

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.565 of 2012

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Smt. Kamala Devi W/o Late Muneshwar Sao, resident of village- Naya Tola
Belthan, P.S- Bakhtiarpur, District- Patna.

.... Appellant/s

Versus

The Union of India through General Manager, Eastern Railway, Kolkata.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Amar Nath Mishra, Adv.

For the Respondent/s : Mr. Anil Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 12-08-2015

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

The appeal suffers from delay, prayer has been
made for condonation of delay, as there is delay of six months and
eight days in filing the appeal, for that, I.A. No. 7296 of 2014 has
been filed giving explanation for condonation of delay in filing the
appeal.

In such view of the matter, the delay in filing the
appeal is condoned.

In this case, the appellant is challenging the order of
Tribunal dated 22nd November 2011 whereby and whereunder he has
rejected the claim of the appellant holding that she is not entitled to
any compensation amount.

The short facts of this case is that on 18.12.2001 the

husband of the claimant, late Muneshwar Saw, while travelling along with his son from Bakhtiyarpur to Patna by Train no. 514 UP Rajgir-Danapur Passenger with a valid journey ticket, accidentally, had fallen down from the crowded running train near Bakhtiyarpur Railway station and died on the spot.

As per the claim application, the victim was a bona fide passenger and died on account of untoward incident. After his death, the claim for compensation was made for an amount of Rs. 4,00,000/- (four lakhs) which was registered as Claim Case No. OA00081 of 2002. Written statement was filed. The entitlement of compensation was denied. The Tribunal has altogether framed four issues. During trial of the case, nine documents were marked as exhibits which are as follows:-

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| 1. | Affidavit of Kamala Devi dated 12.9.11 | Ext.A-1 |
| 2. | Certified copy of Memo | Ext.A-2 |
| 3. | Certified copy of Inquest Report | Ext.A-3 |
| 4. | Certified copy of Post Mortem Report | Ext.A-4 |
| 5. | Certified copy of FIR with F. Report | Ext.A-5 |
| 6. | Photocopy of Voter Identity Card
of Muneshwar Sao | Ext.A-6 |
| 7. | Photocopy of Voter Identity Card
of Kamala Devi | Ext.A-7 |
| 8. | Certified copy of Fardbeyan | Ext.A-8 |

9. Dependency Certificate

Ext.A-9



The Tribunal has rejected the claim application on the ground that it was not a case of untoward accident rather a case of run over, giving a reason of accident 'Run over', when normally a rail passenger while trespassing railway track gets knocked down by a speeding and shunting train, arrived to a finding that as the body of the deceased was found, inside the track, it is not possible in a case of fall from running train, in such cases, the body would fall outside the track, not inside the track. He has assigned reason for rejection of case in his own manner but from the record it appears that before the Tribunal, the report of the Station Master was exhibited as exhibit no. A/2 which itself says that the victim was aged 50-55 years and in the process of boarding train No. 541 UP, he had fallen down, on that account he died and requested the Police to take action in accordance with law.

In the inquest report which is exhibit A/3 where it has been mentioned that another passenger, namely, Jitendra Sah said, the victim met with an accident while boarding the running train No. 541 UP. It also appears from the inquest report that from his pocket a ticket, vide Ticket No. 36250, was recovered. Accordingly, the inquest report was made by the Police and so much so that the Police filed a final report which is Ext-A/5 where also the Police has given report, the victim was a bona fide passenger with

ticket No. 36250.

In support of the claim, one witness, namely, Kamala Devi has been examined, but it is very unfortunate state of affairs, the son of the victim who was going along with his father, has not been brought as an eye witness by the claimant to narrate the whole story. Situation will remain same on account of the fact that the documents aforesaid itself show, the passenger was a bona fide passenger holding a valid ticket which was recovered from the pocket of the deceased which is apparently clear from the S.A. supported by the report.

The Tribunal has given his own reasoning which is inconsistent with law as it made out a third case which was not set up by the Railways, the Station Master himself stated that the victim has died while boarding the running train, how Tribunal had made out a case of run over, as when a person will slip from a running train, the body will fall in lateral position would go to the track.

In the accident, the body of the victim was separated into two parts which itself shows the victim slipped down laterally, as there was no space in the side of platform, the body moved in between the track.

In this view of the matter, this Court is of the view that the learned Tribunal has fallen in an error in holding, it was a

case of run over, but this Court on the basis of material on record arrives to a finding that the victim was a bona fide passenger and met with untoward accident, as provided under Sections 123 and 124A of the Railways Act, the Railways is directed to make payment of compensation of an amount of Rs. 4,00,000/- within three months from the date of furnishing of Mandate Form.

Accordingly, appeal is allowed with the compensation as aforesaid with 6% interest from the date of filing of the application upto the date of payment.

The Office is directed to return the L.C.R. forthwith.

(Shivaji Pandey, J)

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