

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.448 of 2013

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Ram Pravesh Paswan S/o Late Krishan Paswan, resident of village-Saalamabad,
P.S. Rahui, District Nalanda.

.... Appellant/s

Versus

The Union of India through the General Manager, East Central Railways, Hajipur.

..... Respondent/s

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Appearance :

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

For the Respondent/s : Mr. Sunil Kumar Ravi, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 04-09-2015

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

In this case, the appellant is challenging the order dated
4th April 2013 passed by Railway Claims Tribunal, Patna in Claim
Application No. OA 00132/2003 whereby and whereunder the
Tribunal has rejected the claim application holding that the victim was
not a bona fide passenger and the accident does not fall under the
purview of untoward accident.

Claimant-applicant is the father of victim, namely, Suraj
Paswan, both were coming to Patna from Rahui by 543 UP Rajgir-
Danapur Passenger and the accident had taken place at Down Starter
Signal, Patna Jn. at platform No. 4.

In the claim application, it has been stated that the son of

the applicant was a bona fide passenger, died in an untoward accident and as such, father being a dependant, entitled to the compensation.

The Railways has filed its written statement. In para 3, it has been stated that the victim met with an accident, as he was trying to get down from the running train. The victim got down in negligent manner disentitles the claim of compensation. Any passenger will not meet with a casualty unless he commits mistake while getting down from the compartment.

In support of the case, the applicant has exhibited altogether 10 documents which are as follows:-

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| 1 | Affidavit of Ram Pravesh Paswan | Ext.A/1 |
| 2 | Photocopy of Memo | Ext.A/2 |
| 3 | Application of Shri Ram Pravesh Paswan | Ext.A/3 |
| 4 | Photocopy of FIR | Ext.A/4 |
| 5 | Photocopy of Final Report | Ext.A/5 |
| 6 | Photocopy of Inquest Report | Ext.A/6 |
| 7 | Photocopy of Post Mortem Report | Ext.A/7 |
| 8 | Photocopy of death Certificate of Suraj Paswan | Ext.A/8 |
| 9 | Dependency Certificate | Ext.A/9 |
| 10 | Photocopy of Voter I.C. of Ram Pravesh Paswan | Ext.A/10 |

Let us examine the documents that have been come during trial before the Tribunal.

Ext.-A/2 is the Memo of Station Superintendent of Patna Junction who divulged that he received a telephonic message from

Down Starter Cabin that one person aged about 30 years, has been killed by 543 UP, requested to remove the dead body.

Ext.A/3 is the application of Ram Pravesh Paswan where he has stated that he was going to Patna along with his son on 3rd April 2003 by Rajgir-Danapur Passenger and when the Train had reached Patna Jn. at platform No.4, there was heavy crowd led to jostling of passenger at the gate, on that account, his son who had caught the handle of the compartment, slipped and fallen down from the running train which led to his death. He has further submitted that looking to the incident for a while, he became unconscious, when he regained conscious, he found his son was in pool of blood lying dead, and Rs. 300/- and ticket were missing from his possession, but in application date is missing.

The counsel for the Respondent has pointed out, in the photo copy application certain entries which were recorded originally in that letter, purposely have been covered only then the photo copy was prepared.

Ext.A/4 is the First Information Report in which the name of the informant has been shown as Station Superintendent of Patna Junction. The name of the appellant is not there. In the First Information Report, it has been said that the victim met with an accident on account of fall from the running train.

Ext. A/5 is the Final Report, the Police during investigation recorded the statement of father of victim who supported his own case. In the report, it has been recorded that the victim died due to fall from the running train.

Ext.A/6 is the inquest report shows that the body of the victim was separated from the main trunk. The recovery from the person has been mentioned nil, the body has been shown to be unknown.

The Police had made an entry that the accident had taken place by fall from the running train.

Post Mortem report is Ext.-A/7, was conducted on 5/4/2003 of an unknown person there also the father of victim is nowhere shown shows he was not along with the body of his son.

The appellant appeared and filed his affidavit, there he has claimed that he along with his son was going to Patna and the accident took place in the manner as stated above.

Counsel for the Railways submits that it is completely a manufactured story made by the claimant. Had he been along with his son, in the First Information Report his name would have been mentioned which is missing. Inquest report and Post Mortem report, both have shown the body is of an unknown male, itself suggests that the father of victim was not travelling with his son, even if the father

was not there, the materials and circumstances strongly indicates the accident of passenger from the running train, dependant cannot be deprived of the compensation amount.

The relevant chapter deals with the claim of the passenger is a beneficial piece of legislation is meant to provide solace to the family whose family member while undertaking Railways journey, met with an accident.

Bona fide passenger is based on the principle of having a valid ticket. The same was not found in the body of victim placing reliance on the judgment reported in **2008 (3) PLJR 711 (Smt. Kaushalya Devi vs. Union of India)** where the Court said that there will presumption of a passenger travelling with a valid ticket, as the Railways Act prohibits a person to travel without ticket including entering platform. In case of violation, a person will be punished. The Tribunal while dealing with such cases, is not required to make microscopic scrutiny of the fact even in the criminal case minor discrepancy does not hold field, but while deciding the claim case, the Court has to weigh the material in fair and proper manner applying the principle of preponderance following the procedure of natural justice..

The counsel for the Railway Administration has submitted that victim's father who allegedly claiming that he was



travelling with his son, is completely incorrect on the fact that the Ext.A/3 does not bear the date or putting his signature, so much so that the date of receipt of the application is also missing. It also appears that in the First Information Report, the name of informant has been shown to be Station Superintendent, not the father of victim, at the same time, in the Post Mortem report, the body has been shown to be unknown person. These documents itself dispel the claim of the father-appellant that he was a co-passenger, along with his son. Had he been a co-passenger, the body of the victim could not have been shown as unknown body. These documents itself speaks volume that the father was not a co-passenger of his son, so much so that in the claim application also, no averment has been made that he was a co-passenger of his son on the fateful day, but is not an end of the matter as stated above that while deciding the claim of compensation, the court has to proceed to examine whether the sufficient materials are available for arriving to a conclusion, either in favour of the claimant or in favour of the Railways.

In paragraph 3, it has not been denied that the victim was not travelling by that train, but because of his negligence, he tried to get down from the running train, he fell down and died. So far Memo of Station Superintendent dated 3/4/2003 shows that he was informed by the Cabin Man that a man of 30 years, has met with an

accident and requested to remove the body. The F.I.R. also corroborates, the victim had fallen down from the running train. Inquest report also shows that the victim died on account of fall from the running train and the Railways has not come forward with the fact that the train had not arrived Patna Railway station at the time which has been shown in the Memo of Station Superintendent as well as in the F.I.R. These are the materials which indicate that the victim received injury on account of fall from train and died.

The Tribunal has wrongly refused to give relief to the appellant. Accordingly, the order dated 4th April 2013 passed in Claim Application No. OA 00132/2003 is set aside and this appeal is, allowed with a direction to the Railway Administration to make payment of compensation to the appellant as provided under the Railways Act. The appellant is entitled to 6% interest on the compensation amount from the date of filing of the application.

The appellant is directed to furnish a Mandate Form within three weeks from to-day. If he fails to file a Mandate Form within the aforesaid period, he will not be entitled to the interest thereafter.

(Shivaji Pandey, J)

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