

IN THE HIGH COURT OF JUDICATURE AT PATNA**Miscellaneous Appeal No.269 of 2014**

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1. Awdesh Mahto, s/o Late Sabhapati Mahto, resident of village:- Parathu, PS: Pipara, Distt : Patna (Bihar)

.... Appellant/s

Versus

1. The Union of India through the General Manager, East Central Railway, Hazipur.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Krishna Mohan Murari-Advocate

For the Railway : Mr. Anil Kumar Sinha-Advocate

Mr. Shakib Ayaz-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 03-03-2016

On previous day i.e. 01.03.2016, the respondent was non-represented and on account thereof, after hearing the learned counsel for the appellant, an adjournment was granted. Today also, the Railway is not represented. It has been submitted by Mr. Shakib Ayaz, learned Junior Counsel to Mr. Anil Kumar Sinha representing the respondent that as senior is engaged in another Court, as such, the matter be passed over.

2. Non-appearance for two consecutive dates should not be seen in ordinary way and the non-appearance should be condoned in routine manner. After all, the lists are being published in advance to acknowledge and further, for having just adjustment. Be that as it may, the fact remains, respondent is non-represented.

3. The appellant has challenged the judgment dated 21.03.2014 passed by the Railway Claims Tribunal, Patna Bench relating to Claim Case No.0A 00087/2005, whereby and whereunder the claim petition has been dismissed, but without cost.

4. Appellant, Awdesh Mahto filed claim petition making an



avermment that on 11.01.2005, while he was travelling over 6 PG EMU Train having valid ticket from Taregna to Patna, on account of push and pool by the occupants at Punpun Railway Station, he suffered a jolt whereupon was thrown outside the bogie and came under the wheels sustaining the injury. He was immediately taken to P.M.C.H. in unconscious state where he regained sense during course of treatment. Subsequently thereof, local police came, took his statement and sent the statement to G.R.P. Jehanabad. It has also been disclosed that on account of amputation of his leg, he became permanent disabled and as per certificate, disability has been perceived to the extent of 60%. Accordingly, he had asked for compensation to a tune of Rs.4,00,000/- (Four Lacs).

5. Respondent, after having been noticed, had appeared, filed its written statement wherein the averments whatever been made in the claim petition been controverted, apart from stressing over the issue that applicant happens to be under obligation to prove the same. Furthermore, it has also been pleaded that no accident as alleged by the appellant had occurred near Punpun Station. It has also been disclosed that claimant was not at all a bonafide passenger. He might have sustained injury at different place in different manner and so, the railway happens to be not at all under obligation to pay compensation as demanded by the appellant.

6. Trial proceeded, during course of which, apart from sole evidence of claimant, other documents have also been annexed. Neither any witness nor any kind of document has been brought up on behalf of respondent. The learned Tribunal by the judgment impugned dismissed the claim petition, hence, this appeal.

7. It has been submitted on behalf of appellant that claimant was of bonafide passenger as he was travelling through 6 PG Train having a valid ticket unfortunately fell down on account of jostling of other passengers, hence

became victim of untowards accident. Furthermore, his presence at the P.M.C.H., long tenure of treatment and his permanent disablement on account of aforesaid accident is found duly substantiated during course of his evidence which has not been sacked at the end of the respondent. Therefore, the finding of the learned Tribunal happens to be bad, erroneous.

8. It has also been submitted that learned Tribunal rejected the prayer solely on the ground that other documents are not attested. During such consideration, the learned Tribunal should have taken note of that no such kind of enforcement regarding attestation of document is there, apart from the fact that those documents bear signature of their learned counsel, but having absence of word 'attested' and so, should have considered that it was mere a slip of pen. In likewise manner, the learned Tribunal should have also considered the nature of act to be benevolent. So, submitted that finding arrived at by the learned Tribunal should be set aside.

9. Gone through the Lower Court Record. From the fard-beyan of appellant annexed as Annexure-1 of the petition, divulges its recording on 04.03.2005 wherein it has been disclosed that on last preceding day i.e. Tuesday (11.01.2005) while he was travelling over 6 PG Train met with accident wherein he sustained injuries. In the aforesaid written report, it is evident that as soon as the train came over Platform No.2 and was to stop, on account of push and pool, he was thrown away from the bogie. Therefore, as per disclosure, the accident took place over Platform No.2. Furthermore, the aforesaid fard-beyan was recorded near about two months of the alleged occurrence without any explanation. The aforesaid fard-beyan was recorded in presence of brother in-law of claimant namely Bihari Singh, however, could not be examined.

10. From Annexure-2, the relevant prescriptions issued by P.M.C.H., Patna wherein appellant/ claimant was examined firstly as outdoor

patient on 11.01.2005, was admitted on the same day i.e. 11.01.2005, wherefrom it is apparent that it has been shown as auto accident. The other prescriptions only suggest that he had gone long treatment and subsequent thereof, as per disability certificate, he sustained 60% of disability.

11. A ticket has also been filed which happens to be from Taregna to Patna Junction. From close minute observation, it has been found that there happens to be absence of engrossing of date. With regard to his evidence in examination-in-chief as happens to be on an affidavit, supported the same, but during cross-examination, he had stated that so many passengers were ahead to him, but they did not get thrown outside, save and except, he himself. Apart from this, from the lower court record, as it is not apparent that any case was registered at Jehanabad G.R.P., its outcome. Furthermore, there happens to be complete absence with regard to presence of any kind of memo at the end of Station Master, as the accident is said to be at Platform No.2. Not only this, the appellant also failed to substantiate that by whom he was lifted to P.M.C.H.

12. As such, apart from legal deficiencies, which has been perceived by the learned Tribunal, even considering the case of the appellant on merit, in the facts and circumstances of the case, his presence as a bonafide passenger over 6 PG Train and further, meeting with an accident during course of journey near about Platform No.2 of Punpun Station has become doubtful.

13. Accordingly, instant appeal is found devoid of merit and is accordingly, dismissed.

(Aditya Kumar Trivedi, J)

Patna High Court,
Dated-03.03.2016
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