

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.133 of 2013

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Bhumi Mehta S/o Sri Kabeshwar Mehta R/o Village - Khunti Rahi, Belasadi, P.S.
Kumarkhand, Distt. - Madhepura (Bihar)

.... Appellant/s

Versus

The Union of India through its General Manager, N.E. Railway, Gorakhpur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dharmendra Kumar Pandey

For the Respondent/s : Mr. Anil Singh

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA

JAISWAL

ORAL JUDGMENT

Date: 31-10-2017

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 20.12.2012 passed by Member (Technical) RCT/Patna in Claim Application no. 0A 000222 of 2002 whereby the learned Tribunal has dismissed the aforesaid claim case of the appellant.

3. Factual matrix of the case is that Bhumi Mehta filed the aforesaid claim case under Section 125 of the Railways Act against the N.E. Railway Gorakhpur for awarding compensation to the tune of Rs. 4,50,000/- on account of death of his son namely, Pawan Kumar Mehta in 'untoward incident' on 19.04.2002 with the case in succinct that on 19.04.2002 his son Pawan Kumar Mehta



purchasing a IInd class journey ticket from Saharsa to New Delhi, boarded train bearing no. 5517 UP Hariharnath Express for proceeding to Punjab. The coach in which he boarded was over crowded resultantly his son fell down from the running train at Simari Bakhtiyarpur Railway Station due to jostling of passengers inside the coach and died on the spot.

4. The respondent put its appearance in the case and filed a written statement. In ocular evidence, the claimant examined two witnesses including himself and also filed several documentary evidence.

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 (Pawan Kumar Mehta) was a *bona fide* passenger as he had boarded the aforesaid train by purchasing a valid IInd class journey ticket and he fell down from the aforesaid train in course of travelling and sustained injury which proved fatal. The aforesaid case of the claimant stands substantiated by ocular as well as documentary evidence filed by him, but ignoring the aforesaid ocular and documentary evidence, learned Tribunal has dismissed the aforesaid claim case of the appellant finding the deceased not a bona



fide passenger and the death of the deceased not due to falling from the aforesaid train which 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 a *bona fide* passenger as neither any ticket has been furnished by the appellant nor was found from the possession of the deceased at the time of accident. Moreover, the appellant claims to have identified the dead body of the deceased on third day of the accident from his attire, but the police has submitted final report naming the deceased as Pawan Kumar Mehta on the following day of the accident i.e. on 20.04.2002. Though, the police has claimed to have identified the deceased on the basis of the identity card recovered from his possession, but the said identity card has not been brought on record by the Railway or by the appellant. It is further submitted that the dead body of the deceased was received for conducting autopsy in Sadar Hospital, Khagaria on 20.04.2002 at 01:35 PM and the same was conducted at 04:10 PM, but the inquest report (Ext-A/6) indicates that the said report was prepared on 20.04.2002 at 05:00 PM. The aforesaid discrepancy creates serious doubt about the death of the deceased in the aforesaid train accident and also regarding the sanctity of the case of the appellant 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 appellant 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 Pawan Kumar Mehta is said to have died by falling from the train bearing train no. 5517 UP Hariharnath Express at Simari Bakhtiyarpur Railway Station on 19.04.2002. The FIR (Ext-A-3) regarding the said incident was lodged on 20.04.2002 on the basis of fardbeyan of one Nandlal Ram regarding the death of the unidentified person by falling down from the aforesaid train. From perusal of fardbeyan of Nandlal Ram (Ext-A-5), it appears that he has claimed to have spotted a dead body of unidentified person lying on the railway track at platform no. 1. The said fardbeyan has been recorded on 20.04.2002 at 05:00 PM. The aforesaid documents indicate that dead body of the person lying on the railway track was not identified by the time of recording the fardbeyan of Nandlal Ram and lodging the F.I.R. But, the inquest report (Ext-A-6) indicates that the dead body was identified as that of Pawan Kumar Mehta on the basis of identity card received from his possession. The said inquest report has also been prepared on 20.04.2002 at around 05:00 PM exactly on the date and time of recording the fardbeyan. The said aspect of the case creates serious doubt about the identification of the deceased Pawan Kumar Mehta in the said accident. As had the deceased been identified as Pawan Kumar Mehta at the time of preparation of inquest report, the same



would have been mentioned in the *fardbeyan* which was also recorded on the said date and at the same time, but it did not find place in the *fardbeyan*. Moreover, as per the inquest report, the deceased was identified on the basis of identity card recovered from his possession, but the said identity card has not been brought on record either by the appellant or by the police in substantiation of its case that the deceased was identified as Pawan Kumar Mehta on the basis of identity card recovered from his possession.

10. As per statement of appellant (AW-1) recorded in paragraph 1 of his cross-examination, the age of his son was 10 years at the time of accident, but the inquest report (Ext-A6) and postmortem report (Ext-A7) indicate the age of the deceased as 25 years. Said aspect of the case eloquently indicates that the dead body recovered by police at the aforesaid place was not of son of appellant namely, Pawan Kumar Mehta rather was of someone else.

11. From perusal of inquest report (Ext-A6), it appears that the said inquest report was prepared on 20.04.2002 at around 05:00 PM, but the postmortem report (Ext-A-7) indicates that the dead body of the deceased was received in the Sadar Hospital, Khagaria for conducting autopsy on 20.04.2002 at around 01:35 PM and autopsy was conducted at 04:10 PM. The aforesaid aspect also creates serious doubt about the case of the appellant as had the dead body been received in the Sadar Hospital, Khagaria on 20.04.2017 at



01:35 PM how the inquest report would have been prepared on the said date at 05:00PM. The final report (Ext-A-4) submitted by police on 20.04.2002 indicates that the said report contains the name of the deceased as Pawan Kumar Mehta, but the I.O. has not mentioned the basis for identification of the said deceased in the said report. Though, as per the inquest report, the deceased was identified on the basis of identity card received from his possession, but the said fact is not found mentioned in the final report submitted by the police. The said aspect of the case also creates serious doubt about the case of the appellant.

12. As per the statement of appellant AW-1 recorded in paragraph 3 of his cross-examination, one Arvind Mehta was travelling along with the deceased, but the said Arvind Mehta who happens to be the material witness and was travelling with the deceased Pawan Kumar Mehta by the aforesaid train has not been examined by the appellant rather withheld by him and no explanation has been assigned for his non-examination. Hence, adverse inference is drawn against the appellant.

13. Though, Ranbir Kumar Mehta (AW-2) has stated in his examination-in-chief that he had purchased IInd class journey ticket for Pawan Kumar Mehta for travelling from Saharsa to New Delhi and said Pawan Kumar Mehta had boarded the aforesaid train before him, but the said ticket was not recovered from the possession



of the deceased at the time of accident which creates serious doubt about travelling of Pawan Kumar Mehta from the said train with valid ticket

14. In the aforesaid facts and circumstances of the case, I find and hold that the appellant has utterly and miserably failed to substantiate by adducing reliable, trustworthy and cogent evidence that the deceased Pawan Kumar Mehta was a *bona fide* passenger and was travelling by train bearing no. 5517 UP Hariharnath Express and fell down from the said train during the course of travelling at Simri Bakhtiyarpur Station and died. Hence, the aforesaid claim case filed by the appellant is not maintainable. The impugned order passed by the learned Tribunal is correct and legal and does not warrant any intervention and the same is upheld. Accordingly, this Miscellaneous Appeal is dismissed.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
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