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

% Reserved on : 22.01.2026
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\+ **FAO 82/2021**

SH. RAJ KUMAR .....Appellant

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

Versus

UNION OF INDIA .....Respondent

Through: Mr. Jitesh Vikram Srivastava, Advocate (SPC)

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

CM APPL. 7518/2021

1. By way of the present application filed under Section 5 of the Limitation Act, 1963 read with Section 151 of The Code of Civil Procedure, 1908 (CPC), the appellant seeks condonation of delay of 1035 days in filing the present appeal.

2. Learned counsel for the appellant submits that after passing of the impugned judgment/order dated 02.08.2017, the appellant could not file the present appeal within the prescribed period. It is submitted that the appellant belongs to an economically weaker section and, due to paucity of funds, was

unable to obtain timely legal advice. It is further submitted that the certified copy of the impugned judgment/order was received belatedly, and thereafter, upon arranging the requisite funds, the appellant approached the counsel and took steps for filing the present appeal. It is further stated that on account of the accident suffered, the appellant has lost both of his legs and had 98% permanent physical disablement.

3. Learned counsel for the respondent, on the other hand, has opposed the application.

4. It is worthwhile to note that in Mohsina v. 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 poor economic status of the appellants/claimants. This Court also takes note of the decisions of this Court in Saddam v. Union of India[2], and Shalini Gihar v. Union of India[3], wherein delays of 685 days and 1122 days, respectively, were condoned, *inter alia*, considering the financial hardship of the appellants and the surrounding bona fide circumstances.

5. Considering the facts and circumstances of the present case, and guided by the principles laid down in the aforesaid decisions as well as the beneficial nature of legislation, this Court is satisfied that the appellant has been able to show sufficient cause for the delay in filing the present appeal. Accordingly, the application is allowed, and the delay of 1035 days in filing the accompanying appeal is condoned.

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[1] 2017 SCC OnLine Del 10003
[2] 2022 SCC OnLine Del 4647
[3] 2023 SCC OnLine Del 3193

6. The application is disposed of in the above terms.

FAO 82/2021

1. The present appeal has been instituted under Section 23 of the Railway Claims Tribunal Act, 1987 against the impugned judgment dated 02.08.2017 passed by the Railway Claims Tribunal, Principal Bench, Delhi, (hereinafter referred to as "Tribunal") in O.A.(IIu) No. 36/2017.

2. Vide the aforesaid judgment, the Tribunal rejected the appellant's claim seeking compensation for the injuries statedly suffered by him, holding that the appellant was not a bona fide passenger and that the injuries caused to him were not on account of an "untoward incident" within the meaning as defined under section 123 (c) of the Railways Act, 1989.

3. Learned counsel for the appellant has contended that the Tribunal has erred in holding that the appellant was not a bona fide passenger merely on account of the non-recovery of the journey ticket of the appellant. It is further submitted that the finding of the Tribunal that the appellant was intoxicated at the relevant point of time and, pursuant to which, he had fallen from the train, was neither a specific plea raised before, nor was it established by the evidence on record.

4. Learned SPC appearing for the respondent, *per contra,* has disputed the bona fide passenger status of the appellant by contending that the appellant was intoxicated at the relevant point of time, as evidenced from the MLC as well as his own admission that he was carrying a bottle of liquor during the journey. It was submitted the injuries sustained by the appellant were the result of his own negligent conduct and, therefore, the incident does

not fall within the ambit of an "untoward incident" so as to entitle the appellant to compensation.

5. The brief facts, as stated in the claim application, are that on 12.07.2015, the appellant was travelling from *Delhi* to *Gotra* via *Saharanpur* Passenger Train. It is alleged that due to a heavy rush inside the compartment, when the train reached *Gotra* Railway Station and experienced a sudden jerk, the appellant was pushed from within the compartment, as a result of which he fell down from the train, and suffered grievous injuries resulting in amputation of both of his legs. Thereafter, the appellant was removed to G.T.B. Hospital where his MLC was conducted.

6. At the outset, it is noted that while the nature of injuries sustained by the appellant is not in dispute, the submission that the alleged accident being an untoward incident is contested by the respondent.

