

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.416 of 2013

Mahesh Ram @ Mahesh Prasad S/o Late Chulhan Ram, resident of Mohalla- Police Colony, Lal Bahadur Sastri Path, P.S- Gardanibagh, District- Patna.

.... Appellant/s

Versus

The Union of India through the General Manager, East Central Railway, Hajipur (Bihar).

..... Respondent/s

Appearance :

For the Appellant/s : M/s A.N.Mishra, Sahjanand Sharma and Anant Kumar No.1, Adv.

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

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 01-09-2015

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

In this case, the appellant is challenging the order dated 12th April 2013 passed by the Railway Claims Tribunal, Patna in Claim Application No. OA 00129/2003.

The short facts of this case is that on 12.12.2002, the son of the victim boarded Train No. 5105 Baidyanath Dham-Manduadih Kashi Express at Patna Sahib railway station with a valid ticket, but accidentally he had fallen down from the train at the originating station and died on the spot. On that basis, claim has been made under the Railways Act.

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



1	Affidavit of Mahesh Ram	Ext.A/1
2	Copy of Memo/ FIR	Ext.A/2
3	Copy of Final Report	Ext.A/3
4	Copy of Inquest Report	Ext.A/4
5	Copy of Post Mortem Report	Ext.A/5
6	Copy of Death Certificate of Sunil Kumar	Ext.A/6
7	Copy of PPO	Ext.A/7
8	Copy of dependency certificate	Ext.A/8
9	Copy of I. Card of Mahesh Ram	Ext.A/9

In the present case, the Railway has filed a written statement and in paragraph 6, the Railway has not denied that the victim was travelling by the said train on the fateful day but has taken a plea that he met with an accident, as his body was leaning outside the compartment, led to dash against Poll No. 1002 at platform no. 2, on account of that the victim died.

The fact which is admitted, is not required to be proved as is apparent from Section 58 of the Evidence Act.

In support of the case, the affidavit of Mahesh Ram was filed, he was cross-examined. As per the memo of the Station Superintendent, Patna Sahib, shows that a man of 40 years has been run over and killed by Train No. 5105 UP has been marked as Ext.A/2. On the basis of memo, the First Information Report was registered.

The Police investigated the case in which he has



examined four persons, one Dipu was also examined, he stated that he was along with the victim who died in the train accident. The cause of death has been shown to be crowded compartment, and jostling of the passengers, due to which the victim had fallen down from the train and died has been made as Ext.A/3. Ext.A/4 is the inquest report showing that the victim died on account of fall from Train No. 5105 and cause of death has been shown of his falling from the running train. Ext. A/5 is the *post mortem* report showing the cause of death, time has been shown in 18 to 36 hours.

The Tribunal has taken ground that Dipu was travelling with the victim, but he has not been brought before the court to divulge the actual story, so much so that it has discarded the story of Dipu was a co-passenger along with the victim.

Even if, the story of Dipu is ignored, but written statement in para 3 along with the other materials as such memo, *post mortem* report and the inquest report itself show that the victim was travelling by the said train. In para 3 of the written statement, only the plea has been taken that the victim met with an accident with the electric poll on account of body of the victim was leaning outside the compartment.

The counsel for the Railway has tried his best to bring the case under the exception of Section 156 of the Railways Act

which excludes a person of the benefit is travelling on the roof/ engine/foot of the compartment. No such allegation in the present case has been made out, the victim was travelling either at the top of roof of compartment, or on the railway engine or at the foot of the compartment.

The Tribunal is not required to treat the trial of criminal case, but has to examine the case, not required to prove each material on each fact beyond the reasonable doubt even, if Dipu has not been examined but the circumstantial material and plea of the railway itself indicates, the victim was travelling as a bona fide passenger and nowhere the railway has taken plea that the victim did not have a valid ticket, but the plea is only outside the body from the compartment will not make the claimant to be disentitled to the claim.

In such view of the matter, the order dated 12th April 2013 is set aside and the Railway is directed to pay the compensation amount to the applicant along with interest from the date of filing the application. Equally the appellant is directed to submit a mandate form within three weeks from to-day. If such mandate form is filed, the Railway is directed to make payment of compensation along with 6% interest within three weeks thereafter. If no such mandate form is filed within the aforesaid period, the appellant will lose the interest after three weeks.

With the above observations/direction, this appeal is

allowed.

(Shivaji Pandey, J)

Mahesh/-

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