



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

% Reserved on : 19.03.2026
Pronounced on : 04.04.2026
Uploaded on : 04.04.2026

+ **FAO 49/2022**

BRIJESH KUMAR AND ORSAppellants

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

versus

UNION OF INDIARespondent

Through: Ms. Shubhra Parashar, Mr. Virender
Pratap Singh Charak, Advocates

**CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

JUDGMENT

CM APPL. 10641/2022 (Seeking condonation of delay of 1326 days in filing the appeal)

1. By way of the present application, the applicants/appellants seek condonation of delay of 1326 days in filing the appeal.
2. Learned counsel for the appellants submit that appellants being aged parents of the deceased, reside in Village Malepura, P.S. Lavedi, District Etawah, U.P. and after passing of the judgment dated 14.11.2017, they were unable to file the appeal within the prescribed time, as the certified copy of the said judgment was received by them on 30.07.2021. It is further submitted that the appellants are poor and illiterate persons, and belong to an



economically weaker section and, due to paucity of funds, were unable to get in contact with a counsel and obtain timely legal advice.

3. Learned counsel for the respondent, on the other hand, opposes the present application.

4. It is noteworthy that in “*Mohsina vs. Union of India*”¹, a Co-ordinate Bench of this Court condoned a delay of 804 days in filing the appeal, taking into account the weak economic condition of the appellant/claimant. Similarly, this Court in “*Shalini Gihar vs. Union of India*”², allowed the application, and a delay of 1122 days was condoned, considering the financial hardship of the appellants and the surrounding circumstances.

5. Furthermore, it is relevant to note that the Supreme Court in, *In Re: Cognizance for extension of limitation in Suo Moto Writ Petition (Civil) No.3 of 2020 (Order dated 10.01.2022)*, bearing in mind the difficulties faced by the litigants, directed that the period between 15.03.2020 and 28.02.2022 shall stand excluded for the purpose of computing limitation.

6. The Railways Act, 1989 and the Railways Claims Tribunal Act, 1987 arises out of beneficial and social welfare legislation intended to provide compensation to victims of railway accidents and untoward incidents. In such matters, a liberal and justice-oriented approach is required while considering applications for condonation of delay so that genuine claims are not defeated on technical grounds.

7. Considering the peculiar facts and circumstances of the present case, and guided by the principle laid down in the aforesaid decisions, as well as the beneficial nature of the concerned legislation, this Court finds that the

¹ (2017) SCC OnLine Del 10003

² (2023) SCC OnLine Del 3193



appellants have been able to show sufficient cause for the delay in filing the present appeal.

8. In view of the aforesaid, the application is allowed and the delay of 1326 days in filing the appeal is condoned.

9. The application is disposed of accordingly.

FAO 49/2022

1. The present appeal has been filed under Section 23 of the Railway Claims Tribunal Act, 1987 against the judgment dated 14.11.2017, passed by the Railway Claims Tribunal, Principal Bench, *Delhi* (hereinafter referred to as the “Tribunal”) in Claim Application No. OA/II(U) 39/2017, titled as “*Shri. Brijesh Kumar & Anr. vs. Union of India*”.

2. Vide the aforesaid judgment, the Tribunal dismissed the claim application filed by the appellants herein on the ground that the deceased was neither a *bona fide* passenger, nor was the alleged incident an “untoward incident” as defined under the Railways Act, 1989 (hereinafter referred to as the “Act”).

3. The brief facts of the case, as stated in the claim application, are that on 05.07.2016, one *Sh. Pinku* (hereinafter referred to as the “deceased”) was travelling from *Kanpur Central* to *New Delhi* by the *Bhagalpur-New Delhi* Express Train, on the strength of a valid second-class ticket, and while undertaking the said journey, he fell near *Dadri* Railway Station, as a result of which, he sustained severe injuries and he died on spot.

4. Learned counsel for the appellants assails the impugned judgment by contending that the Tribunal has erred in rejecting the claim despite sufficient evidence establishing that the deceased was a *bona fide* passenger, and had suffered an accidental fall from a running train. It is submitted that although



the journey ticket was not recovered from the body of the deceased, the affidavit of AW-1, *Brijesh Kumar*, the father of the deceased, establishes that the deceased undertook the journey on the strength of a valid ticket, which was purchased in his presence. Learned counsel further submits that though a DRM report has been referred to, however, the same was not filed in accordance with law before the Tribunal and, therefore, could not have been relied upon, nor can it be used now to dispute the appellants' evidence.