Notably, the MLC placed on record clearly records the amputations of both of the lower limbs, which is consistent with the disability certificate of the appellant assessing his locomotor disability at 98%.

The DRM report concludes that the appellant suffered the injuries while attempting to carelessly de-board from Train No. 51913 while it was still in motion. It records that the appellant lost his balance due to his own negligent conduct and holds that the incident occurred solely on account of his carelessness, for which the Railway Administration bears no responsibility.

7. In the above backdrop of facts, the issues that arise for consideration before this Court, therefore, are whether the appellant was a bona fide

passenger and whether the alleged accident qualifies as an 'untoward incident' within the meaning of Section 123(c) of the Railways Act.

8. Insofar as the issue regarding whether the appellant was a bona fide passenger is concerned, it is a conceded position that no journey ticket was recovered. The appellant has claimed that though the ticket was purchased but was lost during the incident. The legal position governing the determination of bona fide passenger status in cases where the ticket is not recovered is no longer *res integra*. In Union of India vs. Rina Devi[4], the Supreme Court held that the claimant can discharge the said initial burden by filing an affidavit in requisite material terms. It was held as under:

> *"29. We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly."*

9. In the instant case, while the appellant's journey ticket could not be recovered, the affidavit filed by the appellant states that he had undertaken the journey after purchasing a valid train ticket for Rs.10/-. It is contended that the respondent had failed to lead any independent evidence to dislodge

[4] AIR 2018 SC 2362.

this assertion and thus, the appellant had satisfactorily discharged the initial burden cast upon him to establish his bona fide passenger status.

10. As regards the second issue, it has consistently emerged from the appellant's testimony that he was standing at the gate of the train compartment and was accidentally pushed out due to a sudden jerk when the train reached the *Gotra* Railway Station.

11. The Tribunal however, doubted the appellant's version on two counts: *firstly*, that no co-passenger had reported the incident to the concerned authorities; and *secondly*, that the appellant was intoxicated at the relevant point of time, on which account alone, he had sustained the injuries in question. The said findings, are however unsustainable in the opinion of this Court. Pertinently, DD 56B dated 12.07.2015 by P.S. GTB Enclave notes that a telephonic intimation regarding the appellant's train accident at *Gotra* Railway Station and his subsequent admission to G.T.B. Hospital at the instance of one *Prakash*, was received at about 9.20 PM, which information stood eventually corroborated by the statement of said *Prakash*. Be that as it may, considering the fact that the appellant was travelling alone and suffered the injuries by falling from train, which is not denied by the respondent, any delay attributable to the co-passengers, in this Court's view, in reporting to the concerned authorities, cannot be held against him.

12. The inference of intoxication drawn by the Tribunal is equally unsupported by the evidence on record. The MLC relied upon by the Tribunal merely records presence of an alcoholic smell at the time of examining the appellant; however, the same, by itself, is insufficient to

establish intoxication to the extent that he had lost control over his faculties so as to suggest that the appellant was negligent in de-boarding the train. Likewise, the appellant's deposition in this regard only refers to his occasional consumption of alcohol and possession of a liquor bottle at the relevant point of time, neither of which establishes intoxication at the time of the accident. The appellant had explained that on the day of incident, he was going to the house of his in-laws at *Gotra* on occasion of celebrations of birthday of a child and he was carrying the liquor bottle as a Gift for his brother-in-law. Even otherwise, it is noted that neither any blood test was taken, nor was the attending doctor examined to ascertain the percentage of alcohol contents in the appellant's body. A gainful reference in this regard may be made to the observations of a Co-ordinate bench this Court in Bhola Nath & Anr. vs Union of India[5], made in context of a similar factual matrix, which are as under:

> *"6….Indeed, the smell of alcohol does indicate consumption of alcohol at some stage anterior to the accidental fall. But, the smell by itself does not mean it must lead to the conclusion that the person was in a state of intoxication to the extent that he had lost control over his faculties. For this, something more (in addition to smell of alcohol) was required. The least that could have been done to gather all the relevant facts was to collect the sample of blood of the victim to ascertain the level of alcohol. Since that exercise was never undertaken, even though the railway administration was involved right from the very inception after the accident had been reported, adverse inference will have to be drawn and benefit of doubt extended to*

[5] AIR ONLINE 2019 DEL 2282.

the claimants in this regard. The court thus concludes that the claim case could not have been thrown out only on account of presence of smell of alcohol."

