

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.198 of 2013

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Rina Devi W/o Late Jatan Gope Resident of Village- Baikatpur, P.S- Baikatpur,
District- Patna (Bihar)

.... 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. A.N. Mishra
Mr. Anant Kumar no. 1
For the Respondent/s : Mr. Anil Singh

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA

JAISWAL

ORAL JUDGMENT

Date: 16-10-2017

Heard learned counsel for the appellant and learned
counsel for the respondent on this Miscellaneous Appeal and perused
the record.

2. This Misc. Appeal has been filed against the Order
dated 04.01.2013 passed by Member (Technical) RCT/Patna in Claim
Application no. 0A 00357 of 2002 whereby the learned Tribunal has
dismissed the aforesaid claim case of the appellant.

3. Factual matrix of the case is that Rina Devi filed the
Claim Case no. 0A 00357 of 2002 against Union of India, through the
General Manager E. Railway, Kolkata under Section 125 of Railways
Act for awarding compensation to the tune of Rs. 4 lacs with the case
in succinct that her husband Jatan Gope purchasing a ticket of second
class for Karauta to Khusrupur, boarded the train bearing no. 543 up



Rajgir-Danapur Passenger at Karauta Railway Station. As soon as the train arrived near east cabin of Khusrupur Railway Station, he accidentally fell down from the running train due to heavy rush of passengers inside the compartment and died on the spot.

4. The respondent put its appearance in the case and filed the written statement.

5. After hearing the parties and perusing the record, learned Tribunal dismissed the aforesaid claim case.

6. Being aggrieved and dissatisfied with the aforesaid Order, the claimant has preferred the present appeal.

7. It is submitted by the learned counsel for the appellant that the deceased was a *bona fide* passenger as he had purchased a ticket of 2nd class for undertaking travelling by the said train at Karauta Railway Station and said case of the claimant also stands corroborated by the uncontroverted affidavit of one Kailash Gope who had witnessed the deceased purchasing the ticket and boarding the said train at Karauta Station as the said witness was not cross-examined by the respondent. It is further submitted that the said ticket was lost somewhere in the said accident so it was not recovered from the possession of the deceased at the time of preparation of the inquest report. She has also given affidavit in this regard. The aforesaid aspect of the case explicitly indicates that the deceased was a *bona fide* passenger. It is further submitted by the learned counsel



for the appellant that the deceased was cut from the aforesaid train during the course of travelling as reported by the police officer after investigation of the case in its final report. Hence, it is a case of 'untoward incident' and not of 'run over'. Hence, the impugned order passed by the learned Tribunal is wrong and illegal and is liable to be set aside

8. On the other hand, it is submitted by the learned counsel for the respondent that the deceased was not travelling by the aforesaid train rather he was in the state of mental disorder and was wandering near the railway track in such state of mind and was cut into two pieces by some unidentified train. The informant Chullu Gope on whose statement the FIR has been lodged and who happens to be cousin brother of the deceased has stated in his statement that the deceased was suffering from mental disorder for the last two months and he was wandering in such state of mind. The said Chullu Gope has not been examined by the claimant rather withheld and no reason has been assigned by the claimant for his non-examination, hence, adverse inference be drawn against the claimant. Moreover, the number of trains by which the deceased had met the accident has neither been mentioned in the inquest report nor in the memo. The dead body of the deceased was found cut into two pieces on the railway track which is not possible in the case of 'untoward incident' by falling from the running train. It is also submitted by the learned



counsel for the respondent that the deceased was not a *bona fide* passenger as the said ticket was not recovered from his possession at the time of accident as evident from the inquest report. Though, it is the case of the claimant that the ticket was lost in the accident, but the claimant in his cross-examination has vented her ignorance about filing of the ticket in the case which goes to rule out the aforesaid case of the claimant about missing of the ticket in the accident. The aforesaid aspect cumulatively indicates that the deceased was not a *bona fide* passenger and considering the aforesaid aspect of the case and correctly appreciating the facts and evidence available on record, learned Tribunal has rightly dismissed the case of the claimant by the impugned order which is liable to be upheld and this appeal has no substance in it and is liable to be dismissed.

