

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.423 of 2012

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1. Mantura Devi @ Santura Devi, W/O Late Adalat Sahni @ Adalat Chaudhary,
R/O Village - Shihorwa, P.S. Ramgarhwa, District - East Champaran

.... Appellant/s

Versus

1. The Union of India through the General Manager, N.E. Railway, Gorakhpur
(U.P.)

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Abinash Kumar-Advocate

For the Respondent/s : Mr. Anil Singh-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 29-06-2016

Heard learned counsel for the appellant as well as
learned counsel for the respondent.

2. With the consent of the parties, matter is being
disposed of at the admission stage itself.

3. Appellant/ claimant having been aggrieved by an
order dated 30.03.2012 passed by the Member (Technical), Railway
Claims Tribunal, Patna Bench in Claim Application No.0A 00063 of
2002 whereby and whereunder claim petition has been dismissed,
preferred instant appeal.

4. Though, during course of filing of instant appeal,
there was delay whereupon I. A. No.6404 of 2012 was filed and the
same was allowed vide order dated 03.09.2013.



5. The case of the appellant/ claimant as pleaded, revealed that deceased, Shambhu Chaudhary, who was his son after purchasing ticket on 26.10.2001 at Motihari Station boarded in Train No.525 UP in a way to Ramgarhwa Station along with his co-villager Sanjay Jha and during course thereof, he remained by the side of the gate as there was heavy rush inside the bogie. On account of heavy rush, there was push and pull as well as jerk having been during running of the train whereupon near Semra Station, Shambhu Chaudhary fell down and met with an untoward incident whereunder he sustained grievous injuries and for treatment thereof, he was shifted to M.J.K. Hospital, Bettiah where during course of treatment, he died. It has also been disclosed that during course of aforesaid event, ticket was lost.

6. Railway appeared and filed written statement in an ornamental way objecting the status of deceased as railway passenger. It has also been pleaded that the claimant was under obligation to substantiate his case over untoward incident.

7. During course of filing of petition, several documents were filed on behalf of appellant/ claimant as well as during course of trial; two witnesses have also been examined. Neither any document nor any witness has been examined on behalf of respondent.

8. The learned Tribunal after perceiving the



contradictory case of the appellant as framed during course of filing of the petition in consonance with the evidence having been adduced during course of trial and further, intentionally withholding the fard-beyan of the appellant, PW-1 took adverse to the interest of appellant and on that very score, rejected the petition, hence, this appeal.

9. The learned counsel for the appellant happens to be fair in his submission that he is unable to explain those infirmities persisting on the record. However, it has been contended at his end that from post mortem report, it is evident that deceased, Shambhu Chaudhary died and further from the inquest report, it is evident that he died during course of his treatment at M.J.K. Hospital, Bettiah. Furthermore, it has also been submitted that though fard-beyan of the appellant/ claimant has not been filed at his end, but after investigation, police had submitted final report whereunder it has specifically been mentioned that death occurred on account of injuries having been sustained by the deceased while he was travelling through a train and further, fallen during course thereof. Therefore, the findings so recorded by the Investigating Officer in terms of Section 173 of the Cr.P.C. would have been taken note of and further, non-filing of fard-beyan is found in the background of presence of aforesaid document without having any adverse impact.

10. It has also been submitted on behalf of appellant that

inconsistency in between both the witnesses in consonance with the facts whatever been incorporated in the claim petition is also not found to be worthwhile in the background of the fact that police after registration of the case thoroughly investigated and submitted its report which the respondent failed to controvert.

11. Furthermore, it has also been submitted that though there happens to be disclosure made at the end of the witnesses that Station Master was informed which was taken note of by the learned Tribunal on that very score, and further, pointing out that no memo was issued by the Station Master is of no consequence in the background of police report. So, submitted that the death of deceased, Shambhu Chaudhary in an untoward incident is found duly substantiated whereupon the finding recorded by the learned Tribunal happens to be bad, illegal, perverse and is fit to be set aside.

12. Refuting the submission made on behalf of learned counsel for the appellant, it has been submitted on behalf of learned counsel for the respondent that what was the initial version that too, by the claimant himself should have been brought up on record. Had there been, it could have revealed the theme of untoward incident and its consequence ultimately costing life of deceased who, as a passenger was travelling on Train No.525 UP from Motihari to Ramgarhwa. Therefore, suppressing the initial version is indicative of



the fact that the aforesaid version was otherwise than the present one whatever been pleaded by the appellant/ claimant. It has also been submitted that the subsequent document has got no bearing in the background of the fact that same might have been managed. Apart from this, it has also been submitted that even considering the case of the appellant that the deceased met with untoward incident at Semra Station, then in that event, should have requested the Tribunal to call for any kind of information having at the end of Station Master, Semra Station which could have disclosed that an information was given to the Station Master, Semra Station by any of the passenger what to talk about the appellant or Sanjay Jha regarding untoward incident whereunder Shambhu Chaudhary sustained injuries. There happens to be failure on the part of the appellant on that very score. Had there been such effort at the end of the appellant, then in that event, the lapses on his part in not filing fard-beyan would have no adverse impact. Therefore, it has been submitted that learned Tribunal had rightly doubted the case of the appellant and rejected the petition.

13. From the materials available on the record, it is evident that death of the deceased is found uncontroverted. The post mortem report is found reliable one which substantiates the same. Whenever dead body is sent to post mortem, it contains the inquest report. Therefore, the inquest report available on the record should not



be doubted. Whatever been incorporated at Column No.8 as well as Column No.9 is not the own finding of the police official rather on an information so conveyed. Though, the inquest report, Post Mortem report contains description of Bettiah Town P. S. Case No.832 of 2001 dated 26.10.2001, the format of formal F.I.R. as well as police report contain Motihari G.R. P. Case No.06 of 2001. From perusal of police report , it is evident that the same was forwarded by the Town Police and had received at G.R.P. on 30.10.2001. But the manner whereunder investigation has been conducted by the G.R.P. Police creates a doubt as, police report has been filed on the following day i.e. on 31.10.2001. The inconsistency in the version of both the witnesses in consonance with the pleading, and further, non-disclosure by any of the witness that occurrence taken place in their presence if taken together with the deficiencies persisting on the record, it did not inspire confidence over manner, as suggested and pleaded. Therefore, even considering the nature of the act to be benevolent and further, some sort of relaxation should be in favour of appellant in the background of preamble of the act, that does not mean that appellant should be exonerated from the responsibility/ liability whereunder the appellant is at least to substantiate by probable evidence that deceased died on account of untoward incident during course of journey by train.

14. Consequent thereupon, instant appeal lacks merit and is accordingly, rejected. In the facts and circumstances of the case, the parties will bear their own costs.

(Aditya Kumar Trivedi, J)

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