

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.13 of 2013

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Kaushalya Devi W/O Late Yogeshwar Sah R/O Village - Purani Bazar, Near
Shahid Gate, P.S. & District - Lakhisarai (Bihar)

.... Appellant/s

Versus

Union of India Through Its General Manager, Eastern Railway, Kolkata

.... Respondent/s

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Appearance:

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

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 11-07-2016

Instant appeal has been preferred by the claimant against
an order dated 21.08.2012 passed by Member (Technical), Railway
Claims Tribunal, Patna Bench in Claim Case No. OA 000149 of
2002, dismissing the same.

It has been pleaded that deceased Krishna Nandan
Prasad Sah who boarded 812 Dn. DMU in a way Jamalpur to
Sahebganj, having valid ticket on 27.07.2001 while he was to get
down at Mirja Chowki Station for fetching water and during course
thereof, accidentally slipped and fallen from the running train. During
course thereof, the aforesaid Krishna Nandan Prasad Sah sustained
grievous injuries was taken to Sadar Hospital, Sahebganj for
treatment where he died during course thereof. The doctor had issued
OD slip and on the basis thereof, UD Case No.16 of 2001 was
registered. It has also been disclosed that ticket got lost during course



of aforesaid incident. As the death occurred during course of untoward incident hence, claim petition was filed which has been rejected by the learned Tribunal on the ground of having the documents filed on behalf of claimant doubtful which made the whole case suspicious. Hence this appeal.

3. It has been submitted on behalf of appellant that learned tribunal had doubted the documents in casual manner without any basis and foundation and further, dismissal of the claim petition on that very score happens to be arbitrary, whimsical. To substantiate such plea, it has been submitted that no objection was ever raised on behalf of respondent/opposite party. Had there been, then in that event the learned tribunal should have called for the original document in order to verify the genuineness of the document having been filed on behalf of appellant/claimant. That being so, the approach of the learned tribunal is found contrary to the spirit of law whereupon is fit to be set aside. Also relied upon 2009(3) T.AC 349, 2008(4) PLJR 40 (SC)

4. Furthermore, it has been submitted that original appellant Kausalaya Devi who happens to be mother of deceased had died consequent thereupon I.A. No.1110 of 2015 has been filed for her substitution which should also be allowed.

5. Learned counsel for the respondent has submitted that



substitution petition under I.A. No.1110 of 2015 is fit to be rejected in the background of the fact that during course of filing of claim petition, the appellant/original claimant had not disclosed regarding presence of wife as well as children of deceased Krishna Nandan Prasad Sah. That being so, after death of appellant/original claimant it was incumbent that substitution would have been through the legal heir whom the deceased appellant/claimant Kausalaya Devi left. The substitution petition is found completely silent. At the other end, has been with regard to so alleged children of deceased Krishna Nandan Prasad Sah and so, smacks some foul smell.

6. It has further been submitted that whenever there happens to be claim petition, the same has to be annexed with the document which should bore an endorsement affixing its authenticity. Therefore, having absence at the end of the appellant/claimant an endorsement over genuineness of the document, the learned tribunal had rightly rejected the petition.

7. In order to trace out whether there happens to be any kind of deficiency persisting on the record, the lower court record has been gone through. From the original application, it is evident that no averment has been made at the end of the original claimant regarding, wife as well as children of so alleged deceased Krishna Nandan Prasad Sah though she had claimed herself to be the mother of the



deceased, nor it has been incorporated that claim petition is being filed on behalf of all the dependants or for welfare of all the dependants. Furthermore, from column 19 of the said petition, the details of the document having annexed in order to support the claim petition, it is apparent that certified copy of First Information Report, photocopy of inquest report, certified copy of final report, death certificate issued by Sahebganj Municipality, photocopy of postmortem report have been annexed.

8. Admittedly, none had claimed to be an eyewitness to accident nor there happens to be source of identification. The appellant tried to substantiate her case on the basis of the documents so detailed under column 19 of the petition as well as through oral evidence, AW No.1, herself as well as AW-2 Shankar Sao.

9. The first and foremost event happens to be with regard to proper identification of the deceased and further, he died in an untoward incident. As submitted, the FIR was registered on the basis of memo issued by Dr. A.K. Mandal. The certified copy of the FIR having annexed with the petition discloses it to be only a format of formal FIR and so, the document which happens to be basis of registration of GRP P.S. Case No.9 of 2001 is lacking. Once it is lacking then in that event, identification of deceased has become doubtful. Once identification of deceased has become doubtful then in



that event, the case is to be seen with suspicious eye as, from the subsequent document the source of identification of deceased is not traceable. The conclusiveness of police report also found disputable as on the same date after concluding investigation, final report was submitted. Neither any explanation has been furnished nor, even at the present stage, the learned counsel for the appellant has been able to explain the same.

10. The non-filing of written memo which happens to be the basis of registration of GRP P.S. Case No.9 of 2001 of which only formal FIR has been brought up on record, also creates doubt over its authenticity and further, withholding the document intentionally as well as purposely speaks otherwise than whatever been pleaded by the appellant /claimant. Had there been proper exercise in getting the certified copy of the FIR then in that event, the same would have been made available along with format of formal FIR.

11. The requirement of aforesaid document on record has become essential in the background of the fact that the aforesaid document was only source to know regarding physical condition of the deceased at the time of admission whether he was in sense or not. As per inquest, same was prepared on 27.07.2001 at 08:00 AM, and at the time of preparation of inquest report identification of deceased with full address was known. How aforesaid event visualized the

appellant is completely silent.

12. The approach of appellant found doubtful as she had not claimed that she after knowing regarding incident through any source, had gone to the place, identified the dead body, disclosed to the police whereupon inquest was prepared and in likewise manner, during course of investigation she claimed so. Therefore, identification of deceased, much less in absence of FIR, because there is no pleading that from the documents having with deceased, identity of deceased became known.

13. Now coming over prayer of substitution. Again the action is found full of suspicious one original claimant had not disclosed that any heirs of deceased was present as well as the claim petition was filed for the benefit of all. So, non-disclosure in the claim petition lacks the validity of claim petition. In likewise manner after death of original claimant, her substitution is to be carried out by her legal heir and not by the heirs left by the deceased, during course which again nothing has been said about wife of the deceased.

14. In *Express Newspapers (P) Ltd. & Ors v. Union of India & Ors.* reported in (1986) 1 SCC 133 at para-119 has held thus:-

“119. Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good



faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in S. Pratap Singh v. State of Punjab, AIR 1964 SC 72. A power is exercised maliciously if its repository is motivated by personal Animosity towards those who are directly affected by its exercise. Use of a power for an 'alien' purpose other than the one for which the power is conferred in mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Lindley in General Assembly of Free Church of Scotland v. Overtown, (1904) A.C. 515, 'that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used bona fide for the purpose for which they are conferred'. It was said that Warrington, C.J., in Short v. Poole Corporation, (1926) Ch. D.66, that:

"No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in bad

faith or from corrupt motives, would certainly be held to be inoperative.”

15. In the aforesaid facts and circumstances of the case, it is found and held that learned tribunal had rightly rejected the claim petition. Case law referred by the learned counsel for the appellant did not support plea of the appellant.

16. As held above, instant petition is suffering from the colour of fraud whereupon instant appeal is found non-maintainable and is accordingly dismissed along with I.A. No.1110 of 2015 relating to substitution of original claimant. However, in the facts and circumstance parties will bear their own cost.

(Aditya Kumar Trivedi, J.)

PN/-

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