

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.535 of 2012

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Mostt. Amiraka Devi, wife of late Bal Ram Choudhary, resident of Village-
Bangaon (Purwi Tola) P.S.- Bangaon, District-Saharsa (Bihar)

.... Appellant/s

Versus

The Union of India through its General Manager, N.E. Railway, Gorakhpur.

.... Respondent/s

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Appearance :

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

For the Respondent/s : Mr. Mahesh Prasad, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 11-08-2015

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

2. In the present appeal the appellant is challenging the
order dated 10.2.2012 passed by the Member (Technical),
Railway Claims Tribunal, Patna Bench, Patna in O.A.
No.00085 of 2000 by which the claim application of the
appellant was rejected.

3. The appellant filed claim case under Section 125 of the
Railways Act, 1989 read with Section 16 of the R.CT Act,
1987.

4. Brief facts of the case is that on 16.12.1999 the husband
of the claimant, late Bal Ram Choudhary, boarded 320 DN
passenger train at Mansi Junction with a valid railway ticket
no.41776 but on account of heavy rush and sudden jerk of the

train the victim slipped out from the train and received injury resulted in instantaneous death. Claim petition was filed for compensation amount.

5. The Railway has filed written statement. In paragraph 15 the Railway has claimed that the ticket which is claimed to have been purchased by the deceased was issued on 15.2.1999 whereas the said victim was traveling on 16.12.1999. The appellant led her evidence. Applicant, Amiraka Devi, was examined herself as A.W.1. Mahant Passi examined himself as A.W.2. Amiraka Devi has said that ticket was handed over by his Bhaisur who was traveling along with the victim and the ticket was recovered from the dead body. Mahant Passi has said that he identified the dead body of his brother. He was not present at the time of the post mortem examination. He has said that his brother died on train accident fallen from the train due to untoward incident. During course of trial the applicant exhibited numbers of documents such as certify copy of memo (Exhibit A/3), Copy of Fardbeyan (Exhibit A/4), copy of FIR (Exhibit A/5), copy of final report (Exhibit A/6), certify copy of inquest report (Exhibit A/7) copy of post mortem report (Exhibit A/8), original railway ticket (Exhibit A/9) and Dependency certificate (Exhibit A/10).

6. Learned counsel for the appellant submits that from the record it shows that the victim was boarded on the train and after some time on account of jostling and crowded, the victim had fallen down from the train and died. He has further submitted that a person who had boarded on the train will be treated to be a valid passenger unless it is proved by the Railway that he was not bonafide passenger and so much so report of the Station Master shows that the dead body of the victim was found on the railway track 100 yards from the office of the Station Master. He has further submitted that the finding recorded by the Tribunal that it was not a case of untoward incident arising from the use of rail rather accident took place while crossing railway track he met with an accident is self inflicted injury. He has further submitted that Tribunal does not have a jurisdiction to make out a third case for dismissing the case, he can reject the claim of the appellant on the basis of the material available on record, accepting the objection raised by the Railway not de hors to ground taken by the Railway Administration. He has further submitted that the accident will squarely untoward incident as provided under Section 123©(ii) of the Railway Act, 1989 where the Act has dealt with the meaning of untoward incident which provides

the accidental falling of any passenger from a train.

7. Learned counsel for the Railway has submitted that primary duty of the applicant was to prove that he was bonafide passenger having a valid ticket and entered in the compartment only then any person fallen from the running train will be a case of bonafide passenger met with untoward incident. So much so the victim was found in such a dilapidated condition it cannot be said that it is a case from falling down of the train and the Tribunal has rightly recorded that it was not a case of untoward incident. As it is apparent from the report of the Station Master that the dead body of the victim was found in line no.1 and that too 100 yards from the office of the Station Master. Tribunal has also rightly decided that any person can not catch the train on running 100 yards.

8. While going through the record it appears that it is well known principle of law that for proving the case of accident, claimant is not required to prove the fact beyond reasonable doubt. The principle of proving the case beyond reasonable doubt is always applicable to the criminal case but in cases adjudicating the claim of compensation the theory of preponderance applies. It is also to be noticed that Tribunal has to act as an independent arbiter without being influenced from



out side facts. It is also not the duty of the Tribunal to make out of his own ground based on surmises and conjecture and reject the same. There should not be personalized view but must be based on material available on record and the plea taken by the parties. 9. Learned counsel for the Railway has submitted that the said ticket which is basis of journey is belied from the fact that the railway has specifically taken a plea in the written statement that the said ticket was issued on 15.2.1999 of the express train but the person was found dead on account of falling from passenger train on 16.12.1999. There is gap of 10 months that itself belied the whole story of the claimant of treating her husband to be a bonafide passenger. He has further submitted that after closure of the evidence the Railway has produced the certificate showing the said ticket was issued much earlier but the Tribunal did not allow him to make comment on the said ticket.

10. This Court does not want to enter into the merit of the case. Reason is that if any finding is recorded by this Court one way or other it would effect the case of either party. As the Railway has taken a plea that the ticket which was produced showing that the victim was traveling on the basis of that ticket was issued 10 months earlier is a very serious matter, would

effect very basis of the case of appellant. So much so Railway has taken this point in the written statement and produced the same. For the ends of justice let the matter be remitted back to the Tribunal, Railway will be at liberty to lead the material evidence on facts with respect to issuance of ticket and other side, if so advised, will be at liberty to bring evidence to counter the plea of Railway. As the matter is very old one the Tribunal is directed to complete the process for adjudication within a period of three months from the date of receipt of file. The applicant will be at liberty to examine any witness in support of her claim. Railway is directed to hand over the copy of the written statement which has been filed in Tribunal as appellant has claimed, she was not served copy of written statement by Railway.

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

12. With the aforesaid observations and directions this appeal is disposed of.

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(Shivaji Pandey, J)