

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.565 of 2013

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1. Mahendra Prasad Gupta Son of Late Anant Lal Sah resident of Shahid Prabhu
Narayan Chauk, P.S. & District - Khagaria (Bihar)

.... Appellant/s

Versus

1. The Union of India, through its General Manager, E.C. Railway, Hajipur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pravin Kumar Gupta,

For the Respondent/s : Mr. Sunil Kumar Ravi, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 16-09-2015

No one appears on behalf of the appellant.

2. Heard learned counsel for the respondent.

3. In the present appeal the appellant is challenging the order dated 21.3.2013 passed by the Railway Claims Tribunal, Patna in O.A. No.00060 of 2003 by which the Tribunal has rejected the claim application of the appellant.

4. In the present appeal a question has been raised for entitlement of compensation to the appellant who is father of the victim, namely, Manish Kumar Gupta. As per the claim of the appellant his son, namely, Manish Kumar Gupta was traveling from Rosera to Khagaria junction boarded in the train no. 328 DN Samastipur-Saharsa passenger on 2.7.2002. He purchased second class ticket but on way some miscreants shot him dead in

the said train, he was rushed to Sadar Hospital Khagaria for treatment but he succumbed to the injuries at 8 P.M.

5. The police registered a case vide Khagaria GRPS Case No.27 of 2002 for offences under section 302, 120(34)/34 of the Indian Penal Code and 27 of the Arms Act. Apart from the criminal case the present claim case was filed by the Father of the deceased taking a plea that he was a bonafide passenger, he met with an untoward incident as provided under Section 123 of the Railway Act and from the record it appears that from the possession of the victim a ticket from Salauna to Khagaria was recovered which was marked as Exhibit-A/7.

6. The Railway Administration has filed written statement where it has been denied that any murder occurred on 2.7.2002 in train no.328 DN in between Imali and Olapur railway station as there is no entry in the station record at Khagaria railway station. It has also been taken a plea that deceased has a criminal antecedent and he might have been shot dead elsewhere not in the said train on the aforesaid date. As per the Fardbeyan on 2.7.2002 the deceased had gone to Rosera to attend the criminal case and on that score the Railway Administration has taken a plea that deceased might have been killed by his enemies on way to station while returning from the court. So claim for

compensation is not valid.

7. In support of his claim the applicant has exhibited the following documents:

Exhibit A/1- Affidavit of Mahendra Prasad Gupta

Exhibit-A/2- Copy of fardbeyan

Exhibit-A/3- Copy of final report

Exhibit A/4- Copy of FIR

Exhibit A/5- Copy of letter issued by Mahendra Pd.Gupta

Exhibit A/6- Copy of death certificate

Exhibit A/7- Copy of railway ticket

Exhibit A/8- Copy of newspaper cutting

Exhibit A/9- Copy of I. Card of newspaper cutting

Exhibit A/10- Copy of residential certificate

Exhibit A/11-Copy of admit card of Manish Kumar Gupta

8. In the Fardbeyan it has been stated that the victim had gone to Rosra to attend a criminal case in which he was an accused, and was returning by train no.328 DN which is from Samastipur to Saharsa, was shot at in train itself brought to the hospital at Khagaria for treatment, while going to Patna for treatment he died. In the Fardbeyan allegation has been made against some of the persons behind in this incident mentioned their name. It has been claimed by the informant that under the conspiracy his son

was killed on way while returning to Khagaria. So from the record it appears that he was killed while taking journey in the said train but in the present case whether claimant is entitled to compensation on account of death of the victim as has been claimed that some of the enemies under the conspiracy killed his son.

9. Before examining the issue it will be relevant to consider the provision of Section 123 where untoward incident has been defined. Section 123 of the Railway Act runs as follows;

“123. Definitions.- In this Chapter, unless the context otherwise requires,-

(a) “accident” means an accident of the nature described in section 124;

(b) “dependant” means any of the following relatives of a deceased passenger, namely:-

(i) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his parent;

(ii) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a pre-deceased son, if dependant wholly or partly on the deceased passenger;

(iii) a minor child of a pre-deceased daughter, if wholly dependant on the deceased passenger;

(iv) the paternal grandparent wholly dependant on the deceased passenger;

(c) “untoward incident”: means-

(1)(i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson,

by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers.”

10. On perusal of definition of untoward incident in Section 123© where it provides that any accident connected with terrorist act or making of a violent attack or the commission of robbery or dacoity or indulging in rioting, shoot-out or arson will come under the definition of untoward incident. But when a person has been killed apart from aforesaid ground and dominant intention is to kill the victim on account of previous enmity is silent, in such situation whether it will come under the definition of untoward incident is the issue for consideration. There is no direct judgment in this regard under the Railway Act but under the Motor Vehicle Act the issue came for consideration before Hon”ble Supreme Court in the case of Smt. Rita Devi and others V. New India Assurance Company Ltd. and another, reported in (2000) 5 SCC 113 where the question arose when a murder has taken place in the motor vehicle will come under the definition accident arising out of use of motor vehicle under the Motor Vehicle Act. The Court has said that the murder is a felonious act where death is caused with intent and the perpetrators of that act



normally have a motive against the victim for such killing that will not be a case of an accident. But there are also instances where murder can be by accident on a given set of facts. The difference between a murder which is not an accident and a murder which is an accident, depends on the proximity of the cause of such murder. If the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder. It will be relevant to quote paragraph 10 of the aforesaid judgment:

“10. The question, therefore, is can a murder be an accident in any given case? There is no doubt that murder, as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a murder which is not an accident and a murder which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.”

11. In that judgment different judgments have been considered and arrived to a conclusion that when the murder is out and out a murder is not an accident but a murder originally it was not intended but the murder has taken place in furtherance of any other act then that murder will come under the purview of accidental murder.

12. This Court also has considered identical issue in the case of Ranju Rani alias Ranju Devi and others v. Branch Manager, New India Assurance Company Ltd., reported in 2002(4) PLJR 314 where placing reliance of Rita Devi case (supra) has held that when the murder of a deceased is intentional and dominant will not be an accident but an accidental murder has taken place in furtherance of other criminal act then such murder will come under the definition of bonafide accident.

13. In the present case as per the FIR it appears that allegation has been made that his son was killed on account of previous enmity under conspired while returning to Khagaria. Such intentional killing, in my view, will not come under the purview of bonafide accident as murder has not taken place in furtherance of another criminal act.

14. In such view of the matter in my view this appeal does

not survive. Accordingly this appeal is dismissed.

(Shivaji Pandey, J)

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