

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Miscellaneous Appeal No.81 of 2011
in
Claim Case 180 of 2004**

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Most. Samila Khatoon @ Samala Khatoon wife of Late Md. Mumtaj, resident of village- Kathaila, PS-Bispi, District-Madhubani.

.... Appellant/s

Versus

The Union of India represented through the General Manager, E.C.R, Hajipur (Bihar).

..... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anant Kumar-1

For the Respondent/s : M/s Mahesh Prasad and Anil Singh, Advs.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 15-10-2015

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

In the present case, the appellant is challenging the judgment and order dated 7th September 2009 passed by Railway Claims Tribunal, Patna in OA00 180/2004 whereby and whereunder the court below has rejected the claim of the appellant on different grounds such as the appellant could not prove that Md. Mumtaz (victim) was a bona fide passenger and Md. Najim @ Mister was a co-passenger. There is a discrepancy in the statement of claimant and the co-passenger (Md. Najim) as well as there is a contradiction in the statement/evidence of Md. Najim itself. It has also been said that an U.D. case was registered after lapse of one year itself creates a serious doubt about the claim of the accident arising from the railway journey.



Short facts of this case is that Md. Mumtaj, husband of the appellant had started his journey from his native place (Darbhanga) to Mumbai. Md. Najim @ Mister was also going along with the victim. They purchased a simple ticket of second class. On 25.11.2003, the victim along with the co-passenger (Md. Najim) came to Patna Railway Station to catch Lokmanya Tilak Express Train No. 2442 UP. It has been stated that in order to secure the seat, the victim had taken a lead, but while trying to enter into the compartment he slipped and fell down on the railway track, in that process, his legs separated from the main trunk. It has been claimed that the victim was brought to P.M.C.H., Patna by the G.R.P. personnel with Mr. Najim @ Mister. Md. Najim @ Mister made his fardbeyan before the Officer Incharge which was recorded, but no U.D. case was registered. After one year again on the basis of statement made by Md. Najim (A.W.2) before the Officer Incharge, G.R.P., Patna, U.D. Case No. 75 of 2004 was registered that led to registration of T.R. No. 202 of 2009, on 13th September 2004, the Police made an investigation, submitted final form on 13/9/2004 recorded finding by the Police that the victim died on account of fall from the running train.

In the complaint petition, the appellant has claimed that the victim along with his friend for going to Mumbai came to Patna, purchased a ticket. In course of boarding the train, he

suddenly fell down on the railway track from the running train which led to amputation of the legs of her husband and during treatment, he died.

In the written statement, the Railways has challenged the status of the victim as a bona fide passenger and has also stated that the statement of Md. Najim is in contradiction to his earlier statement. It has been stated that as a matter of fact, deceased was tried to board Lokmanya Tilak Express Train in running condition, in course of that fell down and met with an accident, no particular ticket was found from his possession as well as the cause of accident was his own negligence, for that the Railway Administration cannot be saddled with the compensation amount.

In the present case, the appellant examined two witnesses, namely, A.W. 1 is claimant herself as a wife of the deceased and A.W. 2 is the co-passenger claiming that he also purchased ticket along with the victim for going to Mumbai.

The appellant has filed the statement which was recorded at P.M.C.H., Patna by Assistant Sub Inspector, Pirbahore on 26.12.2003 which has been marked as Ext. A/2. The post mortem report is Ext. A/3. Ext. A/4 is a written application of Md. Najim to the Officer Incharge, G.R.P, Patna and on that basis, a U.D. Case was registered as U.D. Case No. 75 of 2004 which was marked as Ext.A/5. Ext. A/6 is the



statement transcribed from the application filed by Md. Najim and became the part of First Information Report. Ext. A/7 is a news item published on 26/12/2003 in Daily Newspaper "Aaj" where it has been mentioned that the victim received the injury on account of fall from the train. Ext. A/8 is the death certificate of late Md. Mumtaz. Ext. A/9 is the residential certificate of the appellant.

In this case, the Railway Administration has brought and examined one witness, Om Prakash Sharma, Sub Inspector, on 20.4.2009 and one letter dated 13.4.2009 has been exhibited as Ext.C-1.

The counsel for the appellant submits that Md. Najim was a co-passenger who approached the Tribunal and specifically stated that he was going to Mumbai along with the victim after purchasing ticket, while train was just started on account of fall from the train, the victim met with an accident, resulting into amputation of his legs. In support of the case, it has been submitted that the claimant as well as the co-passenger has been examined.

