



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

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+ **FAO 38/2023**

JAGDISH MISHRA & ORS.

.....Appellants

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

versus

UNION OF INDIA

.....Respondent

Through: Mr. Ripu Daman Bhardwaj, CGSC
with Mr. Kushagra Kumar and Mr.
Amit Kumar Rana, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

CM APPL. 7654/2023 (Seeking condonation of delay of 200 days in filing the appeal)

1. By way of the present application, the applicants/ appellants seek condonation of delay of 200 days in filing the appeal.
2. Learned counsel for the appellants submit that 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. 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

¹ (2017) SCC OnLine Del 10003



into account the weak economic condition of the appellant/ claimant.

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

5. In view of the aforesaid, the application is allowed and the delay of 200 days in filing the appeal is condoned.

6. The application is disposed of accordingly.

FAO 38/2023

1. The present appeal has been filed under Section 23 of the Railway Claims Tribunal Act, 1987 against the judgment dated 30.03.2022 passed by the Railway Claims Tribunal, Principal Bench, *Delhi* (hereinafter referred to as the “Tribunal”) in Claim Application No. OA/II(U)/144/2021, titled as “*Sh. Jagdish Mishra & Ors. 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 19.12.2011, one Sh. *Abhay Kumar Mishra* (hereinafter referred to as the “deceased”), along with his maternal aunt and one Sh. *Vivek*, had booked a train journey from *Delhi* to *Siwan* by Train No. 15708 (*Amrapali Express*) on the strength of a reserved journey ticket bearing No. 66543091, under PNR No. 2430180156, however, owing to heavy fog, the said train was



delayed and was boarded by them on 20.12.2011, and during the course of the said journey, the deceased accidentally fell from the running train near *Jaswant Nagar* Railway Station, as a result of which, he sustained fatal injuries and died.

4. Learned counsel for the appellants assails the impugned judgment by contending that the Tribunal has erred in rejecting the claim despite sufficient material on record establishing that the deceased was a *bona fide* passenger and had suffered an accidental fall from a running train. It is submitted that the Tribunal has failed to appreciate the contemporaneous railway record, including the Station Master's memo, which constitutes the earliest account of the incident, and has instead placed undue reliance on the DRM report prepared after an inordinate delay of more than nine years. It is further submitted that the non-recovery of the journey ticket cannot be treated as fatal to the claim, particularly when the appellants have placed on record the ticket particulars as well as the PNR details. It is contended that once the initial burden stood discharged, the onus shifted upon the Railways to disprove the case, which it has failed to do.

5. *Per contra*, learned counsel for the respondent supports the impugned judgment by contending that no journey ticket was recovered from the person of the deceased and that there exists a discrepancy in the timing of the alleged incident. It is submitted that the findings recorded in the DRM report indicate that the deceased was not travelling by any train and was rather "run over" by an unknown train while crossing the railway track. It is further contended that the nature of injuries, as recorded in the post-mortem report, is inconsistent with a case of accidental fall from a train, and therefore, the Tribunal has rightly held that the case does not fall within the



ambit of an “untoward incident” under the Act.

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 record lends support to the appellants’ version. The Station Master’s memo dated 21.12.2011 records that an unknown dead body was found lying on the track at KM No. 1173/32-1173/30 near *Jaswant Nagar* Railway Station. The said record, being the earliest account of the incident, does not indicate trespass or run-over. The Tribunal has, however, discarded the contemporaneous record and relied upon an alleged discrepancy in train timing without production of the relevant Train Signal Register (TSR) or movement record for the relevant dates, and thus, the said approach is unsustainable.

9. Furthermore, the reliance placed on the DRM report is wholly misplaced. It is borne out from the record that the DRM report was prepared after a lapse of more than 9 years from the date of the incident, which detracts its evidentiary value, and it is an admitted position that as per the Railways’ own record retention policy, the relevant data is preserved only for a limited period of 5 years. Consequently, when verification was sought after more than nine years, the record was admittedly not available. In such circumstances, any conclusion drawn from the said report regarding the manner of occurrence, including the theory of “run-over” by an unknown



train is purely conjectural and cannot be sustained, particularly when the inquiry itself was conducted at a stage when the primary evidence had already been lost.

