

IN THE HIGH COURT OF JUDICATURE AT PATNA**Miscellaneous Appeal No.415 of 2012**

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1. Sri Manoj Singh S/O Late Sargun Singh, Resident of Village- Maheshdih, P.O- Maheshdih, P.S- Akabarpur, Distt- Nawada.

.... Appellant/s

Versus

1. The Union of India, through the General Manager, Eastern Railway- 3 Koelaghat Street, Kolkata.

.... Respondent/s

Appearance :

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

For the Respondent/s : Mr. Anil Singh-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 22-06-2016

Instant appeal has been filed by one of the claimant, Manoj Singh under Section 23 of the Railway Claims Tribunal Act, 1987 against the judgment dated 28.03.2012 passed by Member (Technical), Railway Claims Tribunal, Patna Bench relating to Claim Application No.0A 000149 of 2001 dismissing the claim petition on contest without cost.

2. I. A. No.7880 of 2013 has been filed on behalf of appellant on account of some sort of infirmities apparent over memo of appeal putting adverse impact upon its prospect due to non-impleadment of other heirs either applicant or respondent and so, it has been pleaded that remaining applicants be impeaded as



respondents, who were noticed and as they had not objected vide order dated 13.04.2016 been acknowledged as respondent and to this effect the memo of appeal has been directed to be corrected/ amended.

3. Initially, Claim Application No.0A 000149 of 2001 was filed by Jaimanti Devi, wife of deceased Sargun Singh, who allegedly died on account of untoward incident on 06.10.2000 in a way to Kolkata from Nawada through Train No.574 DN Gaya-Jhajha DMU at Lakhisarai Station for which, F.I.R. (U.D.Case) was instituted on the basis of memo issued by one Nand Kishore Razak, Ticket Collector informing the G.R.P., who lifted the injured to hospital where he was declared dead during course of treatment.

4. Respondent/ opposite party-Railway appeared filed written statement wherein the assertion of the claimant has been controverted and it has further been submitted that deceased was not at all victim of an untoward incident while travelling with Train No.574-DN Gaya-Jhajha DMU. Furthermore, it has also been pleaded that applicant happens to be under legal obligation to discharge that deceased was bonafide passenger and that the fact does fall under either of the exceptions so enumerated under Section 124-A of the Railway Amendment Act, 1994. Furthermore, it has also been pleaded that applicant happens to be under strict liability to prove its case.



5. After having issue framed, the trial commenced whereunder witnesses were examined on behalf of appellant/claimant, certain documents were exhibited at their end. However, nothing substantial has been adduced on behalf of respondent/opposite party.

6. From perusal of the judgment, it is evident that learned Tribunal had disbelieved the case of the applicant on so many grounds, including there happens to be some sort of deficiency persisting on the police report with regard to identification of deceased as the F.I.R. was against unknown coupled with the fact that so many police report have been filed at the end of the appellant/claimant bearing different serial numbers whereupon the sanctity of the aforesaid documents have been seen with seriousness and further, declared to be suspicious as well as forged and further, disbelieved the same. Testimony of oral evidence have also been rejected on the ground of being suspicious one.

7. Whenever claim petition is filed in terms of Section 16 of the Railway Claims Tribunal Act, 1987, its procedure has been prescribed under Section 18 thereof, and for better appreciation, the same is quoted below:-

“18. Action on application for

applicant's default—(1) Where on the date fixed for hearing of the application or on any other date to which such hearing may be adjourned, the applicant does not appear Substituted by G.S.R. 700(E), dated 26-11-1991 (w.e.f. 26.11.1991) [when the application is called] for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.

(2) Where an application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the application was called for hearing, the Tribunal shall make an order setting aside the order dismissing the application and restore the same:

Provided, however, where the case was disposed of on merits the decision shall not be re-opened except by way of review."

8. Railway Claims Tribunal (Procedure) Rules, 1989 has also been framed under the aegis of Section 30 of the Railway Claims Tribunal Act whereunder Rule-20 prescribes Procedure and powers of

Tribunal. For better appreciation, the same is quoted below:-

*“20. **Procedure and powers of Tribunal**-The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-*

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witness or documents;

(f) reviewing its decisions;

(g) *dismissing an application for default or ex parte;*

(h) *setting aside any order of dismissal of any application for default or any order passed by it ex parte.”*

9. After going through the respective provisions guiding the procedure and powers of tribunal, it is evident that Tribunal has got power to make requisition to have any record or document or copy of such record or document from any office and for that, the Tribunal has not been confined over prayer having on behalf of respective parties. The aforesaid documents in terms of procedure Rule-7 of the Railway Claims Tribunal (Procedure) Rules, 1989 is expected to be attached with the original petition itself and had there been appropriate application of judicious mind, the relevant anomaly as traced out during course of judgment impugned, would have been located at an earlier stage itself and to verify the same, learned Tribunal as indicated above, was within its dominance to call for the same from the Court concerned as well as could have been able to search out an inconsistency as well as the genuineness of police report. The exercise was essential in background that death is out of controversy, in likewise manner, presence of deceased in injured



condition by the side of the track. It is also evident that deceased was not at all resident of nearby locality. Whether, deceased before his death, searched out and for that, search-cum-seizure list was prepared. It was not for collecting evidence, rather was a sequence of event to expose the event. So, from the conduct of the learned Tribunal, it is apparent that it had proceeded under such manner in order to cover up its own lapses. By not complying the mandate of law to search out the truth, which happens to be essence of trial.

10. Apart from this, in terms of Rule-11 of the Railway Claims Tribunal (Procedure) Rules, 1989, it is evident that application is to be properly scrutinized by the Registrar and in case, the defect is found, the applicant is to remove and rectify the same. Furthermore, in terms of Rule-15-B, the Tribunal has to ascertain from the parties or their authorized representative whether they agreed or denied, documents accompanying the application or reply before framing of the issue which, from the successive order sheet is found lacking. However, as there happens to be no denial or objection at the end of the opposite party under which establishment the G.R.P. Station are established and further, the G.R.P. has been entrusted to act and discharge their function relating to the opposite party that means to say, Railway and so, the G.R.P. is within absolute reach of opposite



party whereupon the reliability of the document in question would have properly been ascertained.

11. That being so, after scrutinizing the judgment impugned in consonance with the materials available on the record as well as the legal provisions as discussed above, it is evident that the powers so vested to the learned Tribunal has not been properly exercised and on account thereof, there happens to be violation of Principle of Natural Justice, as mandated under Sub-section-I of Section 18 of the Railway Claims Tribunal Act, 1987. Ultimately, nullifying the judgment impugned. Consequent thereupon, same is set aside. Appeal is allowed. The matter is remitted back to the learned Tribunal to proceed afresh adhering to mandate of law and would pass proper order in accordance with law.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	26.04.2016
Uploading Date	22.06.2016
Transmission Date	N.A.