

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.117 of 2013

=====

Renu Sinha, W/o Late Sanjiv Kumar Sinha @ Rupak Kumar Sinha, R/o Village-Dona House, B.N. Jha Road, Gaya, P.S. Kotwali, District-Gaya.

.... Appellant/s

Versus

The Union of India through the General Manager, Eastern Railway, Kolkata

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. A.N. Mishra

Mr. Anant Kumar

For the Respondent/s : Mr. Bijoy Kumar Sinha

=====

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 15-09-2017

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

2. This appeal has been filed against the Order dated 27.11.2012 passed by Member (Technical) RCT/Patna in Claim Application no. 0A 00235 of 2002 whereby the learned Tribunal has dismissed the aforesaid claim case of the appellant.

3. Factual matrix of the case is that Renu Sinha filed the aforesaid claim case for awarding compensation to the tune of Rs. 4 lacs against the Eastern Railway Kolkata with the case in succinct that on 12.06.2002 her husband Sanjiv Kumar Sinha boarded the train namely, Patna Hatia Express at Patna Junction in general compartment with general ticket bearing no. B 23697342, but



accidentally fell down from the train at the originating station itself due to heavy rush 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 appellant has preferred the present appeal.

7. It is submitted by the learned counsel for the appellant that the deceased was a *bona fide* passenger and boarded the train by purchasing a valid ticket. The said blood stained ticket has also been recovered from the pocket of the deceased on the spot. The said case was instituted on the basis of application filed by own brother of the deceased namely, Sanjay Kumar Sinha on getting information of the accident and after investigating the matter, the I.O. has submitted final report, finding the case true. It is further submitted that the deceased has died in untoward incident by falling from the train during the course of journey. Hence, the appellant is entitled to get the aforesaid compensation. It is further submitted that though the address of the informant (Sanjay Kumar Sinha) is of Gaya, but at the time of accident, he was in Patna and merely by giving address of Gaya in affidavit, it does not necessarily infer that he was



living in Gaya at that time. The respondent has also not adduced any ocular or documentary evidence to rebut the aforesaid case of the appellant. The appellant happens to be wife of the deceased. Though in the identity card (Ext. A-11) name of the deceased is written as Rupak Kumar Sinha, but the name of the deceased was actually Sanjiv Kumar Sinha @ Rupak Kumar Sinha which stands established by the inquest report (Ext. A-6), final report (Ext. A-9) and post mortem report (Ext. A-8) submitted by the police and doctor. The respondent has also not adduced any evidence in rebuttal of the aforesaid case of the appellant, but learned Tribunal has wrongly dismissed the case of the appellant without appreciating the facts and evidence on record which is liable to be set aside.

8. On the other hand, it is submitted by the learned counsel for the respondent that it is the case of 'run over' and not of untoward incident. Though, the Station Master has issued the memo regarding accident, but the first information report has not been lodged on the basis of said memo rather on the basis of the application filed by the brother of the deceased who does not happen to be the eye witness of the accident as he was not present at the accident site at time of accident and the police has collusively submitted final report in favour of the appellant. It is further submitted that original ticket was not produced before the Tribunal



rather the Xerox copy was filed which is manipulated and forged one. Thus, the deceased was not a *bona fide* passenger. The identity of the claimant (wife of the deceased) also does not stand established as as per the voter identity card of the claimant Renu Sinha filed by her (Ext. A-11), name of her husband is Rupak Kumar Sinha and not Sanjiv Kumar Sinha @ Rupak Kumar Sinha. 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 and the impugned order which is liable to be sustained and this appeal has no substance in it and is liable to be dismissed.

9. From perusal of record, it appears that it is the case of the claimant that the deceased had boarded the train namely, Patna Hatia in general compartment at Patna Junction by purchasing the ticket bearing no. B 23697342. On perusal of the inquest report (Ext. A-6) prepared by the police on the very date of accident at the accident site, it appears that a blood stained ticket bearing no. B 23697342 dated 12.06.2002 issued from Patna Junction to Chandarpura was recovered from the pocket of the shirt of the deceased. The said fact is also found mentioned in the final report submitted by the I.O. after investigation of the case marked as Ext. A-9. Number, date and name of the station mentioned in the



aforesaid ticket matches with the description given by the informant Sanjay Kumar Sinha and also by the claimant in her claim petition. As the aforesaid ticket was recovered from the pocket of the deceased on the spot just after the accident and it was stained with blood, it candidly indicates that the deceased had boarded the said train after purchasing the said ticket and he happened to be the *bona fide* passenger.

