

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.499 of 2014

=====

1. The Union of India through The General Manager, C.R. Hajipur, District Vaishali (Bihar).

.... Appellant/s

Versus

1. Anil Kumar Chaubey S/o Sri Banarsi Chaubey
2. Sushma Devi W/o Anil Kumar Choubey Both Resident of Village Gosaipur, P.S. Rajpur, District Buxar.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Shabbir Ahmad

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 07-12-2015

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

2. I.A. No.5869 of 2014 has been filed for condonation of delay in filing the appeal.

3. This court is satisfied with the explanation made in the aforesaid interlocutory application.

4. Accordingly, the delay in filing the appeal is hereby condoned and I.A. No.5869 of 2014 is disposed of.

5. In the present appeal the Union of India (appellant) is challenging the order dated 21.2.2014 passed in O.A. Case No. 136 of 2005 by the Member (Technical) Railway Claims Tribunal, Patna by which the Tribunal has passed the order in

favour of the complainant giving a direction to pay Rs.4,00,000/- as compensation and also provided the manner of payment to be made to the complainant.

6. The victim Nitya Nand Choubey on 25.5.2005 purchased a ticket for Buxar to Mugalsarai and boarded into Buxar Mungalsarai DMU passenger train at Buxar for going to Mugalsarai. There was heavy rush of passengers in the train. Nitya Nand Choubey was standing inside the compartment near the gate and due to heavy rush the passengers were jostling to each other. The train started running but passengers jostling became more intense on that account Nitya Nand Choubey could not maintain his grip and balance, he accidentally fell down from the running train resulting into his death.

7. The Station Master of the Buxar Railway Station vide memo dated 25.5.2005 intimated the factum of untoward incident to the Officer-in-Charge of Buxar who registered a case as U.D. Case No.14 of 2005. Postmortem was conducted in the Sadar Hospital Buxar on 26.5.2005. After investigation the police found story to be correct and accordingly submitted final report. The claim was made that Nitya Nand Choubey was a bona fide passenger who accidentally had fallen down from the

running train on 25.5.2005 is an untoward incident as defined under Section 123 of the Indian Railway Act, 1989.

8. The Railway Administration filed a written statement, taken a plea that the victim was not bona fide passenger, so much so no ticket was recovered from the possession of the deceased which is apparently clear from the inquest report prepared by the police.

9. The claimant produced First Information Report, inquest report, final form, post mortem report of the deceased and a certificate issued by the Officer-in-Charge, GRP, Buxar.

10. The Claim Tribunal has framed four issues. One of the issues was about the fall of the victim from the running train on 25.5.2005 and the Tribunal has found that the victim had fallen down from running train as his body was found lying near the track. Accordingly the Tribunal has granted the relief.

11. As it appears that the claimant did not appear and depose before the Tribunal and the court without deposition of the claimant, passed the order, recorded that the victim was a bona fide passenger gave a direction for payment of compensation. When the claimant himself not turned up and deposed before the Tribunal, the Claim Tribunal out of his own should not be decided the case one way or the other in stead he

should have given direction to the claimant to come in the dock and depose but in stead of doing the same the Tribunal has passed the order without deposition of any of the witness.

12. In such view of the matter, this Court is of the view that the Tribunal has not acted correctly while deciding the case even though overwhelming evidences are available on record.

13. In such view of the mater, the order dated 21.2.2014 passed by the Tribunal in O.A. No.136 of 2005 is set aside and matter is remanded back to the Tribunal giving liberty to the claimant, if so advised, he may take legal course as available in law. If the claimant appears and takes legal course the Tribunal will decide the case on its own merit.

14. With the aforesaid observation this appeal is allowed.

(Shivaji Pandey, J)

Vinay/-

U			
---	--	--	--