

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.25 of 2009

Rekha Devi wife of Late Indradeo Paswan, resident of village-Kisandaspur, PS-Bidhuchak, District-Bhagalpur.

.... Appellant/s

Versus

The Union of India

.... Respondent/s

with

Miscellaneous Appeal No. 26 of 2009

Rekha Devi

.... Appellant/s

Versus

The Union of India

.... Respondent/s

with

Miscellaneous Appeal No. 24 of 2009

Rekha Devi

.... Appellant/s

Versus

The Union of India

.... Respondent/s

with

Miscellaneous Appeal No. 27 of 2009

Rekha Devi

.... Appellant/s

Versus

The Union of India

.... Respondent/s

with

Miscellaneous Appeal No. 742 of 2008

Rekha Devi

.... Appellant/s

Versus

The Union of India

.... Respondent/s

Appearance :

(In MA No. 25 of 2009)

For the Appellant/s : Mr. Krishna Mohan Murari

For the Respondent/s : Mr. Anil Singh

(In MA No. 26 of 2009)

For the Appellant/s : Mr. Krishna Mohan Murari

For the Respondent/s : Mr. Anil Singh

(In MA No. 24 of 2009)

For the Appellant/s : Mr. Krishna Mohan Murari

For the Respondent/s : Mr. Anil Singh

(In MA No. 27 of 2009)

For the Appellant/s : Mr. Krishna Mohan Murari

For the Respondent/s : Mr. Anil Singh

(In MA No. 742 of 2008)

For the Appellant/s : Mr. Krishna Mohan Murari

For the Respondent/s : Mr. Anil Singh

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 01-10-2015

Heard the parties.

With the consent of the parties, all the cases are being heard separately and are being disposed of by a common order, as all the cases are arising out of one accident in which four persons from one family, died and one person received the bodily injury, but survived.

In the present case, Rekha Devi has filed the claim cases for the injuries received in the train accident and also filed the cases for compensation on account of death of her husband, two sons and one daughter.

As per claimant, her entire family was travelling on 2/12/2006 in Train No. 3071 UP Hawrah Jamalpur Express, before the said train could enter into the platform, an old overbridge

collapsed over bogie No. 8 of the train, on that account, large number of persons died including four persons of one family, namely, Indradeo Paswan husband of Rekha Devi, Rinku Kumari daughter of Rekha Devi, Mukesh Kumar and Ravi Kumar sons of Rekha Devi. Rekha Devi herself received the injury in that incident.

For the death of Indradeo Paswan, Claim Case No. OA 00299/2006 has been filed before the Tribunal which is now M.A. No. 25 of 2009. For the death of Rinku Kumari, Claim Case No. OA 00300/2006 was registered, now M.A. No. 24 of 2009. For the death of Mukesh Kumar, Claim Case No. OA 00301/2006 was registered, now M.A. No. 26 of 2009, For the death of Ravi Kumar, Claim Case No. OA 00302/2006 was filed, corresponding to M.A. No. 742 of 2008 and Rekha Devi has filed for herself Claim Case No. OA 00303/2006, now M.A. No. 27 of 2009.

As per the record it appears that after the death, an application was filed before the Railway Official, Bhagalpur by Brahmdeo Paswan who has given the age of the deceased persons, such as his brother and other family members, are as follows:-

Indradeo Paswan 45 years, Ravi Kumar 19 years,

Mukesh Kumar 15 years, Rinku Kumari 12 years and

Sunil Kumar 15 years.

Ravi Kumar, Mukesh Kumar and Rinku Kumari have

been shown as sons and daughter of Indradeo Paswan whereas Sunil Kumar has been shown to be son of Huro Paswan.

The letter which is marked as Ext. A/4, shows that one Dilmohan Paswan filed an application giving an undertaking that all the deceased persons were his relatives were known to him, requested for handing over the body of seven dead persons for their last rite, were handed over to him, as at the relevant time he was L.R.D.C. of Kishanganj.

There is no dispute that Railways paid Rs.20,000,00/- (twenty lakhs) for the death of Indradeo Paswan, Ravi Kumar, Mukesh Kumar, Rinku Kumari and Sunil Kumar as ex-gratia and also paid Rs.1,00,000/- (one lakh) to Rekha Devi who received injuries in that accident.