10. The record further indicates that Station Master of Patna Junction vide its memo dated 12.06.2002 (Ext. A-4) at 10:00 PM has reported to Officer-in-Charge G.R.P. Patna that one man aged about 35 years was run over and killed by the aforesaid train. The aforesaid case has been instituted on the basis of written application (Ext. A-5) filed by own brother of the deceased namely, Sanjay Kumar Sinha on the date of accident, and on the said application the aforesaid case was investigated by the G.R.P. Patna and finding the case true, I.O. has submitted final report (Ext. A-9). On perusal of inquest report (Ext. A-6) as well as final report (Ext. A-9) it appears that deceased has died due to falling from the aforesaid train due to rush in the train and his leg was amputated in the accident. The autopsy of the dead body of the deceased was also conducted by the doctor vide postmortem report (Ext. A-8) and opined cause of death as haemorrhage and shock due to injuries sustained by the deceased



on his leg and other parts of his person. The aforesaid documents vividly indicates that deceased has died in the accident by falling from the train during the course of journey in the said train.

11. Though, from perusal of the affidavit filed by Sanjay Kumar Sinha, it appears that he has given his address as Dona House, B.N. Jha Road, P.S. Kotwali, District-Gaya, but merely giving the aforesaid address, in my considered opinion, does not necessarily rule out his presence at Patna arriving at the place of accident on getting information of the accident as alleged by him in the aforesaid affidavit and in his written application. The respondent has also not adduced any ocular or documentary evidence that at the time and date of accident Sanjay Kumar Sinha was not present at Patna rather in Gaya. Moreover, the said witness was not cross-examined by the prosecution on the ground that he does not happen to be the eye witness. The averment made by him in his examination-in-chief stand admitted by the respondent.

12. Though, the claimant and the Sanjay Kumar Sinha do not happen to be the eye witness of the accident, but in my considered opinion, mere not being the eye witness of the accident, the claim case of the appellant cannot be thrown out outrightly as on perusal of the documents filed by the claimant, it appears that the deceased has died in the accident by falling from the train during the



course of journey.

13. On the perusal of the identity card (Ext A/11) filed by the claimant, it appears that name of the claimant as mentioned in the identity card is Renu Sinha W/o Rupak Kumar Sinha but name of the deceased is said to be Sanjiv Kumar Sinha @ Rupak Kumar Sinha. Mere mentioning alias name of the deceased Rupak Kumar Sinha in the claim petition as well as the written application does not rule out identity of the claimant as the wife of the deceased because from the perusal of the inquest report (Ext. A-6), final report (Ext. A-9), death certificate of the deceased (Ext. A-12) and postmortem report (Ext. A-8), it appears that everywhere name of the deceased is mentioned as Sanjiv Kumar Sinha @ Rupak Kumar Sinha which in my opinion, is sufficient to establish the identity of the claimant as wife of the deceased.

14. Though, in the memo issued by the Station Master, it is mentioned that the deceased has died due to run over. On that very ground, only the claim of the claimant should not have been dismissed as it is established case of the claimant that the deceased was travelling in the train at the time of accident and has died by falling from the train due to rush in train during the course of journey. The aforesaid accident comes under the purview of 'untoward incident' as defined in *Section 123 (c)(2) of The Railways Act, 1989*



and the claim for the said incident is maintainable under *Section 124-A of The Railways Act, 1989*. Hon'ble Apex Court in ***Union of India Vs. Prabhakaran Vijaya Kumar & others reported in 2008(4) PLJR (SC) 40*** has been pleased to rule that *we are of the opinion that it will not legally make any difference whether the deceased actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an 'accidental falling of passenger from a train carrying passengers'. Hence, it is an 'untoward incident' as defined in Section 123(c) of the Railways Act.* A co-ordinate Bench of this Court in ***Ranjan Roy Vs. The Union of India through General Manager, Eastern Railway reported in 2014(3) PLJR 785*** has been pleased to rule that *a death on a railway track would be presumed to be a case of 'untoward incident' unless proved otherwise. A 'run over' is a case of 'untoward incident' and vice versa unless it comes within the proviso of Section 124-A. Exhibit reports death due to amputation by coming under the wheels of a train and nothing else in the circumstances it was highly presumptuous for technical member of the tribunal to hold that it was a case of 'run over' and not falling within 'untoward incident' and rejecting the claim by creating a third category is beyond the provision of Section 124-A and its proviso. Rejection of claim for non-recovery of ticket is also not correct in*



*view of issue already settled by the High Court earlier in another case that a person found within the precinct of the railway station would logically have a presumption that he had a ticket unless proved to contrary by the railways. Hence, the claimant is entitled for compensation with interest. A co-ordinate Bench of this court in **Ram Sudha Devi Vs. The Union of India represented through the General Manager, East Central Railway, Hazipur (Bihar)** reported in 2013(1) PLJR 727 has been pleased to rule that denial on the ground that deceased was not a bona fide passenger having no railway ticket nor there is any eye witness to the incident, when Railway did not adduce any evidence nor supported that incident occurred due to criminal act of the deceased while applicants witnesses supported the incident, purchasing of the railway ticket and the deceased boarded the train, is not sustainable in the eye of law and is set aside.*

15. 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 this appeal is allowed accordingly.

16. 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 along with interest @6% per annum to the appellant within three months from the date of completing formalities by the appellant in this regard.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	23.09.2017
Transmission Date	N.A.

