

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.694 of 2013

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1. Karu Yadav Son Of Prayag Yadav Resident Of Village - Daibigha, P.O.-
Hasapur, Police Staiton - Narhat, District - Nawada (Bihar)

.... Appellant/s

Versus

1. Union of India through the Genera Manager, E.C. Railway, Hajipur, Vaishali

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. KRISHNA MOHAN MURARI

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 24-09-2015

Heard learned counsel for the appellant and learned
counsel for the Railway Administration.

In the present appeal the appellant is challenging the order
dated 3.9.2013 passed by the Railway Claims Tribunal, Patna in
O.A. No.83 of 2003 by which the Tribunal has rejected the
claim petition, found that the claimant has not produced any
document to show that he was referred by the Hospital Nawada
to PMCH, Patna for treatment where his one leg was amputated.

Brief facts of the case is that the appellant, Karu Yadav,
was travelling in Gaya Howrah train no. 3204 DN express on
20.9.2004. In course of getting down at Nawada station his leg
has come under the wheel led to fracture of leg. As per claim of
the claimant after the accident he became unconscious. It is the



railway staff who brought him to Sadar Hospital, Nawada where after giving some medical treatment referred to PMCH, Patna and he was treated under the unit of Dr. Arjun Singh, Orthopedic PMCH, Patna which is apparently clear from the discharge ticket. The police recorded his statement (Ext.A/4) where he has narrated the entire story, said that when he had fallen became unconscious he lost the ticket. The certificate issued by Vocational Rehabilitation Centre for Handicapped, Anisabad shows the appellant suffered 60% disability (Ext.A/3). On that basis learned counsel for the appellant submits that he is entitled for 60% of total amount of Rs.4,00,000- i.e. Rs.2,00,000/-.

Learned counsel for the Railway has submitted that except the self explanatory statement of the victim there is no material on record to show that the victim was travelling in the railway and he received injury arising out of use of railway journey. So much so the appellant has only given a very vague statement about his admission in the Sadar Hospital, Nawada by railway staffs without any detail and except those things there is nothing on record. He further submits that reference made by the Sadar Hospital, Nawada has not been brought on record which could have explained many facts including in what manner he

had received injuries. In such view of the matter the order of the Tribunal cannot be said to be illegal and not sustainable.

Having considered the rival contentions of the parties, if a person dies he cannot be asked to produce the certificate but as per Section 106 of the Evidence Act the person who is using journey right of the railway he has special knowledge about the purchase of ticket and so much so if any accident takes within the premises of the railway, the railway used to prepare the record about such accident. But in the present case no record has been brought by the other side to show that any such accident or the appellant was met with an accident record maintained by Railway Administration would show accident, in such view of the matter it will not be proper to outrightly reject the claim of the appellant, it will not also be proper to accept the claim of the claimant without proper enquiry into the matter.

Learned counsel for the appellant has relied on the judgment in the case of Gauri Shanker Sah V. The Union of India through the general Manager, East Central Railway, Hazipur, reported in 2014(2) PLJR 326 as in the present case the Hon'ble Court has not discussed the provisions of Section 106 of the evidence Act. So in my view the present case does not cover the facts of this case.

In such view of the matter, the impugned order dated 3.9.2013 is set aside and the matter is remanded back and the Railway Administration is directed to produce the record on the fateful day and Tribunal will examine the record about the claim of accident made by him at Nawada railway station.

With the aforesaid observation/direction this appeal is disposed of.

Office is directed to send the lower court records to the court below forthwith.

Vinay/-

(Shivaji Pandey, J)

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