In the present case, the claimant has claimed that she was also travelling in that train and received the injury.

In the present case, altogether 7 documents have been marked as exhibits.

Let us examine documents separately corresponding to the persons who died in the said accident.

With respect to Claim Case No. OA 00299/2006 is related to Indradeo Paswan. In this case, Ext.A/1 is the statement of Gauri Shankar Gupta, Officer Incharge of Railway Thana, Bhagalpur.



Ext.A/2 is the inquest report where the victim has been shown to be an unknown person and his age has been shown about 40 years. The body of victim has been identified by Miraz Alam and Mr. Parvej Alam. The post mortem report has been marked as Ext. A/3 where the victim has been shown aged 40-45 years. Ext. A/4 is the application of Brahmdeo Paswan. Ext.A/5 is the residential certificate of Rekha Devi. Ext.A/6 is the certificate showing the claimant was a member of scheduled caste. Ext.A/7 is the letter of Deputy Chief Personnel Officer, dated 4.11.1996 mentioning that in the event of a train accident resulting in death of passenger travelling by the train, compensation should be paid in irrespective of bona fide ticket has been produced or not. In support of submission, Rekha Devi herself has been examined as A.W. 1.

The Claim Case No. OA 00300/2006 is related to Rinku Kumari. The claim application has been marked as Ext.-A, Ext-A/1 is the statement of Incharge Railway Thana, Bhagalpur. Inquest report has been marked as Ext.A/2 where the body of victim has been shown to be an unknown female aged 20 years. Post mortem report also shows, a female of 20 years was brought for conducting the post mortem. Ext.A/4 is the letter of Brahmdeo Paswan and identically the residential certificate and caste certificate have been shown as Ext.A/5 and Ext.A/6. Ext.A/7 is the letter of Deputy Chief Personnel Officer,

dated 4/11/96.

The Railway has exhibited altogether three documents such as Ext. R/1, Ext.R/2 and Ext.R/3. These are the photo copy of cross-examination of all the persons in another cases, namely, Veena Devi, Gyandeo Paswan, Meena Devi and Raj Kishore Paswan from their deposition, the counsel for the appellant submits that there is no dispute that four deceased persons of her family, died in that accident.

Claim Case No. OA 00301/2006 is related to Mukesh Kumar. In this case, Ext.-A/1 is the statement of the Police. Ext. A/2 is the inquest report where the victim has been shown to be a male about 40 years. Ext. A/3 is the post mortem report there also the age of the deceased has been shown about 40 years whereas in the application filed by the Brahmdeo Paswan, Mukesh Kumar has been shown to be 15 years and in this case also Rekha Devi has filed her residential and caste certificate, not required to be repeated. Evidence given in first case was also to be treated the evidence in the present case.

Claim Case No. OA 00302/2006 is related to Ravi Kumar. In this case, the statement of Police has been marked as Ext.A/1. Ext.A/2 is the inquest report there the name of victim has been shown as Ravi Kumar son of Indradeo Paswan and his age has

been shown about 25 years. Post mortem report is Ext. A/3, there the name of victim has been shown as Ravi Kumar aged 25 years, but in the application, the age of Ravi Kumar has been shown to be 19 years.

Claim Case No. OA 00303/2006 is related to the claim for Rekha Devi who received the injury in that accident. She brought the evidence as Ext. A/1 which is the statement of Police with regard to that accident. Ext.A/2 is the certificate issued by the Superintendent of J.L.N.M.C.H., Bhagalpur dated 25/01/2008. Ext. A/3 is the application filed under the RTI Act, 2005. Ext.A/4 is the bed-head ticket of Rekha Devi. Ext.A/5 and Ext.A/6 are the residential and caste certificates.

In the present case, the appellant on the basis of these materials, has submitted that there is no dispute that in that accident four persons of her family, died and she received the injury, for that, the Railway Administration paid Rs. 20,000,00/- (twenty lakhs) for dead persons and Rs. 1,00,000/- to the present appellant. It has further been argued that the appellant herself came to the dock, she faced the cross-examination and nothing substantial could be extracted from her.

