

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.458 of 2013

RAMNANDI DEVI W/O LATE RAJA RAM MAHTO RESIDENT OF
VILLAGE- GHAGIA, P.S- B IHIA, DISTRICT- BHOJPUR.

.... APPELLANT/S

VERSUS

THE UNION OF INDIA THROUGH THE GENERAL MANAGER, EAST
CENTRAL RAILWAY, HAJIPUR (BIHAR)

.... RESPONDENT/S

Appearance:

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

For the Respondent/s : Mr. Mahesh Prasad, Adv.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

Date: 26-04-2016

Instant appeal has been filed by the appellant/claimant against the order dated 04.04.2013 passed by Member Technical, Railway Claims Tribunal, Patna Bench in Claim Application No.OA 000303/2003 whereby and whereunder claim petition has been dismissed.

2. On account of death of Raja Ram Mahto on 03.09.2003 in an untoward incident while he was returning home from Bihia along with his brother Sita Ram Mahto with valid ticket through 3040 Down Janta Express and came at door while the train reached Karisath Railway Station to get down, on account of push and pull as the bogie was crowded, deceased came under wheel of train, got injured and died at the spot. Ara GRP UD Case No.25/2003 was registered on the fardbeyan of Sita Ram Mahto. On the aforesaid assertion, Claim Petition No.OA000303/2003 was filed.

3. WS was filed on behalf of respondent/opposite party



on appearance wherein it has been pleaded that from the fardbeyan of Sitaram Mahato, brother of the deceased, it is evident that while train was moving slowly at Karisath Station, at that very time deceased attempted to get down and during course thereof, slipped, came under wheel and died. So, deceased had not died on account of untoward incident rather on account of own negligence and for that, as per exception so provided under Section 124(A) of the Railway Act, Railway Administration would not be liable to pay compensation. it has also been pleaded that the burden lies upon the applicant to substantiate that the deceased was bonafide passenger of 3040 down Janta Express, failing which it will be presumed that deceased violated the mandate of Section 55 of the Railway Act being unauthorized passenger and for that, railway did not borrow any sort of obligation. Furthermore, denying the further averments made under petition, in para-10 of the WS, it has been pleaded that inquiry is going on and after submission of the report in case so necessitate, further objection will be filed.

4. On the rival pleading the learned Tribunal had framed following issues.

- 1.** Whether the deceased was a victim of the alleged untoward incident as defined under Section 123(C)(2) of the Railways Act, 1989?
- 2.** Whether the deceased, Raja Ram Mahto was a bonafide passenger of 3040 Dn. Janta Express on 08.09.2003 at the time of the alleged untoward incident?
- 3.** Whether the claim application of the applicant is maintainable?

4. Whether the applicant /defendants of the deceased are entitled to receive compensation, as claimed for?

and decided the same against the appellant /claimant ultimately dismissing the petition, hence this appeal.

5. It has been submitted on behalf of petitioner that learned Tribunal had decided each and every issue against the settled principle of law and for that, it has been submitted that for the purpose of adjudication, the tribunal would have based upon the rival pleadings as well as evidence having been adduced on behalf of respective parties without making out a third case which, the tribunal would not have. From the order impugned, it is evident that learned tribunal on its own concluded it a case of run over.

6. Furthermore, it has also been pleaded that presence of deceased during course of journey in 3040 down Janta Express has not been denied by the railway administration on the alleged date of accident as well as recording of fardbeyan of brother of deceased to that effect over which, UD case was registered. Therefore, casting doubt over the genuineness of the document, brushing aside the same on that very basis happens to be beyond the record.

7. The learned counsel for the appellant further submitted that railway administration on its own had not stated that deceased was not a bonafide passenger contrary to it pleaded that burden lies upon the applicant to prove the deceased to be a boanafide passenger. so submitted that the respondent/OP on its

own failed to challenge the status of deceased.

8. It has also been submitted that putting reliance over memo of the railway chowkidar Karisath (Ext.R/1) and further concluded thereupon that it was a case of run over is not found duly substantiated. So submitted that the order impugned is fit to be set aside.

9. On the contrary the learned counsel for the respondent has submitted that the finding recorded by the learned tribunal happens to be in accordance with law whereupon did not attract inference.

10. The learned counsel for the respondent further submitted that for claiming compensation, the claimant has to substantiate that deceased was a bonafide passenger and he died due to an untoward incident. For bonafide passenger, the passenger has to possess a valid ticket and untoward incident, is found duly defined under Section 123(c) of the Railway Act. In the present case none of the aforesaid ingredients has been satisfied and on account thereof, appellants are not at all entitled for getting compensation. That being so, instant appeal is fit to be dismissed.

11. Passenger is defined under Section 2(29) of the Railway Act as passenger means “a person travelling with a valid pass or ticket.” furthermore, as per Section 55 of the Railway Act, it is evident that there happens to be prohibition of any person to enter into or remain in any carriage for the purpose of travelling as a passenger unless he possess a valid ticket, pass or permission.



Section 137 of the Act prescribes penalty for contravention of Section 55 of the Railway Act. Therefore, presence of passenger is to be construed to have possessed valid ticket or pass. In likewise manner no person without the valid pass or ticket or permission so obtained from the railway authority happens to be entitled for travelling as a passenger and in contravention thereof, are liable for punishment.

12. Whenever penalty has been prescribed for violation of any provision and further, there happens to be lacking on that very score more particularly having an obligation upon the passenger to tender ticket or pass to the railway authority in terms of Section 54 of the Act could be seen a circumstance which could not be overlooked.

