

# IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.630 of 2012

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AHILYA DEVI D/O LATE RAMDAHIN MAHATO RESIDENT OF VILLAGE -  
RAGHOPUR, BIND TOLA, P.O. + P.S. - RAGHOPUR, DISTRICT - VAISHALI

.... .... APPELLANT/S

VERSUS

THE UNION OF INDIA THROUGH GENERAL MANAGER EAST CENTRAL  
RAILWAY

.... .... RESPONDENT/S

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**Appearance:**

For the Appellant/s : Mr. UMA SHANKAR, Adv.  
MR. KARANDEEP KUMAR, ADV.  
For Union of India : MR. ANIL SINGH, ADV.

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**  
CAV ORDER

**Date: 10-05-2016**

With the consent of the parties, instant appeal is  
being disposed of at the stage of admission itself.

**2.** Challenge in this appeal is judgment and order dated  
20.11.2009 passed by the Member, Judicial, Railway Claims  
Tribunal, Patna bench in Claim Case no.OA00124/1999 whereby  
and whereunder Claim Petition filed on behalf of  
appellant/claimant has been rejected.

**3.** Bereft of unnecessary details, on account of death of  
Ramdahin Mahto while he was under going treatment at Barh  
hospital having been admitted by the Barh G.R.P personnel for the  
injuries sustained by him in an untoward incident while he was  
travelling from Patna Junction to Jamalpur through Brahmaputra  
Express (4056 Dn) as bonafide passenger having valid ticket  
bearing no.7592 (second class). Claimant/appellant Ahilya Devi,  
claiming herself to be daughter of aforesaid Ramdahin Mahto filed

claim petition in terms of section 125 of the Railway Act read with Section 16 of Railway Claims Tribunal Act, 1987.

**4.** Respondent /opposite party appeared and filed W.S. wherein challenged specifically over status of deceased being bonafide passenger as well as, controverted sustaining of injury followed with death of deceased Ramdahin Mahto in an untoward incident. Furthermore, it has also been pleaded that story of possessing ticket no.7592 is found completely demolished on account of inconsistent plea of the claimant herself.

**5.** On rival pleadings, the learned tribunal had framed following issues:

- (a) Whether the claim petition happens to be legally maintainable?
- (b) Whether deceased was bonafide passenger of 4056 Dn on 03.12.1997?
- (c) Whether the incidence as alleged satisfies the ingredients of untoward incidence in terms of section 123(C)(2) of the Railway Act, 1989?

And decided the aforesaid issues against the appellant hence this appeal.

**6.** Learned counsel for the appellant while assailing the judgment and order impugned has submitted that death of deceased Ramdahin Mahto in an untoward incident is found duly substantiated. To support the same, it has been submitted that deceased was lifted by the GRP Personnel themselves from Barh Railway Station and for that, on the fardbeyan of Constable 250

Rampyare Ram, Bakhtiyarpur Rail P.S. UD Case no.34/1997 was registered. It has also been pleaded that from perusal of the said report it is evident that death of deceased in an untoward incident is found duly substantiated.

**7.** Furthermore, it has also been submitted that after concluding investigation, the I.O. had submitted final form divulging the fact that deceased fell down from 4056 Dn Brahmaputra Express as well as proper identification of deceased as Ramdahin Mahato.

**8.** Apart from this, it has also been contented that absence of railway ticket will have no bearing and that being so, the learned tribunal wrongly as well as illegally based its finding adverse to the interest of the appellant as, there happens to be no disclosure at the end of the opposite party/respondent and further, having failed to duly substantiated by cogent, reliable evidence that deceased was travelling without ticket. So submitted that during course of trial before the learned tribunal identification of deceased had properly been established that of Ramdahin Mahto along with having been validly substantiated to be a bonafide passenger. That being so, appeal is fit to be allowed setting aside the judgment and order impugned.

**9.** At the other end, learned counsel for the respondent supported the finding arrived at by the learned tribunal and further, submitted that each and every aspect has properly been dealt with during course of appreciation of the materials available on the record and so, the judgment and order impugned did not

attract interference.

**10.** It has also been submitted that deceased was lifted, admitted at hospital where he died. As identity of deceased was not ascertained at that very moment, it was shown to be unknown. Inquest was prepared, that of unknown. As during course of inquest no ticket was found therefore, during course of trial the appellant/claimant intentionally withheld the inquest report though other documents have been filed at their end. Therefore, status of deceased to be a bonafide passenger is found non-permissible in the eye of law.

**11.** It has also been pleaded that claim petition was filed after consuming substantial time, speaks about possessing ticket no.7592 which, from own admission of the appellant /claimant became falsified as, neither claimant was present at the time of accident along with deceased nor she was handed over by the I.O. of the case a ticket though other articles were handed over and further, claimant happens to be an illiterate lady, whereupon disclosing of ticket number has become doubtful. Moreover, the aforesaid theme found further strengthen on account of non-production of inquest report. Moreover, the FIR is also silent over presence of ticket.