It is not in dispute that both started their journey from their native place for going to Mumbai and for that, both of them came to Patna, in course of railway journey, the victim fell down on the railway track and met with an accident. It has been submitted that after the accident, Md. Najim went to P.M.C.H.



there he has specifically stated the whole story about the incident, but unfortunately the Police did not register an U.D. case, but on account of inaction on the part of Police Administration, no case was registered that compelled the appellant-claimant to take proper steps, for that, he approached the Police/G.R.P. where he filed a written complaint and on that basis, a U.D. case was registered. He has further submitted that the sufficient materials are available for arriving into a finding that the victim met with an accident on account of fall from the train. The ticket has become traceless, cannot be a ground to deprive the right of compensation to the claimant-appellant. In the P.M. report, the nature of injury that has been shown itself depicts, the victim received the injury on account of hard blunt substance crossed over his legs which led to crushing and amputation of his legs itself suggests that the nature of injury cannot be sustained otherwise then crossing of wheel over his legs so the nature of injury caused on account of accident is a case of an untoward incident as has been mentioned in Section 123 (c) of the Indian Railways Act. It has further been submitted that the accident was a news item of Hindi Newspaper "Aaj" and in the newspaper items. As the proceeding is not a criminal proceeding, it has to be seen on principle of preponderance and availability of sufficient materials for arriving to a safe finding of an untoward accident as mentioned in the Indian Railways Act



whereas the Railway Administration has heavily resisted and submitted that the statements made by two witnesses are completely contradiction and there is no compatibility in between them, as in one place, A.W. 1 has said that her husband was doing the job of Jarri, on way to Mumbai along with A.W. 2, met with an accident, but in her statement, she has submitted that her husband had gone alone. Md. Najim in his statement has submitted that he along with Md. Mumtaz purchased a ticket of second class, he handed over the ticket to the victim who met with an accident and both tickets were traceless later on, he changed the story of return of the ticket and money he received. It has further been submitted that first statement was made on 25/11/2003 and after lapse of about one year, U.D. Case has been registered itself suggests and creates a strong suspicion. It has further been submitted that Md. Najim, in his statement, said that his statement was recorded by the G.R.P. on the same day. Both witnesses have changed their statement at different stages.

It has been submitted that there is no evidence to show that after the accident in what manner the victim has gone from railway station to P.M.C.H. for treatment, so much so, the deposition of the sole witness of Railway itself suggests that there is no material available to the G.R.P.

Having considered the rival contention of the parties,



one thing is very important that the statement of Md. Najim, (A.W. 2) to Pirbahore Police Station where he specifically stated that he along with victim was on way to Mumbai and the victim met an accident. Of course, no U.D. case was registered, on the basis of his statement, it can be said that it was a negligence on the part of Police. The Police ought to have registered a case or ought to have remitted his statement to the G.R.P. where the proper action could have been taken by the Railway Police. It appears that no such case was registered by Pirbahore Police Personnel, after a long period and on the basis of application filed by Md. Najim, Police has registered a case on the same date, submitted the final report. Here is the question, two documents are very important, one is the first statement made by Md. Najim before the Police at P.M.C.H. there whole story has been narrated and that statement is corroborated from the post mortem report because the post mortem report suggests that the victim received the injury by hard blunt substance on account of crushing impact. It is a fact that the legs of victim were separated on account of such accident is only possible wheel had crossed over legs. When a heavy iron material would cross the body, it will crush and separate from the main trunk, not otherwise that itself corroborates the statement of Md. Najim. The post mortem report bears the signature of Md. Najim.



Though the Tribunal has given its own reasoning for rejection of the claim finding out discrepancies in the statement of A.W. 1 and A.W. 2, but there is no finding about the nature of injury received by the victim. If the nature of injury is taken into consideration, compared with the first statement made by Md. Najim then this Court would arrive the resistible conclusion that the story that has been led by Md. Najim that the victim died on account of fall from the train, cannot be ruled out. Looking overwhelming evidence though somewhere there is a contradiction, but in the present case, only the preponderance of material facts has to be examined to test the sufficient materials are available for arriving to a fair finding of untoward accident. This Court is of the view that the appellant could be able to show that the victim was on way to Mumbai and received injury by a train accident, but it is not end of the matter, as the claim has been made by the Railway Administration that the claimant has not produced dependency certificate to show that she was a dependent of her husband and there is no other dependent on him, and as such, this Court feels that while releasing the money, the Railway Administration will be ensured that the money should go to the real dependent of the victim, for that, the appellant will have liberty to file a dependency certificate before the authority concerned who after proper verification/ satisfaction, will release the amount to the proper person.

The appellant is directed to file a mandate form within three months from to-day. In failure to file the same, she will not be entitled to any interest thereafter. The compensation will be included with the interest from the date of filing of the claim application at the rate of 6%.

Accordingly, impugned order is set aside and this appeal is allowed.

(Shivaji Pandey, J)

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