



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

% Reserved on : 13.07.2026
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+ **FAO 287/2022**

SMT SAHANA AND ORS.Appellants

Through: Mr. Adarsh Ganesh, Advocate

versus

UNION OF INDIA

....Respondent

Through: Ms. Avshreya Pratap Singh Rudy,
CGSC for UOI with Ms. Usha
Jamnal, Ms. Nyasa Sharma, Mr.
Ankit Khatri and Mr. Ojas Pandey,
Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

CM APPL. 49428/2022 (seeking condonation of delay of 234 days in re-filing the appeal)

1. By way of the present application, the applicant/ appellant seeks condonation of delay of 234 days in re-filing the appeal.
2. Learned counsel for the appellants submits that the delay in filing the present appeal was occasioned due to certain documents on record being illegible, for which certified copies had to be obtained. It is submitted that though the certified copy was received in the office of the counsel during the summer vacations, it was inadvertently tagged with another case file by the clerk and, therefore, could not be placed before the counsel.



Upon discovery of the inadvertent mistake, the certified copy was immediately placed and the present appeal was filed without any further delay.

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 into account the weak economic condition of the appellant/claimant. Similarly, in “*Reshma vs. Union of India*”², this Court condoned a delay of 598 days in filing the appeal, keeping in view the beneficial nature of the legislation and the liberal approach required in such matters.

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 appellant has 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 234 days in re-filing the appeal is condoned.

6. The application is disposed of accordingly.

FAO 287/2022

1. The present appeal has been filed under Section 23 of the Railway Claims Tribunal Act, 1987, against the judgment dated 28.02.2022, passed by the Railway Claims Tribunal, Principal Bench, *Delhi* (hereinafter referred to as the “Tribunal”) in Claim Application No. OA/II(u)/GZB/72/2018.

2. The brief facts of the case, as set out in the claim application are that one *Riyasat Ali* (hereinafter referred to as the “deceased”), was travelling

¹(2017) SCC OnLine Del 10003

²FAO 25/2022



from *Rampur* to *Lucknow* by Train No. 13308 (*Ganga-Sutlej Express*) on 30.09.2017. It is the appellants' case that when the train reached near *Malihabad* Railway Station, the deceased accidentally fell from the train due to a sudden jerk and came under the train, resulting in his death.

3. *Vide* the impugned judgment, the Tribunal held that the deceased was neither a *bona fide* passenger nor a victim of an "untoward incident" within the meaning of Section 123(c) read with Section 124-A of the Railways Act, 1989 (hereinafter referred to as the "Act").

4. Learned counsel for the appellants submits that the Tribunal has misdirected itself by ignoring the documents placed on record, including the *Roznamcha* entry, the statement of SI/RPF *Sarvjeet Singh*, the *Panchnama* and the Post-Mortem Report, all of which indicate that the deceased sustained injuries in connection with the said train accident. It is further submitted that the Tribunal discarded the testimony of the son of the deceased, *Shuab Ali* (AW-2) merely because his name did not find mention in the claim application, without appreciating that his evidence was duly tested in cross-examination. It is argued that the mere fact that the train had no scheduled stoppage at *Malihabad* could not, by itself, lead to the conclusion that the occurrence was not an untoward incident or that the deceased was not a *bona fide* passenger.

5. Learned counsel for the respondent, on the other hand, supports the impugned judgment and submits that no journey ticket was recovered from the deceased and there is no independent evidence to establish that he was travelling by Train No. 13308. Reliance is placed upon the DRM Report and the Guard's Memo Book to contend that the train had no scheduled stoppage at *Malihabad* Railway Station. It is, therefore, submitted that the deceased



attempted to get down from a moving train at a place where it was not scheduled to halt and such an act cannot be treated as an untoward incident within the meaning of the Act.

6. This Court has heard learned counsels for the parties and perused the material available on record.

7. The first question which arises for consideration is whether the deceased could be said to be a *bona fide* passenger.

AW-2, the son of the deceased, categorically deposed on oath that on 30.09.2017 he had purchased the journey ticket for his father for travel from *Rampur* to *Lucknow* and had personally accompanied him to *Rampur* Railway Station, where he made him board the Train. During his cross-examination, he consistently maintained the said version. He specifically stated that although the ticket was not recovered from the person of the deceased, he had himself purchased it and had seen his father board the train. Nothing substantial could be elicited in his cross-examination so as to render this part of his testimony unreliable.

8. The Tribunal has discarded the testimony of AW-2 solely because the claim application did not specifically state that the ticket had been purchased by him or that he had accompanied the deceased to the station. This Court is unable to agree with the said reasoning as pleadings are meant to set out the material facts of the case and every detail of the evidence may not find place in the initial claim petition. Once AW-2 entered the witness box and was subjected to cross-examination, the Tribunal was required to assess the credibility of his testimony on its own merits.