13. Furthermore, apart from having disclosure made under para-10 of the WS, the legislature had thought in the interest of justice to provide an internal mechanism for getting the bonafide incidence of untoward incident properly inquired into so that rightful claimant should not be denied to avail usufruct of beneficiary legislation as well as to forbid an opportunity against unscrupulous litigant, in terms of Section 129 of the Railway Act notified the Railway passenger (manner of investigation of untoward incident) Rules, 2003 which was to be effective from the date of publication in the gazettee which effected on 08-08-2003 wherein apart from others as per rule-11, some of the obligation has been bestowed upon the Divisional Railway Manager after receipt of report in terms of rule-10 and further, the action taken

by the Divisional Railway Manager in terms of Rule-11, apart from having been communicated to the Station Superintendent requires to be placed before claim office in terms of Rule-30. No such report has been made available to the claim tribunal as is evident from the lower court record itself.

14. Furthermore, the ambit and scope of untoward incident has to be perceived. In terms of Section 123(C)(2) speaks regarding accidental falling of any passenger from train carrying passengers. As per Section 123(a) the meaning of accident as laid down under Section 124 of the Act has been identified. For better appreciation Section 124 of the Railway Act is quoted below:

“124. Extent of liability. When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or has suffered a loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident”

From bare perusal of the Section itself it is apparent that no such kind of barrier in the present form as pleaded is



found save and except the exception so prescribed under Section 124(A) of the Act whereunder compensation was not at all made permissible in case there happens to be (a) suicide or attempted suicide by him (b) self-inflicted injury (c) his own criminal act (d) any act committed by him in a state of intoxication or insanity (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

15. As per pleading, it is evident that neither it happens to be a case of suicide or attempted to suicide, own criminal act, in a state of intoxication or insanity or natural cause or disease or medical or surgical treatment. It could not be said to be self-inflicted injury because of the fact that the injury was not committed that means to say the death was not as a result of intentional conduct of the deceased. As pleaded and accepted by the respondent relying upon the fardbeyan recorded by the brother of the deceased, it is evident that the deceased slipped, gone under wheel. Slipping by the deceased could not be said to be self-inflicted in other words it could be said as being negligent to some extent. Apart from this, when the manner of incident is taken together in terms of Section 123(c)(2) of the Railway Act, it is found non-permissible.

16. In *Jameela & Ors. Vs. Union of India reported in (2010) 12 SCC 443* wherein the deceased, a passenger while was standing by the side of the door of the compartment, fell down and died. The Hon'ble Apex Court had dealt with the issue in the

background of factual aspect as pleaded by the railway. For better appreciation para-11,12 is quoted below:

“11. Coming back to the case in hand, it is not the case of the Railways that the death of M. Hafeez was a case of suicide or a result of self-inflicted injury. It is also not the case that he died due to his own criminal act or he was in a state of intoxication or he was insane, or he died due to any natural cause or disease. His falling down from the train was, thus, clearly accidental.

12. The manner in which the accident is sought to be reconstructed by the Railways, that the deceased was standing at the open door of the train compartment from where he fell down, is called by the Railways itself as negligence. Now negligence of this kind which is not very uncommon on Indian trains is not the same thing as a criminal act mentioned in clause (c) to the proviso to Section 124-A. A criminal act envisaged under clause (c) must have an element of malicious intent or mens rea. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. Thus, the case of the Railways must fail even after assuming everything in its favour.”

17. Now coming to the other aspect, it is evident from para-10 of the order impugned that all the documents filed on behalf of appellant were thrown away by the learned tribunal which ought not on account of having those documents exhibited on behalf of respondent under Ext.R/2, R/3 and R/4 Series out of which Ext.R/2 contained similar kind of overwriting. From the



aforesaid para of the order, it is evident that the learned tribunal had put much emphasis over Ext.R/1 which happens to be copy of memo served by the Station Master to Sarju Chowkidar, Karisath directing him to keep watch over a dead body of a person who was run over. It neither speaks that the Station Master was an eye witness nor it discloses the train number and further whether dead body was lying within the premises of Karisath station. Having the dead body lying at down loop line is indicative of the fact that it was at the station.

18. Therefore, presence of deceased as well as death is found out of controversy coupled with presence of postmortem report.

19. Now two more questions survive. The first one being bonafide passenger and the second one whether deceased had travelled by 3040 Down Janta Express. With regard to bonafide passenger, though there happens to be assertion and further the claim has not been questioned by the respondent on that very score including that of relevancy of the exhibits, it is also apparent from the inquest report exhibit A/5 that at the time of preparing inquest there was shirt, Full pant, underwear, vest over the dead body but the inquest report did not speak searching out pocket of respective apparel. In likewise manner, from column 3 thereof, it is apparent that dead body was lying at the Karisath Station. Apart from this, during course of incident deceased is found vulnerable and during said course, it is difficult to trace out ticket. Furthermore, in the background of the relevant provision as

discussed above as deceased was not at all perceived and penalized for travelling without ticket, it will be presumed otherwise that he was travelling with a ticket.

20. Now coming to the second aspect, neither respondent had objected nor refuted that 3040 Down Janta Express had not crossed at the relevant time. At the same time failed to other relevant document having its possession to indicate that 3040 Down Janta Express had not crossed from Karisath Station even till the time of recording of fardbeyan or preparation of inquest report.

21. That being so, the order impugned is set aside. Petition is allowed. Respondent is directed to pay the statutory amount of compensation within two months from the date of instant order, failing which appellant will be entitled to get it through legal process. In the facts and circumstances of the case, parties will bear their own cost.

(Aditya Kumar Trivedi, J.)

Patna High Court
Dated 26th day of April, 2016
Prakash Narayan

U			
---	--	--	--