9. From perusal of record, it appears that the learned Tribunal has dismissed the aforesaid case of the claimant on three grounds (i) that there is no eye witness of the occurrence (ii) it is a case of 'run over' and not 'untoward incident' and (iii) that the deceased was not a *bona fide* passenger. So far as the eye witness is concerned, in such type of accident by train generally there happen to be no eye witness of the accident as no one come forward to give evidence as eye witness as the commuters of the train avoid to enter into the complication of the legal proceeding. Moreover, in my considered opinion, such type of cases should not be thrown away



merely for want of eye witness of the accident and that too in the presence of consistent evidence in substantiation of the case of claimant regarding the incident on record. Regarding *bona fide* passenger, it is the case of the appellant that the deceased had purchased second class ticket at Karauta Railway Station for undertaking travelling by the said train. Though, the said ticket was not recovered from possession of the deceased by the police personnel at the time of accident as the same has not been found mentioned in the inquest report, but, Kailash Gope (AW-2) by filing affidavit has stated that the deceased had purchased valid ordinary ticket at Karauta Railway Station for travelling from Karauta to Khushrupur in his presence and after purchasing the ticket, he had boarded the said train. The said witness has not been cross-examined by the respondent and from the order dated 24.09.2012 of the Tribunal, it appears that the learned Tribunal did not find it necessary to cross-examine the said witness claiming him to be not an eye witness of the accident. Hence, the aforesaid statement of AW-2 that the deceased Jatan Gope purchased the second class ticket at Karauta Railway Station for traveling by the said train and boarded the aforesaid train stood admitted to the respondent. Division Bench of this Court passed in ***Smt. Kaushalaya Devi & Ors. Vs. Union of India through General Manager, North Eastern Railway, Gorakhpur, U.P. reported in PLJR 2008(3) at page 711***, has been



pleased to hold that where the dead body of the deceased was found in the precincts of the Railway Station, the presumption is that the deceased was a *bona fide* passenger and had purchased a ticket. The onus to prove that the deceased was a ticket less traveller or ticket less wanderer lies on the shoulder of the Railway. But the respondent has failed to prove the same. In the aforesaid facts, I find that the deceased Jatan Gope was a bona fide passenger.

10. From perusal of Ext-A3, it appears that the Railway Authority of Khushrupur reported to the GRP Khushrupur/Bakhtiyarpur about finding of a dead body of an unknown person on down line ahead of advance starter on the basis of information given by Dayanand Paswan and Ext-A4 (First Information Report) indicates that the case was registered regarding the death of the deceased Jatan Gope in the aforesaid accident by the said train on the basis of information given by Chullu Gope and the police after investigation of the case submitted final report vide Ext-A5. The final report submitted by the police after investigation of the case indicates that the dead body of the deceased cut into two pieces by the aforesaid train was found at the accident site and postmortem of the deceased marked as Ext-A6 indicates that the body of the deceased was divided into two parts from abdomen.

11. From perusal of the statement of the Chullu Gope, it appears that the said Chullu Gope happens to be cousin brother of the



deceased and has stated that the deceased was suffering from mental disorder for last two months and he was wandering in such state of mind. But, mere being of mental disorder, in my considered opinion, has no potential to rule out the case of the claimant that the deceased had boarded the said train and was travelling by it and was cut by falling from the said train during the course of travelling in view of admission of the aforesaid facts by the respondent and evidence on record that the deceased was found cut into two pieces by the train at the accident site. In aforesaid facts and circumstances, I find that the deceased has died being cut by the train bearing no. 543 up Rajgir-Danapur Passenger by falling from the said train in course of travelling. Hence, it is not a case of 'run over' rather 'untoward incident'.

12. Learned counsel for the respondent relying upon the finding of Hon'ble Apex Court in Special Leave Petition (C) no. 26625 of 2015 in Kamrunnissa Vs. Union of India, has submitted that the Hon'ble Apex Court has found that when the dead body is found cut into two pieces, it does not happen to be a case of 'untoward incident' rather 'run over'. But the aforesaid observation of the Hon'ble Apex Court is not applicable in the case under hand as in the aforesaid case, the deceased was 'run over' by the train in the course of crossing the railway track as he did not notice the oncoming train, but in the case under hand, the deceased was cut into two pieces by



falling from the train in the course of travelling by the said train.

13. In the aforesaid facts and circumstances of the case, I find and hold that the appellant has succeeded to establish her case by adducing cogent, clinching and worth credence evidence and she is entitled to get compensation as claimed by her, hence, the impugned order passed by the learned Tribunal is set aside and the respondent is directed to pay compensation to the tune of Rs. 4,00,000/- (four lacs) as per Part-I to the Schedule of Rule 3 of the Railway Accident and Untoward Incident (Compensation) Rules 1990 to the appellant within three months from the date of completing formalities by the appellant in this regard.

14. Accordingly, this appeal is allowed.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
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