

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.215 of 2014

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Dinanath Ram, son of late Butai Ram, resident of Village-Sadahpura, P.S.
 Gaurichak, District-Patna.

.... Appellant/s

Versus

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

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. A. N. Mishra-Advocate

Mr. Anant Kumar-1-Advocate

For the Respondent/s : Mr. Sunil Kumar Ravi-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 12-10-2015

Instant appeal has been filed under Section 23 of the Railway Claims Tribunal Act, 1987 by the appellant/ applicant Dinanath Ram against an order dated 09.09.2013 passed by the Railway Claims Tribunal, Patna Bench in Case No.0A 00131 of 2003 whereby dismissed the appeal.

2. Appellant/ applicant Dinanath Ram had filed a petition in accordance with Section 125 of the Railway Act read with Section 16 of the Railway Claims Tribunal Act, 1987 asking for compensation to a tune of Rs.4,00,000/-, the consolidated amount as provided under Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, on account of meeting with Untoward Incidents by his son Mohan Kumar, deceased while travelling by Train No.3050 Down (Amritsar-Hawra Express) on 13.11.2002 from Ara to Bakhtiyarpur in order to go to the place of his sister at Bakhtiyarpur with valid ticket, near Gulzarbagh Railway Station where he fell down from the bogie on account of heavy rush and died instantaneously.

3. Union of India through General Manager, East Central Railway, Hajipur appeared and filed written statement whereunder status of deceased as bona fide passenger was challenged and on that very basis also pleaded that

appellant/ applicant was not entitled for any kind of compensation.

4. The learned Tribunal framed following issues:-

- (i) *Whether deceased died under Untoward Incidents which comes within the purview of Section 123 (c)(2) of the Railway Act.*
- (ii) *Whether deceased Mohan Kumar was bona fide passenger on 13.11.2002 relating to Train No.3050 DN (Amritsar-Hawra Express).*
- (iii) *Whether appellant/ applicant has valid cause.*
- (iv) *Whether appellant/ applicant is entitled for compensation.*

And while deciding the issues, issue no.(iii) was decided in favour of appellant/ applicant, however issue nos.(i), (ii) and (iv) were decided against the appellant/ applicant, on account thereof, dismissed the appeal.

5. It has been submitted on behalf of appellant/ applicant that Tribunal was too technical in refuting the claim of the compensation solely on the ground that there happens to be discrepancy with regard to age of the deceased. On this score, it has been submitted that Mohan Kumar, deceased being son of appellant/ applicant has not been denied nor the factum of his death. Furthermore, the dead body from the railway track, on being informed, was removed by the G.R.P., Gulzarbagh on the basis of a memo furnished by Station Master, whereupon Patna Sahib U. D. Case No.35 of 2002 was registered and the dead body was sent for post mortem examination. Because of the fact that at that very moment, none of the family members were present on account thereof, it was shown as dead body of an unknown person. After arrival of appellant/ applicant, who reached at the Police Station in course of search of his son, who failed to arrive at the place of his sister, who happens to be married at Bakhtiyarpur, the ultimate destination, he identified the dead body and then thereafter, the final report, so submitted, does contain the name of deceased to be Mohan Kumar.



When railway could not be able to challenge the finding of the investigation, then in that event, having discrepancy in the age is of no avail, because of the fact that identification of deceased remained out of controversy. Furthermore, the age of deceased has got no impact upon the quantum of compensation like Motor Vehicle Act as has been fixed to Rs.4,00,000/-. Apart from this, it has also been submitted that although, the learned Tribunal has not taken into account presence/absence of ticket, therefore, that controversy now no more remains under subject matter of instant appeal nor the railway had raised any sort of grievances on that very score. As such, the order impugned is fit to be set aside.

6. The learned counsel representing the respondent has submitted that when there happens to be discrepancy with regard to age of the deceased shown under petition by the appellant/ applicant himself being inconsistent with the finding of the doctor, who held post mortem examination as well as the finding of the investigation of a criminal case bearing Patna Sahib U. D. Case No.35 of 2002, on account thereof, the learned Tribunal has rightly disputed over genuineness of assertion made by the appellant/ applicant and dismissed the petition.

7. At the relevant juncture of the argument, a query has been made with regard to genuineness of finding of the investigation submitted in the form of final report in pursuance of Section 174 Cr.P.C. (A-7) identifying the deceased to be Mohan Kumar aged about 25 years whereupon no plausible explanation has been given at the end of learned counsel for the respondent.

8. Perused the record. From perusal of the record, it is evident that on behalf of appellant/ applicant so many documents have been filed including that of A-7 wherefrom identification of deceased to be Mohan Kumar, son of Dinanath Ram is found properly fixed along with the fact that he died on account



of untoward incidents which he met while travelling with Train No.3050 DN (Amritsar-Hawra Express). Respondent-Railway happens to be negligent in its conduct whereunder, save and except after filing of W.S., did not care to at least controvert the final report (A-7), more particularly with regard to identification of deceased having made during course of investigation by the competent police officials. In case, respondent was aggrieved thereby, should have examined the I.O. in order to controvert the mode of identification of deceased as well as to challenge the finding on that very score. But sitting idle, in careless manner left no scope to discredit the finding nor would be allowed to raise the same.

9. Though, nothing has been raised on behalf of respondent challenging the status of deceased Mohan Kumar not to be a bona fide passenger, the aforesaid theme should also be taken note of in the light of Section 55 of the Railway Act whereunder ticket/ pass happens to be mandatory while entering inside the railway premises as well as to travel by train and is further found punishable in terms of Section 137 of the Railway Act. That being so, it was obligatory on the part of railway to have adduced a prima facie evidence on that very score in having the onus shifted upon the appellant/ applicant in the facts and circumstances of the case, as the inquest report (A 5) as well as the police report (A 7) did not specify that pocket of the deceased was searched and no ticket was found. Therefore, this aspect is not found duly favouring the respondent. Apart from this, the situation is found fully covered with Division Bench decision of this court in Smt. Kaushalaya Devi & others vs. Union of India reported in 2008 (3) P.L.J.R. 711.

10. Insertion of relevant provisions under Railway Act, allowing broad spectrum in order to claim for compensation, even on no fault liability in terms of Section 124 of the Act, itself indicate the nature of act to be benevolent

and accordingly, it should be construed while interpreting the same.

11. Accordingly, the order impugned is set aside. Appeal is allowed. Appellant/ applicant is held entitled for compensation to a tune of Rs. Four Lacs (Rs.4,00,000/-) at the end of respondent along with interest at the rate of 6 % from the date of institution of claim petition till its full realization which should be made within two months through Bank Draft.

(Aditya Kumar Trivedi, J)

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