

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.659 of 2013

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Ahilya Devi W/o Late Bihar Singh Resident of Village Kul, P.O. + P.S. + District Nalanda.

.... Appellant/s

Versus

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

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. S. Pratap
Mr. Harendra Pandey
Mr. Arvind Kumar Verma
For the Respondent/s : Mr. Bijoy Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA

JAISWAL

ORAL JUDGMENT

Date: 11-10-2017

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

2. This Miscellaneous Appeal has been filed by the appellant against the order dated 14.08.2013 passed by Member (Technical), Railway Claims Tribunal, Patna Bench, Patna in O.A. no. 00153 of 2005, whereby learned Tribunal dismissed the claim petition of the claimant.

3. Factual matrix of the case is that the claimant Ahilya Devi filed claim petition bearing O.A. no. 00153 of 2005 for awarding compensation to the tune of Rs. 12,00,000/- on account of death of her husband Bihar Singh in the train accident with the case in succinct that on 16.04.2005, Bihar Singh was travelling by 547 DMU train from Mahuri Halt to Biharsharif in second class



compartment purchasing ticket bearing no. 10067 dated 16.04.2005. During the course of travelling, he fell down from the said train near the down signal of the Nalanda Railway Station and sustained injury which proved fatal.

4. The claimant examined herself in the case as AW-1 and also filed several documents in buttress of her case.

5. The respondent put its appearance in the case and filed written statement with the case that the deceased was not a *bona fide* passenger of the aforesaid train and it is a case of 'run over' and not 'untoward incident', hence, the Railway is not liable to pay any compensation to the claimant.

6. After hearing the parties and perusing the record, learned Tribunal dismissed the aforesaid claim case by impugned order.

7. Being aggrieved and dissatisfied with the aforesaid Order, the claimant has preferred the present Misc. Appeal.

8. It is submitted by the learned counsel for the appellant that the deceased was travelling by 547 DMU train after purchasing a ticket which was recovered from his possession at the time of accident and his death as evident from the inquest report and final report submitted by the police. It is also submitted that the deceased has died after falling from the train during the course of journey, hence, it is not a case of 'run over' rather "untoward



incident”. It is further submitted that it is not a case of respondent that the time of passing of aforesaid train through Nalanda Railway Station is of night and not the morning. But, learned Tribunal setting up a third case, has dismissed the case *inter alia* on the ground that passing time of the said train is of morning which creates serious doubt about the case of the claimant. Moreover, there is nothing on record to give such finding by the learned Tribunal and the learned Tribunal has given such finding without any material and evidence on record.

9. On the other hand, learned counsel for the respondent submitted that it is a case of ‘run over’ as the Station Master in its Memo Ext-A2 has reported the same to be a case of ‘run over’ and not the case of ‘untoward incident’, hence, the Railway is not liable to pay any compensation to the claimant. It is further submitted that learned Tribunal after correctly appreciating the facts and evidence available on record, has rightly dismissed the case of the claimant and the impugned order is liable to be upheld and this appeal has no substance in it and is liable to be dismissed.

10. From perusal of record, it appears that it is not a case of the respondent that the timing of passing of the aforesaid train through Nalanda Railway Station is of morning and not the night as it has not taken any such case in its written statement. But, the learned Tribunal *inter alia* finding the timing of passing of the said



train as of morning while the accident is said to be of the night has dismissed the claim case. Moreover, the aforesaid finding of the learned Tribunal does not appear to be based on any document available on record. Learned counsel for the appellant submitted that the timing of arrival of the said train at Nalanda Station is of 7:55 PM and not in the morning as evident from the chart of the timing of the running train.

11. In the aforesaid facts and circumstances, the aforesaid finding of the learned Tribunal appears to have been given without any evidence on record. Accordingly, it is set aside and the case is remitted back to the learned Tribunal to give finding in the case after according opportunity to the parties to lead evidence in this regard. Accordingly, this appeal is allowed.

12. The learned Tribunal is directed to dispose of the claim case positively within two months from the date of receipt/production of a copy of this order.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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