

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.867 of 2011

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Mina Devi, wife of Late Naresh Sah, resident of village- Tirmuhani, P.S.- Ghoswari, District- Patna.

.... Applicant-Appellant.

Versus

Union of India, through the General Manager, Eastern Railway, Kolkata.

.... Respondent-Respondent.

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Appearance :

For the Appellant : M/s. Sudhir Kumar & Rajeev Kumar, Advocates.

For the Respondent : Mr. Anil Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 15-04-2015

Heard learned counsel for the appellant and the Respondent and perused the record.

2. This is the claimant's Misc. Appeal under Section 23 of the Railway Claims Tribunal Act, 1987, against the Judgment/Order dated 29.07.2011 passed in Claim Application No.OA 00049 of 2002, whereby the Member (Technical), Railway Claims Tribunal, Patna (hereinafter referred to as "the Tribunal") dismissed the aforesaid claim application.

3. The brief facts of the case is that Naresh Sah, husband of the applicant-appellant was coming to Mokama from Deoghar on 18.07.2001 boarding at Train No.3111 UP Lal Kila Express after purchasing the valid ticket bearing Ticket No.11131 alongwith villagers, Ramswaroop Sao, Mahendra Sao, Krishna Devi and others. In the way, in between Daudpur Halt and Gidhaur Railway Station, the train dashed with Tata Sumo bearing

Registration No.BR-IP-4786, which was standing on the Railway Track. Naresh Sah, who was standing near the gate inside the compartment, due to heavy rush in the compartment, accidentally fell down from the running train as a result of which he died on the spot regarding which, on the basis of the written statement of Section Engineer, Rail Track, Eastern Railway, Jhajha, Jhajha G.R.P.S. Case No.0018 dated 18.07.2001 was instituted. Thereafter, the information regarding the death of the deceased was sent to the family members of the deceased, inquest report of the dead body of the deceased was prepared and the dead body of the deceased was sent for post-mortem examination to Sadar Hospital, Jamui.

4. The learned Tribunal on the basis of the pleadings of the parties, framed altogether four issues, out of which issue no.2 relates to the untoward incident and issue no.3 relates to bonafide passenger. The learned Tribunal on considering the oral and documentary evidence decided issue nos.2 and 3 against the applicant-appellant and dismissed the claim petition.

5. Learned counsel appearing on behalf of the appellant submits that Ramswaroop Sao (AW-1), who is the co-villager of the deceased, has specifically stated in his evidence that he was co-passenger with Naresh Sah at the time of accident and Naresh Sah fell down from Lal Kila Express when the train dashed with the Tata Sumo and he died on the spot and in the inquest report (Ext.A-4) the train ticket number of the deceased has also been detailed. In spite of that the learned Tribunal illegally held that the deceased was knocked at the time of accident on track where the Tata Sumo was present.



6. On the other hand, learned counsel appearing on behalf of the Respondent submits that from the written report of Section Engineer, Rail Track, Eastern Railway, Jhajha (Ext.A-3) and the supervision note of Jhajha G.R.P.S. Case No.0018 dated 18.07.2001 (Ext.A-4), it is apparent that the deceased at the time of accident was present along with others at the railway track and he received injuries on a track and not on falling down to the train. As such, the learned Tribunal has rightly dismissed the claim application of the applicant-appellant for compensation.

7. On perusal of record, it appears that Mina Devi (AW-2) in her claim petition and in her deposition has specifically stated that her husband, Naresh Sah, alongwith Ramswaroop Sao (AW-1), Mahendra Sao and Krishna Devi was coming from Deoghar to Mokama on purchasing ticket no.11131 on 17.07.2011 boarding at 3111 UP Lal Kila Express and fell down to the train in between Daudpur Halt and Gidhaur Railway Station due to dashing of train to Tata Sumo standing on the track and died on the spot. AW-1, Ramswaroop Sao, has also stated in his evidence that at the time of accident the deceased, Naresh Sah, who was his co-villager, was at the door in the train and he fell down from the train when the train dashed to Tata Sumo Vehicle on railway track. While he tried to stop the train but not succeeded and lastly train reached at Jamui from where he went to the place of occurrence. Thereafter, police also reached there and he saw Naresh Sah dead and found his both the legs amputated. He further stated in his cross-examination that he has no knowledge about the rail ticket of the deceased. He also put his signature on a paper. While AW-1 has claimed to be an eye



witnesses to the occurrence regarding falling down of the deceased, who was his co-villager, to the train and putting the signature on the inquest report (Ext.A-4) but the inquest report dated 18.07.2001 (Ext.A-4), shows that the inquest report was prepared as of unknown dead body, which creates serious doubt about the presence of AW-2 at the time of accident. The post-mortem report dated 19.07.2001 (Ext.A-5) also shows that the post mortem was done as of an unknown male. The written report of Section Engineer, Rail Track, Eastern Railway, Jhajha (Ext.A-3) shows that on 18.07.2001 at about 03.45 A.M., he on receiving information about the presence of Tata Sumo on up and down railway track in between Daudpur Halt-Gidhaur Railway Station went there and saw Tata Sumo bearing Registration No.BR-IP-4786 standing in between up and down railway track and a dead body was also found there. With the help of local people, the said vehicle was removed from the railway track. He also found both the legs on the dead body amputated, which appeared to him that due to rash and negligent driving, Tata Sumo came on a railway track as a result of which one unknown person died. Similar is the finding in the supervision note dated 28.07.2001 (Ext.A-6). While in the inquest report in column no.7 the rail ticket bearing no.11131 is said to be recovered with the dead body but the ticket no.11131 had not been filed with the claim petition by the claimant rather the same has been produced before the Tribunal later on without explanation how the claimant got the said ticket. The learned Tribunal has discussed the oral and documentary evidence in respect of the issue nos.2 and 3 in detail in the impugned Judgment/Order and disbelieved

the factum of death of husband of claimant in untoward incident in course of rail journey and dismissed the claim petition accordingly.

8. Under the facts and circumstances of the case and the discussions made above, I find no infirmity and illegality in the impugned Judgment/Order. Accordingly, this Misc. Appeal stands dismissed.

(Rajendra Kumar Mishra, J)

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