

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.240 of 2002

Union of India Through the General Manager Eastern Railway Calcutta

.... Appellant/s

Versus

1(a) Sanjay Kumar

1(b) Manish Kumar Gupta

Both are son of Late Raj Kumar Gupta

1(c) Parwati Kumar Gupta

1(d) Indu Kumari Gupta

1(e) Madhu Kumari Gupta

1(c) to (e) are daughter of Late Raj Kumar Gupta

2. Sanjay Kumar Gupta, son of Late Sri Raj Kumar Gupta

3. Manish Kumar Gupta, son of Late Sri Raj Kumar Gupta

All residents of khairal ahmad road, Piperpati, P.S. Kotwali, Gaya

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Anil Singh, Railway Advocate

For the Respondent/s : Mr. Jyotendra Pratap Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

CAV JUDGMENT

Date: 09 -04-2015

The present appeal under Section 23 of the Railway Claims Tribunal Act, 1987 (hereinafter referred to as the "Tribunal Act") has been preferred against the judgment and order dated 22.3.2002 passed in Case No. OA/142/97, whereby, the Railway Claims Tribunal, Patna Bench (hereinafter referred to as the "Claims Tribunal"), while allowing the claim case has awarded Rs. 4,00,000/- as compensation and directed the appellant of the present appeal to make payment of 50 % of the award amount to the widow of the deceased and 10% each to the two sons and daughters of the deceased within a period of sixty days, failing which, it was

directed to pay the compensation amount with interest at the rate of 9% from the date of order.

Short fact of the case is that one Urmila Gupta, filed an application before the Claims Tribunal under Section 16 of the Railway Claims Tribunal Act read with Section 124-A of the Railways Act, 1989 claiming compensation due to death of her husband due to fall from the running train. It was disclosed that on 29.6.1996 her husband (Late Raj Kumar Gupta) along with her two sons namely, Sanjay Kumar Gupta and Manish Kumar Gupta while returning from Ara to Patna after purchasing ticket arrived at Ara Railway Station to board a train for Patna at about 10.30 A.M. At about 11.30 A.M. a DMU passenger train running between Mughalsarai to Patna arrived at Ara Railway Station and stopped for two minutes. After the train stopped the two sons of the applicant boarded the train and just when her husband tried to board the train, the train without giving any alarm started to move and, thereafter, accidentally her husband fell down from the train. Her sons tried to get the train stopped by pulling emergency chain and when the train got slowed down the two sons got down from the train. Thereafter, they noticed that their father was lying unconscious on the railway track. Subsequently, the injured husband of the claimant was carried to Government hospital, Ara,



where, he was given some medical aid and, thereafter, the injured was referred to P.M.C.H. The injured was subsequently brought to the P.M.C.H. where doctor declared him dead. Accordingly, a U.D. Case was registered at P.M.C.H. Fardbeyan of son of deceased namely Sanjay Kumar Gupta was got recorded by Pirbahore Police Station which was forwarded to G.R.P., Ara, and thereafter, a U.D. case vide Case No. 20 of 1996 was registered on 6.7.1996. On the dead body of the deceased post mortem examination was also conducted. The claimant claimed that her husband was an income tax assessee and whole family was dependent on him. Accordingly, claim petition was filed, and as such, a case vide Case No. OA/142/97 was registered. Before the Claims Tribunal, respondent / Railway appeared and filed written statement opposing the claim application. Before the Claims Tribunal affidavits were filed duly sworn by the widow of deceased, namely, Urmila Gupta, affidavit of Sanjay Kumar Gupta @ Sanjay Kumar, son of the deceased and affidavit of Manish Kumar Gupta, second son of the deceased. Besides, affidavits certain relevant documents were also brought on record including copy of fardbeyan of the son of the deceased recorded by the Pirbahore Police Station. The learned Claims Tribunal after hearing the parties and considering the claim, allowed the claim application and directed to pay compensation amount of Rs.

4,00,000/- as referred hereinabove.

During the pendency of the appeal the respondent no. 1 , namely, Urmila Gupta died, and as such, substitution was allowed by order dated 5.12.2013.

