

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.22 of 2014

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1. The Union Of India Through The General Manager, Eastern Railway, Kolkata
..... Appellant

Versus

1. Smt. Manbirti Devi Resident Of Village - Kajpa, Post Office - Jakhim, Police
Station - Ratiganj, District - Aurangabad, Bihar
..... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anil Singh, Advocate
For the Respondent/s : Mr. Kumod Kumar Srivastava, Advocate
Mr. Dheeraj Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 07-04-2016

Appellant/Opposite Party has challenged the order dated
12.10.2012 passed by the Member, Technical, Railways Claims
Tribunal, Patna Bench, Patna in Claim Case No. OA 00241/2002
allowing the claim petition.

2. Respondent/claimant, Smt. Manbirti Devi filed Claim
Petition on account of death of her husband, Nand Lal Prasad in an
untoward incident while he was travelling by Mughalsarai Gaya
Passenger (052 DN) on 04.07.2002 having Monthly Season Ticket
bearing No. H08014274 which was issued on 05.06.2002 and was
valid up to 04.07.2002 to and fro from Sasaram to Jakhim Railway
Station, at Chiraila Pathu Block Halt .

3. Appellant/Opposite Party appeared and filed WS.
Apart from raising ornamental objection, it has also been stated that
the deceased had not died in an untoward incident in terms of
Provision 123 of the Railways Act and further, also questioned the

date of untoward incident which the deceased allegedly met on 04.07.2002. Furthermore, it has also been stated that the ticket was neither shown to the Station Manager nor it was seized by the GRPS and on account thereof, was not a bona fide passenger. It has also been pleaded that applicant happens to be under liability to substantiate that cause of death does not fall within the exception of Section 124A so detailed under Sub-Section-A to E.

4. The learned Tribunal framed following issues on the basis of rival pleading:-

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, Nand Lal Prasad was a bonafide passenger of train no. 052 Dn Mughalsaray-Gaya passenger on 04.07.2002, at the time of the alleged untoward incident?
3. Whether the claim application of the applicant is maintainable?
4. Whether the applicant/dependents of the deceased are entitled to receive compensation, as claimed for ?

Learned Tribunal decided the same inconsonance with the documents, testimonies of the witnesses including claimant and decided the issue in favour of claimant. Hence, this appeal.

5. While challenging the order impugned, it has been submitted on behalf of appellant that even if considering the deceased was in possession of MST, that was valid only up to 04.07.2002 while from the Memo forwarded by the Station Master, it depicts the date 05.07.2002 at 08:25 hours. Furthermore, it has been submitted that the



aforesaid Memo contains a discloser that an unidentified man was run-over at KM 544/00 on the Dn line and has been made Ext-R/1. on account thereof, the date of death has crossed the period of validity of MST and so, on 05.02.2007, even if considering the case of the claimant that deceased died in untoward incident, was not a bona fide passenger as, MST was not at all valid one. The learned Tribunal while adjudicating upon the issue completely overlooked the aforesaid conclusive evidence.

6. Furthermore, Ext-R/1 suggests that death was not on account of untoward incident rather on account of own lapses as it was a case of run over. It has further been urged that tribunal had disbelieved the other relevant documents, such as First Information Report, Inquest Report, Final report, which ought not, as was relevant for adjudicating upon the plea of the claimant. Furthermore, it has also been pleaded that on account of some sort of lapses, having at the end of Railways took adverse to the Railway irrespective of deficiency persisting in the claimant's version which create doubt over authenticity of their version whereunder the deceased met with death. So, submitted that in the facts and circumstances of the case as well as illegal approach pursued by the learned Tribunal in allowing the claim petition, attracts interference by having the same annulled under the present appeal.

7. Learned counsel for the Respondent controverted the

submissions made on behalf of appellant and submitted that the learned Tribunal while allowing the petition had gone through each and every aspect. Therefore, the same does not require interference.

8. It has also been submitted that relevant documents were rejected not on the basis of its unreliability rather on account of some sort of technical flaw as was not properly certified/attested, however, the facts are out of controversy. So submitted that the learned Tribunal has rightly allowed the petition which needs no interference.

9. Death is uncontroverted. Because of the fact that Memo issued by the Station Master, Sonenagar happens to be the basis of registration of Sonenagar GRP UD Case No.22/02, that could be taken note of. From close scrutiny of the report, it is evident that nowhere, it discloses that death was on 05.07.2002 rather speaks that as per information given by a cabin-man L.C.P. Munda, one unknown man aged about 45 years has been run-over.

10. The aforesaid information also lacks on which date information was given. Furthermore, had the aforesaid L.C.P. Munda, an eyewitness to occurrence, then in that event, the aforesaid L.C.P. Munda might have disclosed the train number under wheels of which the deceased met with his death.

11. As such, on account of aforesaid ambiguity persisting in the information conveyed by the Station Master, Sonenagar, it is difficult to accept that death was on 05.07.2002 and in likewise

manner, it was a case of run-over.

12. Apart from this, the claim petition specifically details the place where the deceased met with untoward incident near CPB Halt. Halt and station have got different identity. Munda had not disclosed that dead body of deceased was not near halt. On the other hand, witnesses have deposed certifying the same. But the reason best known to the appellant/Opposite Party that death had occurred within the precinct of Sonenagar Railway Station or it was near Chiraila Pathu Block Halt, during course of cross-examination, witnesses were not at all tested on that score.

13. In the background of aforesaid deficiency having at the end of the appellant while proceeding with the trial certainly discredit their objection having been made at an initial stage and in likewise manner, at the present stage.

14. It is true that whenever a party comes to a Court for taking a particular finding, then in that event, the burden lies upon the party to prove its case in order to obtain such finding. Therefore, the burden lies upon the claimant to substantiate that the deceased met with death in an untoward incident while he was travelling with a train being a bona fide passenger.

15. Though, during course of judgment certain document an exhibit of the record including MST (Original) were not taken into consideration on account of certain procedural deficiency in the

opinion of the learned Tribunal, but even excluding the same, it is apparent that death of deceased being a bona fide passenger in an untoward incident is found duly substantiated. With regard thereto, apart from the Memo filed by Station Master, Sonenagar as discussed above, oral evidence of witnesses are available, AW-1, Claimant, Manbirti Devi, AW-2, Sunil Kumar, son of deceased, AW-3, Kamta Prasad @ Kamta Mahto out of whom the reason best known to the appellant, neither AW-2 nor AW-3 were cross-examined on their behalf. Therefore, their evidence is found intact and support the incident.

16. AW-1 Manbirti Devi has been cross-examined and from perusal of the same, it is evident that by way of cross-examination, the appellant itself supported the case of the claimant.

17. Furthermore, as no legal impediment is found in between, whereupon, the finding recorded by the learned lower court could be found adverse to the materials and the legal principles guiding the issue and that being so, need not warrant interference.

18. As such, the instant appeal is found devoid of merit and is, accordingly, dismissed.

(Aditya Kumar Trivedi, J)

Patna High Court
Dated April 7th 2016
Perwez/AFR

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