

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.333 of 2013

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KUNTI DEVI W/O LATE CHHOTE MALLIK RESIDENT OF
VILLAGE- MORA TALAB, P.S- RAHUI, DISTRICT- NALANDA.

.... APPELLANT/S

VERSUS

THE UNION OF INDIA THROUGH THE GENERAL MANAGER,
EASTERN RAILWAY, KOLKATA.

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Amar Nath Mishra, Adv.

Mr. Anant Kumar No.1, Adv.

For the Respondent/s : Mr. Anil Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

6 16-02-2016 Appellant, Kunti Devi claimed herself to be wife of deceased Chhote Mallik and has filed instant appeal against the order dated 12.02.2013 passed by Member (Technical), Railway Claim Tribunal, Patna bench in Claim Case No.OA 000359/2002 whereby and whereunder the learned Tribunal had rejected the claim petition.

2. Bereft of unnecessary details, as is evident a claim petition purported to be under Section 125 of the Railway Act has been filed at the behest of appellant and to justify the same, it has been pleaded that on 23.02.2002, the deceased while was in a way to Barh from Bakhtiyarpur by 502 Down Patna-Jhajha EMU after purchase of valid railway ticket no.16807, he fell down from the running train just outside Bakhtiyarpur Railway Station on account of heavy rush in the bogie and was crushed under the wheels having instantaneous death. It has also been submitted that on account of rumour



having floated in and around, brother-in-law of deceased, namely, Suresh Mallik rushed to the spot, perceived the situation and on his statement a UD case was registered wherein after concluding investigation, final report was submitted containing detail with regard to possession of valid ticket by the deceased as well as death caused on account of falling from running Patna-Jhajha EMU Train.

3. The railway (O.P.) appeared and objected the claim petition mainly on the ground that it was not a case of untoward incident as well as also challenged status of the deceased in the background of own admission on the side of the applicant that deceased was dashed against Brahmaputra Express.

4. The learned tribunal framed the issue, examined the witnesses and thereafter dismissed the petition by the order impugned, subject matter of instant appeal.

5. After hearing rival parties as well as going through the relevant documents filed on their behalf, it is apparent that brother-in-law of deceased, namely, Suresh Mallik is the author of UD Case No.6 of 2002 whereunder specific assertion has been made that deceased was dashed against Brahmaputra Mail. Subsequently, during course of trial, instead of procuring his attendance as a witness, an affidavit has been filed duly sworn by him wherein some sort of explanation has been furnished to suggest that whatever information he had given to the police at an earliest was under



confusion mental agony and then, he corrected himself identifying the deceased to be a passenger against Patna-Jhajha EMU and further, during course thereof, met with untoward incident. However, the aforesaid Suresh Mallik has not been examined nor any kind of explanation has been furnished for his non-examination. It is also apparent that aforesaid contents of the affidavit could not be taken into consideration because of the fact that the aforesaid content happens to be untested.

6. Now, coming to the evidence of sole witness, the appellant herself, it is apparent that she had not claimed to be an eyewitness to occurrence and on account thereof, the status of the deceased could not confirmed at her end.

7. However, another circumstances have to be seen in the background of having in possession of railway ticket which, was not at all found during course of inquest however, cannot be considered as conclusive because of the fact that there happens to be no averment in the inquest report that pockets of apparel were searched and nothing was found, and further, there happens to be no evidence on the score that during course of investigation, the ticket was produced by the claimant. Therefore, having in possession of valid ticket, presence of deceased is found duly substantiated.

8. There happens to be an argument at the end of the respondent that appellant's house lies by the side of the railway track and on account thereof his presence was there is



not at all found corroborated with cross-examination of claimant save and except that her house lies at some distance from the place of occurrence. That does not mean that the house of the appellant was by the side of the railway track. Furthermore, there happens to be no controversy with regard to identification of the place of occurrence which happens to be the end of the platform no.1. That means to say it was near about the platform itself. That means to say within the vicinity of the Bakhtiyarpur Railway Station. That being so, deceased presence at the Bakhtiyarpur Railway Station having a valid ticket will say nothing otherwise than a bonafide passenger. Once, so perceived, then in that event, his death is to be seen in similar way unless and until there happens to be specific plea controverting the same.

9. At the present juncture, as usually railway adopts, save and except pleading nothing has been adduced nor examined. Presence of deceased, at the fag end of railway platform having with valid ticket and further finding of the tribunal in paragraph 14 is indicative of the fact that the learned tribunal has not gone to that extent while perceiving the same.

10. In likewise manner, although as held above that there happens to be some sort of deficiency at the end of appellant by not examining Suresh Mallik and for that, adverse inference was to be drawn but one thing which has to be borne in mind is that Suresh Mallik was himself not an eyewitness



and that being so, his statement cannot be accepted as a gospel truth more particularly in the background of the finding recorded by the I.O., which tribunal in paragraph 17 of the judgment doubted the final report without rhyme and reason. At the other end, perusal of final report, it is evident that witnesses so named therein have had supported the case, that deceased died on fall while travelling through Patna-Jhajha EMU. Had there been any sort of doubt, the tribunal should have called for the original case diary.

11. Furthermore, as is evident from para-11 of the judgment of the learned Tribunal, it is apparent that much emphasis has been drawn up on two score, the first one as per Station Master comment dated 21.12.2003 (R/1) no such incident occurred at the station is found completely falsified in the background of column no.III of Annexure-3, inquest report wherefrom, it is evident that the place of occurrence happens to be fag end of platform no.1 of Bakhtiyarpur station, being unchallenged, and secondly, that as per the final report the station master had informed the GRP which FIR does not speak. This also has lost its authenticity because of the fact that FIR was lodged by some body else, Suresh Mallik who certainly was not expected to know about the same, and in likewise manner, final report Annexure-5 did not did not disclose the same.

12. That being so, it is manifest that the learned Tribunal while adjudicating upon the matter overlooked the

relevant materials at the other end, proceeded in preoccupied mind whereupon needs reconsideration, Thus, the judgment/order recorded by the learned Tribunal is set aside. Appeal is allowed. Matter is remitted back to the learned Tribunal to consider afresh in accordance with law.

(Aditya Kumar Trivedi, J.)

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