Some minor discrepancy cannot be a basis to reject the claim of the appellant whereas the counsel for the Railway Administration has submitted that the payment of ex-gratia has been



made without any proper verification, identification and corroboration of the facts, but whoever came forward claiming the dead body of his/her relative, was paid the ex-gratia amount and that cannot be a basis to allow the claim cases, it can only be allowed on the basis of supportive materials available on record. He has further submitted that Rekha Devi who appeared and deposed before the Tribunal, had not produced any documentary evidence to show that she was Rekha Devi wife of Indradeo Paswan, when a question was asked by the Tribunal to prove her identity whereupon she replied that she has brought the residential certificate as well as the caste certificate, but she never produced the identity card showing she was Rekha Devi wife of Indradeo Paswan. He has further submitted that except in the case of Ravi Kumar whose body was identified by name, but in the inquest report, rest three persons have been shown to be unknown. He has further submitted that the name of Ravi Kumar and his father has been mentioned in the inquest report and deceased Indradeo Paswan died in accident, his body was lying by the side of his son. Similarly, body of Mukesh Kumar and Rinku Kumari were lying by the side of Ravi Kumar, have been shown unknown. He has further submitted that the age that has been recorded with respect to Rinku Kumari and Mukesh Kumar in the inquest report as well as in the Post mortem report show the gross discrepancies with the age that has been given by Brahmdeo



Paswan in his application giving details of the age. He has further submitted that in the application, except Rekha Devi, no other witness has been examined in the present case when Dilmohan Paswan and Brahmdeo Paswan are also two necessary witnesses, should have been brought to be examined in the case. Brahmdeo Paswan had filed the application, identified the deceased by name, age and parentage whereas Dilmohan Paswan who was the D.C.L.R. of Kishanganj, had taken seven dead bodies in his possession for the purposes of last rite and he has also submitted that from the evidence of Rekha Devi it appears that the claim applications have been filed on the instruction of Dilmohan Paswan.

Having heard the counsel for the parties, one thing is very clear that the death had taken place, four persons died and one person received the injury. But here is the question whether Rekha Devi who has come before the Court in appeal, is wife of Indradeo Paswan or another lady has been set up in the name of Rekha Devi wife of Indradeo Paswan to file the claim. This is also important to note that except Ravi Kumar, the age that has been recorded in the inquest report as well as in the post mortem report, is not the same age, but having a great disparity, as Mukesh Kumar has been shown to be 15 years by Brahmdeo Paswan whereas in the inquest report he has been shown to be 40 years, both ages are completely at variance,



having no compatibility and the same has also been recorded in the post mortem. A man of 15 years cannot be looked a man of 40 years. Other thing is also startling that the lady who appeared as a witness, has appeared not a widow lady. When a question was put by the Tribunal that how she is bearing vermillion and dot, she replied that in her family even widow lady maintains herself in that manner. When the lady has not brought any document to show that she herself is Rekha Devi creates a serious doubt about genuineness of her identity, another document has been produced before the Tribunal, Mukesh Kumar has been shown 15 years whereas inquest report shows of his age 40 years. Rinku Kumari has been shown 12 years in the application, but the inquest report that has been brought shows lady of 20 years. Girl of 12 years cannot be looked as a woman of 20 years.

This Court is of the view that there is no doubt that there is a death in the family. This Court has all sympathy with the victim family who received such casualty but this Court has grave doubt the manner the case has been conducted and the lady who has come forward to file the case. This Court is of the view that as it is a death case, impugned orders are quashed, cases are remanded back to the court below to examine the matter and pass an order in accordance with law. The appellant is given liberty to prove her identity and if so desires she may bring two witnesses, namely, Dilmohan

Paswan and Brahmdeo Paswan in support of her cases. It is better that the Tribunal himself will take steps and issue the notices to Brahmdeo Paswan and Dilmohan Paswan and record their evidences.

Accordingly, these appeals are disposed of.

The Office is directed to return all lower court records forthwith.

(Shivaji Pandey, J)

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