13. Thus, in view of the above, the respondent has failed in bringing the appellant's case within any exception as under Section 124A of the Act. At this juncture, this Court is reminded of the settled legal position that the provision pertaining to the compensation under the Railways Act is a beneficial piece of legislation and should accordingly receive a liberal and purposive interpretation instead of a narrow and technical one.

14. Turning to the issue of quantum of compensation, it would be apposite to refer to the authoritative exposition of law by the Supreme Court in Rathi Menon v. Union of India[6], wherein the scope of Section 124-A of the Railways Act, 1989, the nature of statutory liability of the Railway Administration, and the manner in which the quantum of compensation is to be determined with reference to the Rules framed under the Act, have been explained. The relevant extracts from the judgment, which delineate that the liability to pay compensation is statutory and that the extent of such compensation is governed entirely by the Rules made under Section 129 of the Act, are reproduced hereinbelow.

"xxx

15. Now we have to see Section 124-A which is the provision imposing liability on the Railway Administration to pay compensation to the victims of untoward incidents. Its proviso excludes from its purview persons who committed or attempted to commit suicide, persons who inflicted injury by

[6] (2001) 3 SCC 714

self, and those who committed criminal acts or acts done in a state of intoxication or insanity and also the cases affected by any natural cause of disease etc. After excluding such persons and cases, Section 124-A can be read thus:

"124-A. When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the Railway Administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the Railway Administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:"

16. The liability of the Railway Administration in such a case would be to pay compensation, but the extent of such compensation is "as may be prescribed" which means prescribed by the rules made under the Act. Section 129 of the Act empowered the Central Government to make such rules.

17. The Railway Accidents (Compensation) Rules, 1990 (for short "the Rules") were made by the Central Government in exercise of the powers conferred on it by Section 129 of the Act. Rule 3(1) says that the amount of compensation payable in respect of death or injuries shall be as specified in the Schedule. The Rules as well as the Schedule were amended with effect from 1-11-1997. After the amendment Rule 3(2) reads thus:

"3. (2) The amount of compensation payable for an injury not specified in Part II or Part III of the Schedule but which, in the opinion of the Claims Tribunal is such as to deprive a person of all capacity to do any work, shall be Rupees four lakhs.

xxx"

15. In the present case, the medical record and the disability certificate issued by VMMC & Safdarjung Hospital unequivocally establish that the appellant has suffered double amputation of both legs, namely right above-knee amputation and left below-knee amputation, resulting in 98% permanent locomotor disability, which has been certified to be non-progressive and not likely to improve. Compensation for injuries arising out of an untoward incident is governed by Rule 3(1) read with Part II of the Schedule to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, as amended. Part II of the Schedule expressly prescribes compensation of Rs.8,00,000/- for cases of double amputation through leg or thigh, or amputation through leg or thigh on one side and loss of the other foot. The appellant's injuries squarely fall within the said category. The double amputation has rendered the appellant permanently and totally disabled, with complete loss of earning capacity. Accordingly, this Court holds that the appellant is entitled to compensation of Rs.8,00,000/- in terms of Rule 3(1) read with Part II of the Schedule to the Rules, being the amount payable for injuries of the gravest category under the applicable statutory framework.

16. Consequently, the impugned judgment dated 02.08.2017 is liable to be set aside. Accordingly, the appeal is allowed and compensation of Rs.8,00,000/- along with interest @ 12% p.a. is awarded to the appellant from the date of the accident, i.e. 12.07.2015 till the date of payment.

17. The respondent is directed to ensure release of the aforesaid amount within a period of 4 weeks from today.

18. The present appeal is disposed of in above terms.

MANOJ KUMAR OHRI
(JUDGE)

JANUARY 28, 2026
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