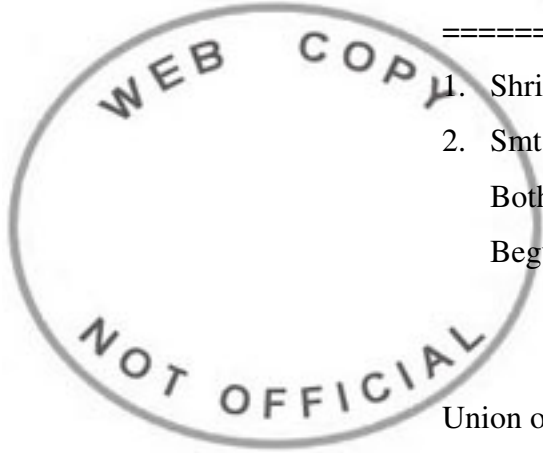


IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.39 of 2013



- =====
1. Shri Kedar Mahto, Son of Shri Ram Swarup Mahto
 2. Smt. Rekha Devi, Wife of Shri Kedar Mahto
- Both resident of Village-Mattu Naroi, P.S.-Sahebpur Kamal, District-Begusarai (Bihar).

.... Appellant/s

Versus

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 AKHILESH CHANDRA

ORAL ORDER

14 13-01-2015

Heard the parties.

2. This is an appeal preferred against the Order dated 16th October, 2012 passed by Sri J.D. Goswami, Hon'ble Member (Technical), Railway Claims Tribunal, Patna Bench, in Claim Application No. - OA 00223 of 2002.

3. This appeal has been preferred against refusal of claim preferred by the claimants-appellants seeking compensation of death of their son, namely, Rakesh Kumar Mahto, aged about 20 - 25 years, who died on falling from

a train on 16th November, 2001 while he started his travelling in Train No. 506 (Down) Samastipur - Katihar Passenger from Bachhwara Railway Station.

4. The claim has been refused by the Claim Tribunal Below on the ground of insufficient and contradictory evidence and lack of railway ticket.

5. To substantiate the claim, altogether three witnesses have been examined. Kedar Mahto, the father of the deceased, is the claimant himself has come to say that while returning from maternal grandfather's place on being send off by his maternal uncle, namely, Gopal Mahto, the deceased did not arrived. On query made after a few days, he could learn about the accident death of his son and identified him by photograph. One Vijay Kumar Singh is said to be a companion, of course unconnected with the deceased, but travelling side by side has stated about purchasing of ticket etc. and the maternal uncle of the deceased, Gopal Mahto, in his examination-in-chief, on affidavit, has stated about purchasing of ticket and sending off the deceased, who boarded in the train but, for no reason explained, this witness could not be cross-examined by the Railway and that is why his statement remained

unchallenged. He has also said about identifying the deceased from the photograph kept by the police.

6. By way of documentary evidence Exhibit - A4, the Final Form, clearly indicates that it is a case of death by falling from the train. Exhibits - A5, A6 and A7 does not contradict the above conclusion. That apart, a Division Bench of this Court in a case of **“Smt. Kaushalaya Devi & Ors. Vs. Union of India, Through General Manager, North Eastern Railway, Gorakhpur, U.P”**, reported in **“2008(3) PLJR 711”**, has held as such in **paragraph - 5** of the judgment:-

“5. Railways Act provides prosecution of persons entering Railway Stations without valid journey ticket or platform ticket. That makes its abundantly clear that without a ticket, either for undertaking a journey or for the purpose of visiting the platform, no one is entitle to be within the precincts of the Railway Station would, therefore, logically have a presumption that he had a ticket for him. That he did not have a ticket was obligatory on the part of the Railway Administration to prove.”

7. Thus, there appears no substantial reason for denial of claim preferred by the claimants-appellants;

consequently, the order under challenge did not at all sustainable. Accordingly, the Order dated 16th October, 2012 is hereby set-aside. The Railway (respondent) is directed to pay a sum of Rs. 4,00,000/- (Rupees Four Lacs) to the appellants within a period of 2 (two) months from today with an interest @ 6% per annum right from the date of filing of claim application till the date of actual payment only after filing of bank's mandate by the appellants, which they have directed to do within a month from today.

(Akhilesh Chandra, J)

Praveen-II/-

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