9. The testimony of AW-2 also finds support from the evidence of Smt. *Sahana*, (AW-1). During her cross-examination, AW-1 stated that she had



informed the counsel that her son had purchased the ticket and had made the deceased board the train. Thus, the version of AW-2 cannot be said to be an improvement introduced for the first time during evidence. It is also significant that the respondent has not produced any material to the contrary.

10. The issue of non-recovery of the ticket is no longer *res integra*. In “Union of India v. Rina Devi”³, the Supreme Court held that mere non-recovery or loss of the journey ticket cannot, by itself, lead to the conclusion that the victim was not a *bona fide* passenger. It was further held that once the claimant discharges the initial burden by filing an affidavit containing the relevant facts, the burden shifts upon the Railways to rebut the same by cogent evidence.

In the present case, the appellants have led positive evidence through AW-2 regarding purchase of the ticket and boarding of the train. Except relying upon the fact that the ticket was not recovered from the person of the deceased, the respondent has not been able to rebut the said evidence. In these circumstances, this Court finds no reason to disbelieve the evidence of AW-2 and holds that the deceased has been proved to be a *bona fide* passenger.

11. Coming now to the issue of the incident falling within the ambit of an “untoward incident”, the Tribunal held that the deceased was not a victim of an “untoward incident” on the reasoning that Train No.13308 did not have a scheduled stoppage at *Malihabad* Railway Station and, therefore, the deceased must have attempted to alight from a moving train at a place where it was not scheduled to halt.

12. A perusal of the railway record shows that there is no dispute

³(2019) 3 SCC 572



regarding the occurrence of the accident involving Train No.13308. The “Untoward Incident Report” prepared by the Station Master records that information had been received regarding a person having fallen from Train No.13308 near *Malihabad* Railway Station. Furthermore, the Station Master’s diary, the entry recorded by the RPF and the statements of the Station Master and the Token Porter also consistently refer to the deceased having fallen from Train No.13308 and sustaining fatal injuries. The body was thereafter subjected to inquest proceedings and post-mortem examination.

13. The only circumstance relied upon by the respondent is that Train No.13308 did not have a scheduled stoppage at *Malihabad* Railway Station. However, merely because a train did not have a scheduled stoppage at a particular station, it cannot automatically be inferred that the deceased attempted to alight from the moving train or that the occurrence falls outside the scope of Section 123(c) of the Act. Notably, it is the categorical case of the appellants, as pleaded in the claim application, that the deceased accidentally fell from the train due to a sudden jerk. Except relying upon the absence of a scheduled halt at *Malihabad* Railway Station, the respondent has not produced any cogent evidence to establish that the deceased had attempted to deboard the moving train.

14. A gainful reference in this regard may be made to the decision in “*Jai Pal &Ors. v. Union of India*”⁴, wherein a Coordinate Bench of this Court held that the mere absence of a scheduled halt could not justify an inference that the victim had voluntarily attempted to alight from the moving train so as to deny compensation under the beneficial provisions of the Act.

⁴2022 SCC OnLine Del 5420



Likewise, in “*Ramesh Suneja v. Union of India*⁵”, this Court held that the Tribunal could not presume that the claimant had attempted to disembark a moving train merely because the train had no scheduled halt at the concerned station, observing that such a conclusion was based on assumptions and not on any direct evidence.

15. In the present case as well, the respondent has not led any direct or cogent evidence to establish that the deceased had attempted to alight from the moving train. The defence rests solely on the fact that Train No.13308 had no scheduled stoppage at *Malihabad* Railway Station. Such a circumstance, by itself, is insufficient to displace the consistent contemporaneous railway record indicating that the deceased had fallen from Train No.13308 near *Malihabad* Railway Station or the appellants’ categorical case that the deceased accidentally fell due to a sudden jerk.

16. Once the contemporaneous railway record itself establishes that the deceased sustained fatal injuries in connection with Train No.13308 and the appellants have discharged the burden of proving that he was a *bona fide* passenger, the respondent was required to establish that the case was covered by one of the exceptions contained in the proviso to Section 124-A and none of those exceptions have either been pleaded or established by the respondent in the present case.

17. In the considered opinion of this Court, the findings recorded by the Tribunal that the deceased was neither a *bona fide* passenger nor a victim of an “untoward incident” are contrary to the evidence available on record.

18. Accordingly, the impugned judgment dated 28.02.2022 is set aside and the matter is remanded back to the Tribunal, which is requested to assess the

⁵FAO 164/2016



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amount of compensation payable to the appellants 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 13.08.2026.

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

(MANOJ KUMAR OHRI)
JUDGE

JULY22,2026

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