

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.391 of 2013

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Munnilal Vidyarthi, Son Of Late Fauzdari Thathera, resident of Village- Purani Bazar, Barh, P.S.- Barh, District- Patna

.... Appellant/s

Versus

The Union of India, through the General Manager, East Central Railway, Hajipur (Bihar)

.... Respondent

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Appearance :

For the Appellant/s : Mr. Amarnath Mishra, Advocate
Mr. Anant Kumar, Advocate

For the Railways : Mr. Ashok Kumar Keshri, Advocate

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 06-02-2015

Heard the parties.

2. This is an Appeal preferred against judgment and order dated 18th March 2013 passed by Railway Claims Tribunal, Patna Bench in Claim Application OA 00099/2003, refusing claim of the claimant appellant, who is said to have sustained injuries and forced to get both legs amputated due to an untoward incident taking place on 6th April 2002 while he along with his daughter namely Bebi boarding from Patna Junction in Train No.539 both fell down at next station i.e. Rajendra Nagar Terminal resulting death of his daughter and sustaining severe injury by the claimant appellant.

3. Two claim petitions were preferred in which the

first one for compensation against death of the deceased Bebi (daughter of the claimant applicant) and another one relating to injuries sustained by the present appellant.

4. Both the claim cases proceeded independently but as, it appears disposed of by common judgment. However, on the different footing relating to non-disclosure of other beneficiary the appeal preferred against refusal of compensation, against death of his daughter MA No.393 of 2013, has been dismissed vide judgment dated 04.02.2015 but the present Appeal heard independently is being disposed of.

5. The Claim Tribunal has denied the claim mainly on two counts firstly; claimant appellant was not a bona fide passenger, secondly; he was sustained injuries while crossing the railway tracks and was run over by a train.

6. It is pointed out by learned counsel for the appellant that in the claim application there is specific mention of the fact that the claimant appellant along with his daughter after purchasing valid tickets boarded in Train No. 539 down Kamla Inter City passenger train at Patna Junction and while it was approaching Rajendra Nagar Station both fell down from the train due to heavy rush and journey etc. In the written statement, filed by the Railway, there is in fact no denial of all such averments made in

application by the claimant.

7. No doubt, the claimant appellant is the solitary witness examined in this case by either of the side and paragraph 3 i.e. examination-in-chief on affidavit has clearly stated about purchasing of tickets, boarding in particular train at Patna Junction and due to untoward incident injuries sustained he lost the tickets. But, in cross-examination, there is absolutely nothing except in the first line of cross-examination; he admits that tickets have not been filed before the Claim Tribunal. In absence of any denial in the pleading coupled with any cross-examination on the point during evidence, the testimony of the solitary witness on these points cannot be discarded. The Claim Tribunal below has done so without any due consideration even there is no material to show that it was a case of run over by the train while crossing railway tracks.

8. Much argument is advanced by learned counsel representing respondent that Exhibit A-2, the information lodged by the Station Master, there is nothing about reference of particular train or falling down from therein. But this argument also cannot be accepted, if Station Master wishes to mention all such things. It is for the railway to further by producing relevant collected materials, such as, details of the trains with their timing coming and going at

the relevant time at the station etc. but railway is conspicuously silent both in the pleading and proof.

9. Learned counsel for the appellant also tried to rely upon a decision rendered in the case of *Smt. Kaushalya Devi and Ors. Vs. Union of India through General Manager, North Eastern Railway, Grakhpur, U.P.* reported in 2008(3) PLJR 711. But it was a case of deceased where one co-passenger had also said about purchasing of tickets by the deceased, it cannot be of much relevance. In the instant case, wherein on the ground of unreverted solitary statement of the claimant appellant his claim relating to bona fide passenger of a particular train and felling from the same, as stated, cannot be disbelieved.

10. Learned counsel for the respondent also placed reliance in an unreported decision dated 15th December 2014 in M.A. No. 380 of 2013 in the case of Tetri Devi vs. The Union of India in MA No.380 of 2013 by this Bench. But facts and circumstances of the said case is altogether different. That was also a case of a deceased and but there was none to say anything but this is not the case here of course in the present case hence the aforesaid unreported decision is also of no help to the railway respondent.

11. Now coming to the question of quantum of compensation, it is submitted by learned counsel representing



railway that there appears some ambiguity on the materials on the point of injury sustained by the claimant appellant so matter deserves to be remitted for fresh decision on the point but this statement is not at all acceptable apart from others taking into consideration that this is a case of the year 2002 and the claimant appellant is still deprived of single penny as compensation.

12. To show extent of injuries sustained there is exhibit A-4 the discharge slip showing amputation of both feet in RTA. No doubt, from this discharge slip, it cannot be assessed to what extent amputation of feet were but it is read with exhibit A-5 and A-6, the certificate of concession issued by office of the Civil Surgeon, it brings the injury sustained by the claimant appellant column 13 and 24 of Part III of the Schedule prepared in view of Rule 3 of The Railway Accidents And Untoward Incidents (Compensation) Rules, 1990.

13. Taking into consideration, this aspect and quantum of compensation mentioned in column 13 a bit more than column 24 the claimant appellant deserves larger benefit in view of the legislation being beneficial one. Consequently, he deserves compensation of Rs.1,60,000/- (one lac sixty thousand) with interest @ 6% per annum from the date of filing of the application till actual payment.

14. With the above finding and directions the Appeal is hereby allowed, the order impugned dated 18th March 2013, relating to present Appeal, passed by Railway Claims Tribunal, Patna Bench in Claim Application OA 00099/2003 is set aside and respondents are directed to pay Rs.1,60,000/- (One lac sixty thousand) with interest @ 6 % *per annum* from the date of filing of the application till actual amount shall be received by the appellant.

15. Appellant is also directed to furnish due mandate within one month from today, failing which he may be deprived from the interest for the period causing delay due to his own laches.

Ashwini/-

(Akhilesh Chandra, J)

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