10. Therefore, the said report is not based on contemporaneous material and has been prepared at a stage when the primary record itself was no longer available. The aspect of belated filing of a DRM report has been commented upon by this Court in “*Bhola vs. Union of India*”², the relevant extracts wherefrom are as under:

“2. There is a delay of 14 months in submitting the DRM Report....

4. The claim petition was filed on 27.07.2014, the DRM Inquiry was initiated thereafter and a report was filed 7 months later. The delay in initiating an inquiry is fatal to the facts of the case because what essentially needs to be gathered is what happened on the date of accident. The medical reports and the police records show that an accident happened on 08.10.2012 and the cause of the accident was, the appellant having been fallen from a moving train. The DRM Report does not address any of these aspects. On the contrary it says that since no ticket was produced to support the claim of the appellant, of him being a bona fide passenger, therefore by conjecture, he could have well suffered a self-inflicted injury while crossing the railway tracks. Reliance was placed upon the judgment of the Supreme Court in Kalandi Charan Sahoo and Anr. vs. General Manager, South-East Central Railways, Bilaspur in Civil Appeal No. 5608/2017.”

11. It has been consistently held that delay in initiating an inquiry is fatal, as what is required to be ascertained is what transpired at the time of the incident. A delayed inquiry, based on incomplete or unavailable record, cannot form the basis of denial of a claim. The DRM report, therefore, being based on conjectures and prepared after an inordinate delay, is of no

² (2018) SCC OnLine Del 13486



evidentiary value and cannot override the contemporaneous record available on file. In the absence of any cogent material to establish a case of “trespass or run-over”, therefore, and in view of the contemporaneous record indicating a railway occurrence, the incident in question is liable to be treated as an “untoward incident” within the meaning of the Act.

12. Insofar as the issue of *bona fide* travel is concerned, it is not in dispute that the journey ticket was not recovered from the person of the deceased at the time of the inquest. However, the record reveals that the appellants have consistently disclosed the specific ticket particulars, i.e., Ticket No. 66543091, booked under PNR No. 2430180156, in respect of the journey from *Delhi* to *Siwan*. The said particulars are not vague or general assertions, but precise details which have remained consistent throughout the proceedings.

13. It has further come on record that verification of the said ticket could not be carried out by the Railways on account of its own default in carrying out delayed verification. Thus, the absence of verification is not attributable to any deficiency on the part of the appellants, but is a consequence of the respondent’s own inability to produce records after an inordinate lapse of time.

14. The oral evidence of AW-1, Sh. *Jagdish Mishra*, the father of the deceased, clearly states that the deceased had undertaken the journey pursuant to the said booking. The said testimony has remained unshaken in cross-examination and no material contradiction has been elicited, and no suggestion has been put to the witness that the deceased was not travelling by train.



15. An additional circumstance which merits consideration is that the journey in question was from *Delhi* to *Siwan*, covering approximately 900 kilometres, whereas the body of the deceased was found near *Jaswant Nagar*, at a distance of approximately 600 kilometres from *Siwan*. This fact has not been disputed by the respondent. In the absence of any alternative explanation and in view of the respondent's failure to produce any contrary record, the said circumstance clearly establishes that the deceased had travelled a substantial distance of 300 kilometres by the said train prior to the incident. The respondent has neither produced any record to show that the deceased was not travelling on the said train nor led any evidence to establish an alternative version.

16. In this backdrop, the principles laid down in “*Union of India v. Rina Devi*”³ squarely apply. Once the claimants place material indicating travel, the burden shifts upon the Railways to disprove the same. In the present case, the appellants have discharged the initial burden through specific ticket particulars, PNR details, and oral evidence, whereas the respondent has failed to rebut the same. The entire defence rests on non-recovery of ticket and a delayed DRM report, both of which, for the reasons already noted, cannot be determinative. This Court is, therefore, of the considered view that the deceased was a *bona fide* passenger at the time of the incident.

17. 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

³ (2019) 3 SCC 572



2026:DHC:3137



before the Tribunal at the first instance on 30.04.2026.

18. The appeal is allowed and disposed of in the above terms.
19. A copy of this judgment be communicated to the learned Tribunal.

(MANOJ KUMAR OHRI)
JUDGE

APRIL 15, 2026

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