Sri Anil Singh, learned counsel for the appellant has assailed the judgment and order of the Claims Tribunal taking a plea that since the accident had occurred while the father of the respondents was trying to get into the moving train, it may not be termed as untoward incident, but in such accident injury shall be considered as self inflicted injuries and accordingly, in such cases, no compensation is permissible. He has further assailed the judgment and order on the ground that the deceased was not a bona fide passenger since neither before the police nor before the Claims Tribunal any railway ticket was brought on record from the side of the claimants. He asserts that in absence of valid railway ticket the deceased may not be considered as a bona fide passenger attracting grant of compensation under the Railway Claims Tribunal Act as well as Railways Act. Sri Singh has also tried to persuade the court that there are other contradictory materials which were sufficient to reject the claim application. However, the learned Claims Tribunal, in an irregular and illegal manner has allowed the claim application. According to him, the order of the Claims Tribunal is liable to be set aside.



Sri Jyotindra Pratap Singh, learned counsel for the respondents has opposed the prayer of the appellant. It has been argued that for the purposes of seeing the daughter who was leaving at Ara the deceased along with his two sons had gone to Ara. While for returning to Patna he had come to Ara Railway Station valid railway ticket was purchased by him. At the railway station son-in-law of the deceased had also come to see them off. The DMU passenger train arrived at 11.30 A.M. at Ara Railway Station which had come from Mughalsarai and going to Patna. While the train stopped the two sons of the deceased got into the train, however, their father carrying a brief case while was stepping into the train, in the meanwhile, without any alarm / whistle the train started to move and accidentally the deceased lost his balance and he fell down and in injured condition he was found over the railway track. Immediately, after noticing the accident two sons of the deceased tried to stop the train by pulling the emergency chain, however, when the train slowed down on the Railway Station itself both the sons got down and arrived at the place of occurrence, where son-in-law of deceased along with others were also present. Immediately, thereafter, the injured was carried to a doctor and thereafter he was given first aid in Ara Sadar hospital and he was referred to P.M.C.H., Patna for further treatment. When the injured



was brought to Patna P.M.C.H. the doctor declared him dead. In P.M.C.H. itself fardbeyan of son of the deceased was got recorded where inquest report was also prepared and autopsy on dead body was done. The fardbeyan which was recorded was subsequently referred to G.R.P., Ara, and as such, a case vide G.R.P. Case No. 20 of 1996 was registered on 6.7.1996. The police after investigation submitted its report. In view of the facts and circumstances it was argued that the deceased was a bona fide passenger and death had occurred due to untoward incident which is covered under Section 123(c)(2) of the Railways Act, 1989. It has further been argued that merely on the ground that railway ticket was not produced, the claim of compensation was not required to be rejected. Learned counsel for the respondents in support of his argument has placed reliance on a judgment of this court reported in **2008(3)PLJR 711 (Smt. Kaushalya Devi & Ors. vs. Union of India thr. General Manager, North Eastern Railway, Gorakhpur, U.P.)**. He further submits that the same judgment was also followed by this court in a case reported in **2012 (3) PLJR 765 (Aasha Gupta vs. The Union of India through the General Manager, Eastern Railway)**. He further submits that despite the fact that three witnesses were examined on behalf of the claimant and they were also cross –examined, the Railway failed to extract anything which was suggestive to create

doubt on the case of claimant.



Besides hearing learned counsel for the parties, I have also perused the materials available on record. On going through the materials on record, the court is of the opinion that since the deceased had fallen while he was trying to get in the bogey in DMU passenger train, the fall from the train of the deceased was squarely covered under the definition of Section 123(c)(2) of the Railways Act, 1989 which defines that fall from running train is treated as untoward incident. The plea which has been taken by learned counsel for the appellant / Railway that the deceased was trying to get into a running train may not be accepted in view of the evidence on record which suggests that while the passenger was entering into the train the train without any alarm or whistle started moving and due to such movement of the train he fell over the railway track. The court is of the opinion that the learned Claims Tribunal has rightly accepted the claimants' case. So far as non-production or non -availability of railway ticket is concerned, in view of the judgment of this court in Kaushalaya Devi Case (supra) which was followed in Aasha Gupta Case (Supra), the court is of the opinion that there is no reason for accepting the plea of the appellant / Railway that the deceased was not a bona fide passenger. Accordingly, in view of the facts and circumstances, the court is satisfied that the learned Claims Tribunal

has not committed any error or mistake in allowing the claim case. Accordingly, the appeal stands dismissed. However, without any cost.

In view of dismissal of the appeal, the appellant is required to pay compensation amount in terms of the judgment and award of the Claims Tribunal, if same has not been paid till date within a period of three months from the date of receipt / production of a copy of this order.

(Rakesh Kumar, J)

Praful/-

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