as well as the import of decision rendered by the Supreme Court in In Re: Cognizance for Extension of Limitation, Suo Motu Writ Petition (Civil) No. 3/2020 as well as of Co-ordinate Bench of this Court in Mohsina (Supra), the application is allowed and the delay in filing the accompanying appeal is condoned.

6. In view of the above, the application is allowed and the delay of 258 days in filing the appeal is condoned.

7. The application is disposed of.

FAO 90/2021

1. By way of present appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987 the appellants/claimants assail order dated 12.03.2020 passed by the Railway Claims Tribunal, Principal Bench,

Delhi in Case No.OA/II(u)/DLI/89/2019 whereby the claim petition filed by them was dismissed.

2. The facts, as apparent from the records, are that the underlying claim petition came to be filed by appellant No.1 alongwith other dependants, thereby claiming that her husband/*Sh.Shankar Suman* died in an '*untoward incident*'. It was averred that on 15.05.2018, the deceased after purchasing a valid 2nd class superfast railway ticket for travel from *Agra Cantt.* to *Hazrat Nizamuddin* railway station, boarded in train. When the train reached at KM No.1528/09-10 Hari Nagar Ashram, the deceased was standing at the door of the compartment. He accidentally fell down from the moving train and died on the spot.

3. As the journey ticket was not recovered, the Tribunal came to the conclusion that the deceased was not a *bonafide passenger*. After perusing the material on record, it came to a further conclusion that death had not occurred accidentally due to fall from the moving train. Finding the appellants non-suited on both counts, the claim petition was dismissed.

4. Learned counsel for the appellants while referring to the post-mortem report, where cause of death has been opined as '*...possible in railway track accident*', submitted that the Tribunal erred in concluding that the death was not on account of accidental fall from a moving train. He further submitted that the journey ticket was lost at the time of accident only and thus the finding that the deceased was not a *bonafide passenger* is also incorrect.

5. Learned counsel for the respondent, on the other hand, defended the impugned order.

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

7. A perusal of the case records would show that first information about the incident came to be recorded vide GD Entry No.025A (which was exhibited as *Ex.A-1*) on 15.05.2018 at 18:40 hours wherein it was mentioned that one person was lying run over on the Ashram railway bridge (“*ASHRAM RAILWAY PULIAYA TRACK PAR EK ADMI KATA PADA HAI*”). Another GD Entry No.028A (which was exhibited as *Ex.A-2*) on 15.05.2018 at 19:50 hours, in fact, recorded that three dead bodies were lying at the UP- line of *Nizamuddin - Tughlakabad Section* in badly mutilated condition.

Admittedly, there is no eye-witness to the incident, and in fact, the appellants have also not stated that they witnessed the deceased buying the tickets or boarding the train.

8. Secondly, the post-mortem report noted multiple crush injuries, fracture of skull bones and fracture of pelvis on both sides. The brain matter was found to be mostly absent. The cause of death was recorded as “*a result of combined effects of cranio cerebral damage and shock*”. The DCR register maintained by RPF also recorded that: “*KAREEB 19/05 BAJE MILI AGYAT SOOCHNA KI NZM-OKA KE MADHYA ASRAM PUL KE PAAS 03 LADKE RUN OVER HO GAYE HAI*”.

9. The present is a case where three dead bodies were found at the spot making it difficult to believe that all three of them had accidentally fallen from a moving train at the same time. Coupled with the facts that no journey ticket was found, that the first information also recorded to the effect that the deceased had been run over, as well as the post-mortem report, this Court concurs with the Tribunal that the appellants

have failed to make out a case of 'untoward incident' as defined under Section 123(c) of the Railways Act.

10. Accordingly, the findings recorded in the impugned order are upheld and the present appeal is dismissed.

(MANOJ KUMAR OHRI)
JUDGE

April 12, 2023/v

