

GAHC010272102018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MFA/83/2019

SMTI JAMUNA SHIL SARKAR AND ANR
W/O LATE CHANU SARKAR,
RESIDENT OF VILLAGE ROWMARI PART I, PO AND PS GORESWAR, DIST
BAKSA, ASSAM, 781364

2: SMTI. ASHARANI SARKAR

W/O SRI KRISHNA PADA SARKAR

RESIDENT OF VILLAGE JOYPUR
PO TULSHIBIL
PS GOSSAIGAON
DIST KOKRAJHAR
BTAD
ASSAM 78334

VERSUS

UNION OF INDIA
REPRESENTED BY THE GENERAL MANAGER NF RAILWAY MALIGAON,
GUWAHATI ASSAM

Advocate for the Petitioner : MR. A ALAM

Advocate for the Respondent : SC, NF RLY

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 30.11.2023

None appears on call for the appellant. However, Mr. B. Sarma, learned standing counsel for the NF Railways is present.

2. This appeal under Section 23 of the Railway Claims Tribunal Act, 1987 is preferred against the order dated 18.07.2018 and 12.11.2018 passed by the learned Railway Claims Tribunal, Guwahati Bench, Guwahati. By the order dated 18.07.2018, the claim petition, which was registered as OAIU-151/2014 was dismissed for non-prosecution, *inter-alia*, on the ground that the matter was listed before the learned Tribunal on several occasions for evidence of the appellant, but the appellant remained absent and on 18.07.2018, the appellant was not present and therefore, the matter was dismissed for non-prosecution.

3. The appellant filed an application for restoration of the claim petition, which was dismissed for non-prosecution. The said application was registered as Restoration Petition no. 5/2018. However, it appears from the order dated 12.11.2018, that the ground assigned for non-appearance in the claim petition was that due to illness of the wife of the learned counsel, steps were not taken. The learned Tribunal after appreciating the documents and the pleadings arrived at a finding that the wife of the learned counsel for the appellant was discharged from hospital on 03.07.2018 and she was referred for follow-up on 20.07.2018 at Guwahati and therefore, the learned Tribunal found that no material to show that the wife of the learned counsel was undergoing treatment on 18.07.2018. The learned Tribunal had summoned the I.O. in connection with the said Restoration Petition no. 5/2018, who had appeared along with the

inquest report and on being examined by the learned Tribunal, the statement of the I.O. was recorded as follows:

I was posted at GRPS/Bongaigaon as ASI on 16.06.2014. I have investigated the case relating to death of Shri Chanu Sarkar. I have investigated the death of the victim from the time of preparing inquest report till receipt of post mortem examination report from the concerned hospital. I prepared inquest report, recorded statements of 3-4 witnesses during investigation. I had not found any article or material in possession of the deceased person. The accident had occurred about 50 feet away from the GRPS Bongaigaon office premises. I was sitting in the office/GRPS Bongaigaon and upon hearing hue and cry of the public, I immediately rushed to the spot and saw one person lying in injured condition who was thereafter taken to the hospital by 108 ambulance. Station Master had also visited the spot. One constable of the GRPS/Bongaigaon had accompanied the injured person (since deceased) to the Bongaigaon Civil Hospital. I had seen the injured person lying on the other side of the track that is not on the side of the platform. Before I reached the hospital, relatives of the deceased had already arrived

I prepared the inquest report at the Bongaigaon Civil Hospital. I did not prepare any seizure list as no material or article could be recovered from the possession of the deceased even after thorough search of the deceased body. As no seizure list was prepared, there is no question of preparing zimmanama.

On further examination by the Tribunal after showing exhibit A7 i.e., purported seizure list submitted by the applicant, the present deposing witness states as follows:

The said documents was not prepared by me, the handwriting and signature as appearing in the document are not mine. As stated earlier, no seizure list was prepared in connection with the case.

On further examination by the Tribunal after showing exhibit A4 i.e., inquest report submitted by the applicant, the present deposing witness

states as follows:

Yes, I have prepared the said report and signature appearing in the document is mine". Accordingly, the learned Tribunal arrived at a finding that the documents filed with the claim petition were not prepared by the I.O. and that the seizure list appended to the claim petition was also not prepared by him."

4. Accordingly, the learned Tribunal arrived at a finding that the journey ticket was also not recovered from the possession of the deceased and accordingly, the learned Tribunal found that the deceased was not a bona fide passenger and accordingly, the appellant was not found entitled to any compensation under Section 123 of the Railways Act, 1989.

5. In this appeal, the appellant has referred to the record of Bongaigaon GRPS UD Case No. 38/2014 dated 16.06.2014 and reliance is placed on the seizure list prepared on 16.06.2014 at 1.00 PM by which mentioned has been made about seizure of a journey ticket from Choutara to Kamakhya Junction vide Ticket No. 34244378 of Rs.65.00 dated 16.06.2014. However, the said seizure, as per the statement made in sub-para (f) on the ground for this appeal discloses that the seizure of the journey ticket was made from the brother of the deceased. There is nothing to show that the brother of the deceased, namely, Benu Ch. Sarkar was a co-passenger along with the deceased. Therefore, there is no material appended to this memo of appeal so as to dispel the finding recorded by the learned Tribunal in connection with Restoration Petition no. 5/2018 vide order dated 12.11.2018 that the seizure memo was not prepared by the I.O. deputed for the purpose of investigation, who was examined as AW-4.

6. Under such circumstances, as narrated above, coupled with the fact that even today the appellant had remained absent when the matter was called, not only on merit but also on the ground of non-prosecution, this appeal fails and the same is dismissed.
7. The finding of the learned Tribunal vide order dated 12.11.2018 in Restoration Petition no. 5/2018 arising in the proceeding of OAIU-151/2014 does not warrant any interference. Accordingly, this appeal stands dismissed.
8. Let the LCR be returned.

JUDGE

Comparing Assistant