**12.** Now coming to identification of deceased, it is evident that no connecting material has been placed at the end of the appellant/claimant save and except the police report which, after going through the same, is found duly managed as no source of identification has been mentioned therein. So submitted that

instant appeal is fit to be dismissed.

**13.** The date of death has been shown on 03.12.1997. Petition was filed before the learned Tribunal on 05.04.1999. As is evident from order dated 15.05.2008, after condoning the delay the petition was admitted. In likewise manner the judgment / order impugned happens to be dated 20.11.2009 and the appeal has been filed on 07.09.2012 having delay of two years six months. I.A. No.6539 of 2014 has been annexed with the memo of appeal asking for condonation of delay. Now the simple question arose whether the court is competent enough to condone the delay during course of entertaining appeal? For better appreciation two relevant provisions are taken together. The first one is Section 17 of the Railway Claims Tribunal Act, 1987 guiding limitation whereunder sub-section 2 empowers the tribunal to condone the delay in case sufficient cause is shown for non-providing the claim petition before the tribunal within the stipulated period. That means to say, claims tribunal has been empowered to condone delay if any, while entertaining petition if sufficient cause is shown at the end of appellant.

**14.** Section 23 of the Railway Claims Tribunal Act, 1987 deals with appeal wherein sub-section 3 prescribes the time limit extending up to 90 days from the date of passing of the judgment for filing an appeal. Like Section 17 of the Act, no such provision is found under Section 23 of the Act and so, during course of entertaining an appeal beyond the period of limitation in terms of Section 23(3) of the Act, the court has not been vested power to

condone the same delay.

**15.** Now coming to scope of Section 5 of the Limitation Act, it is evident that under the Railway Claims Tribunal Act, 1987 no such provision has been made nor, after close scrutiny of the relevant provisions of the Act does inspire confidence for its applicability. Had there been presence of applicability of Limitation Act, then in that event, there was no need to subscribe the tenure in terms of section 17 as well as Section 23 of the Act, respectively and in likewise manner, empowering the tribunal to sterile the period of limitation in case is found duly explained in terms of Section 17(2) of the Act while admitting the claim petition. However, no such remedy has been made available during course of exercising the appellate jurisdiction. That means to say, the legislature was very much conscious while framing the act that at the time of filing of claim petition delay, if any, should not be identified as a barrier in entertaining the petition in case the delay is found duly explained but such latitude is not at all found permissible during course of filing of an appeal. The court would not impose its own view in case the statute lacks such provision.

**16.** Furthermore, from bare perusal of the Railway Claims Tribunal Act, 1987, it is evident that it happens to be a complete code prescribing its own procedure under guise of Section 30 of the Act, known as the Railway Claims Tribunal (procedure) Rules, 1989 wherein also, no such provision found traceable and so is not at all found overshadowed by the law of limitation.

**17.** The Hon'ble Apex Court in ***Hukumdev Narain Yadav***

**v. Lalit Narain Mishra** reported in **(1974) 2 SCC 133** at para-17, has held:

“17. It was contended before us that the words “expressly excluded” would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual the meaning given in the Dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject matter and scheme of the special law exclude their operation.”

**18.** In **CCE & Customs v. Hongo India (P) Ltd.** reported in **(2009) 5 SCC 791** at para-35, it has been observed:

“It was contended before us that the words “expressly excluded” would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law here in this case is Central Excise Act. The nature of the remedy



provided therein are such that the legislature intended it to be a complete Code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court.”

**19.** Preamble of the Act, did oust applicability of any other law and for better appreciation, the same is quoted below:

“An Act to provide for establishment of a Railway Claims Tribunal for inquiring into and determining claims against a railway administration for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to it to be carried by railway or for the refund of fares or freight or for compensation for death or injury to passengers occurring as a result of railway accidents\* [or untoward incidents] and for matters connected therewith or incidental thereto.”

**20.** At the present moment Section 15 of the Railway Claims Tribunal Act have also to be taken note of:

**“15. Bar of jurisdiction;--**On and from the appointed day no court or other authority shall have, or be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in <sup>3</sup>[sub-sessions (1) and (1A) of section 13.”

**21.** After scrutinizing the overall event as discussed above, it is evident that the Railway Claims Tribunal Act, 1987 is a complete code having no access of any other law and on account thereof, there would not be applicability of Section 5 of the Limitation Act. Furthermore, as per Section 23 of the Railway Claims Tribunal Act, there happens to be no power vested to the court of appeal to condone the delay on account thereof, I.A. No.6539 of 2014 is rejected, whereupon instant appeal is found hopelessly barred by the imitation and is, accordingly dismissed.

**(Aditya Kumar Trivedi, J.)**

PN/-

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