5. *Per contra*, learned counsel for the respondent supports the impugned judgment by contending that the deceased was not a *bona fide* passenger as no ticket was found from the person of the deceased during the inquest proceedings. It is further submitted the nature of injuries recorded in the post-mortem report, and the location of the body near the crossing indicate that the deceased was not travelling in the train, and did not suffer an accidental fall therefrom. It is further contended that the case does not fall within the ambit of an "untoward incident" under the Act, and the Tribunal has rightly dismissed the claim of the appellants.

6. This Court has heard the arguments of both the parties and perused the material on record.

7. In the backdrop of the above facts, the two issues that arise for consideration are that, whether the deceased was a *bona fide* passenger and whether the alleged incident was an "untoward incident" as defined under the Act.

8. Coming first to the manner of occurrence, the contemporaneous evidence on record lends support to the appellants' version. The first information regarding the incident, as recorded through *Bunty Kumar*, the Gateman at Gate No. 148C, indicates that a person had fallen from Train No.



12349 and died on spot. The timing of such information bears chronological nearness to the incident in question and constitutes an important piece of evidence which cannot be disregarded merely on the ground that the Gateman was not an eyewitness. It is well recognised that in cases of railway accidents, the earliest information often emanates from railway personnel performing operational duties, and its evidentiary value lies in its spontaneity and contemporaneity.

9. The Tribunal has, however, chosen to discard the said material and instead rely upon assumptions drawn from the nature of injuries and the location of the body near a level crossing, to conclude that the deceased was “run over” while crossing the track. This line of reasoning is speculative and there is no direct evidence on record to substantiate such a conclusion. The finding, thus, rests upon conjectures instead of cogent evidence or sufficient explanation, and further, overlooks the material which is pointing towards fall from the train.

10. Once it is established that the deceased was travelling by train and had fallen therefrom, the incident would squarely fall within the definition of an “untoward incident” under Section 123(c) of the Act. In “Union of India v. Prabhakaran Vijaya Kumar”³, the Hon’ble Supreme Court has held that the liability under Section 124-A is strict in nature, and arises the moment an “untoward incident” is established. The said statutory provision leaves little room for considerations such as negligence or alternative theories in the absence of proof of any of the exceptions. In the present case, no such exception having been either pleaded, or established by the respondent, the liability of the Railways stands attracted, and the appellants are consequently

³ (2008) 9 SCC 527



entitled to compensation under the Act.

11. Insofar as the issue of *bona fide* travel is concerned, it is not in dispute that no journey ticket was recovered from the person of the deceased during the inquest proceedings. In “*Union of India v. Rina Devi*”⁴, the Hon’ble Supreme Court has authoritatively held that the mere absence or non-recovery of a ticket cannot, by itself, be treated as conclusive to negate the status of a passenger, and that once the claimant is able to place some material indicating that the deceased was travelling by train after purchasing a journey ticket, the burden shifts upon the Railways to disprove such assertion.

12. In the present case, the appellants have discharged this initial burden. AW-1, the father of the deceased, has deposed by way of affidavit that the deceased had purchased a journey ticket from *Kanpur Central* to *New Delhi* in his presence, and had boarded Train No. 12349 on 05.07.2016. The said testimony is clear and consistent, and significantly, the record reveals that this assertion has remained unchallenged, as no effective cross-examination was directed on this aspect.

13. Equally significant is the fact that the respondent did not lead any evidence before the Tribunal to dislodge the appellants’ case. Though reference has been made to a DRM report, the same was admittedly not placed before the Tribunal in due time, and in such circumstances, the said report could not have been relied upon to the prejudice of the appellants. The absence of any cogent rebuttal evidence on behalf of the respondent assumes importance, particularly when the initial burden stood discharged by the claimants.

14. The Tribunal, however, proceeded to reject the claim primarily on the

⁴ (2019) 3 SCC 572



ground of non-recovery of the ticket and on certain inferences drawn from the location of the body and the nature of injuries. Such an approach, in the considered view of this Court, reflects an unwarranted elevation of conjecture over evidence.

15. In view of the above, the impugned judgment is set aside and the matter is remanded back to the Tribunal, which is requested to assess the amount of compensation payable to the appellant in accordance with law and direct the authorities concerned to disburse the same within two months from the receipt of a copy of this order. For this purpose, the matter be listed before the Tribunal at the first instance on 13.04.2026.

16. The appeal is allowed and disposed of in the above terms.

17. A copy of this judgment be communicated to the learned Tribunal.

MANOJ KUMAR OHRI
(JUDGE)

APRIL 04, 2026

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