

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.373 of 2013

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1. Rekha Devi Wife Of Late Surendra Prasad Yadav Resident Of Village-
Bishanpur Bazar, P.S.- Kumarkhand, District- Madhepura (Bihar)

.... Appellant/s

Versus

1. Union Of India, through its General Manager, N.E. Railway, Gorakhpur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pravin Kumar Gupta, Advocate.

For the Respondent/s : Mr. Mahesh Prasad,
Mr. Anil Singh, Advocates.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 26-08-2015

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

2. In the present appeal the appellant is challenging the
judgment and order dated 11.5.2012 passed by the Member
(Technical), Railway Claims Tribunal, Patna in OA No.
000170 of 2000 by which the court below has refused to grant
compensation in favour of the appellant.

3. The appellant is the wife of the victim, namely,
Surendra Prasad Yadav, who was travelling by Train No.5715
Up i.e. GL Express from Murliganj to Saharsa. On 22.5.2000
he met with an accident. Claim has been made that on account
of jostling of passengers for space he had fallen down from the

running train. In support of the case the appellant has exhibited the following documents:

Exhibit- A/1- Affidavit of Smt. Rekha Devi

Exhibit-A/2- Affidavit of Shri saroj Kumar

Exhibit-A/3- Photocopy of FIR

Exhibit A/4- Photocopy of final report

Exhibit-A/5-Photocopy of letter of receiving of dead body.

Exhibit-A/6- Photocopy of inquest report

Exhibit A/7- Photo copy of postmortem report.

4. He has also examined two witnesses, namely, Rekha Devi, the claimant and one Saroj Kumar who has filed an affidavit on 18.8.2010 stating therein that he was co-passenger going along with the victim.

5. The Tribunal after examining the material on record has arrived to a finding that FIR is a manipulated document insertion at different places showing, earlier statement recorded therein has been erased, over that super imposition has been made. So much so he has also recorded that statement of Saroj Kumar does not inspire any confidence and rejected the same.

6. Learned counsel for the appellant submits that from the FIR it is apparently clear that the accident has taken place at



Madhepura railway station where the body was recovered and the same was placed for post mortem examination and the same was conducted on 23.5.2000. FIR itself shows that the victim died on running train. He was a bonafide passenger. So much so final report of the police itself shows that the victim died on account of falling from running train. Final report itself shows that the victim is a bonafide passenger and met with an untoward incident. The court below has wrongly refused to rely upon those documents and wrongly held that the statement of Saroj Kumar cannot be relied upon whereas in the cross-examination he has stated that both were the neighbours at Saharsa and were travelling as co-passenger in the said train. So much so he has also stated that he had informed the station master about the accident that was taken place.

7. Learned counsel for the Railway submits that the Tribunal has rightly refused to accept the contention of the appellant, he himself examined the record and found that FIR itself is not a genuine document but it is a manipulated and fabricated document created for the purposes of the present case. So much so the final report submitted by the police is so hazy, it is very difficult to decipher with the same. It is not a case of bonafide passenger who met with an untoward incident

but is a case of run over.

8. Having considered the rival contentions of the parties basically the Tribunal has rejected the claim on two grounds, first FIR which was produced before him did not inspire confidence and he has recorded that it is a manipulated document putting circle at different places showing that earlier statement recorded was erased and later on the statement was inserted therein, on that account he has declared the FIR a fabricated document. If some doubt was running in the mind of the Tribunal, one thing is very clear, at the time of exhibiting the document the railway administration did not object for exhibiting the same and later on the Tribunal has got a smell of fabrication, in such a situation the Tribunal ought to have called the original record from GRP where original record has been kept and compared the same with the original one and so much so he should have called original record of final report submitted by the police and only then the Tribunal should have recorded any finding about the fabrication of the document. The Railway Claim Tribunal Act itself provides ample power to the Tribunal to call for the records as provided under Section 18 of the Act. The Tribunal should have called the original record and tested the authenticity of the document

produced before him before declaring any document to be a fabricated document.

9. In such view of the matter, this Court is of the view that the Tribunal has committed wrong in rejecting the case of the appellant without comparing with original record on the ground that the document produced is a fabricated document is not sustainable.

10. Accordingly the judgment and order dated 11.5.2012 is set aside and the matter is remanded back to the Tribunal to call for the original record from the concerned GRP as well as memo, if any, from the station master compare with same and pass reasoned order. The whole process should be completed within a period of six months from the date of receipt of the file. Office is directed to remit back the lower court records to the Tribunal forthwith.

With the aforesaid observations this appeal is disposed of.

(Shivaji Pandey, J)

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