

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.725 of 2011

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Most. Vidya Devi, wife of Lal Chandra, Resident of village – Koilasa Bazar, P.S.-
Koilasa Bazar, District – Azamgarh (U.P.).

.... Appellant/s

Versus

1. Union of India, through its General Manager, North Eastern Railway,
Gorakhpur.
2. Union of India, through its General Manager, East Central Railway, Hazipur,
Bihar.

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Arvind Kumar Sinha, Advocate.

For the Respondent/s : Mr. Naresh Dikshit, Advocate.

Mr. Brij Bihari Tiwary, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date: 25-08-2018

Heard learned counsel for the appellant and learned
counsel for the respondents on this miscellaneous appeal.

2. This miscellaneous appeal has been preferred by the
claimant against the order dated 15.03.2011 passed by the Member
(Judicial), Railway Claims Tribunal, Patna Bench, Patna in Claim
Application No. OA000131/2000 whereby the learned Tribunal
rejected the claim application of the appellant.

3. Factual matrix of the case is that the appellant Most.
Vidya Devi filed Claim Application No. OA000131/2000 for
awarding compensation to the tune of Rs. 4,25,000/- on account of
death of her husband, namely, Lal Chandra in the railway accident
with the case in succinct that her husband Lal Chandra was a CRPF



personnel. He was on casual leave from 19.04.1999 to 28.04.1999 and taking the aforesaid leave, he was travelling by Train No. 5609 UP Awadh Asam Express from Guwahati on 19.04.1999. During the course of travelling when the said train arrived at outer signal of the Barauni Junction on 20.04.1999, he fell down from the running train and sustained grievous injury. After according him primary medical aid, he was rushed to Sadar Hospital, Begusarai where he succumbed to his injury during the course of treatment.

4. The respondent put its appearance in the case and filed written statement taking specific case that the deceased was not a bonafide passenger rather was travelling on the roof of the train and fell down from the roof of the train at outer signal of Barauni Junction and subsequently succumbed to his injury. It is not a case of untoward incident. Hence, the claimant is not entitled to get any compensation. Claimant adduced ocular as well as documentary evidence in buttress of her case.

5. After hearing the parties and perusing the record, the learned Tribunal rejected the aforesaid claim case of the appellant vide order dated 15.03.2011.

6. Being aggrieved and dissatisfied with the aforesaid order, the appellant has preferred this miscellaneous appeal.

7. It is submitted by learned counsel for the appellant



that the deceased was a bonafide passenger. He was a CRPF personnel and was travelling in the aforesaid train by purchasing ticket which was lost during the accident. The co-passenger of the deceased namely Anand Singh vide letter marked as A-14 written to the claimant has also narrated that the deceased was travelling by the said train along with him, but on the way he went missing. Deceased being the responsible person was travelling by the said train as bonafide passenger and fell down from the running train. So it is a case of untoward incident. Hence, respondent is liable to pay compensation to the appellant as claimed by her.

8. From perusal of the record, it appears that the appellant has claimed that her husband (deceased) was a CRPF personnel and he was on casual leave from 19.04.1999 to 28.04.1999, but he has not adduced any evidence either regarding his appointment in the CRPF or taking casual leave by him. Though the claimant, examined herself as AW-1 has stated that the deceased was travelling by the said train and fell down from the running train and met the accident, but she does not happen to be either co-passenger of the deceased or eye witness of the occurrence. The appellant has laid much emphasis on the letter written by Anand Singh marked as A-14 in buttress of her case. But from perusal of the aforesaid letter, it appears that in the said letter the said Anand Singh has nowhere



stated that the deceased was travelling by the said train by purchasing ticket and moreover he has also not stated about falling of the deceased from the running train. More so, the aforesaid Anand Singh has not been examined by the appellant in substantiation of her case that the deceased was travelling by the said train as bonafide passenger and fell down from the running train and sustained injury. Thus, there appears to be no convincing and plausible evidence on behalf of the appellant to substantiate that the deceased was a CRPF personnel and was travelling in the aforesaid train by purchasing ticket as a bonafide passenger and fell down from the compartment of the train.

9. On the other hand, specific case of the respondent is that the deceased was travelling on the roof of the train and fell down from its roof at outer signal of Barauni Junction and met the accident and subsequently succumbed to his injury. From perusal of the fardbeyan marked as A-3 which happens to be evidence of the appellant as the same has been filed by her in buttress of her case, it appears that the informant Umashankar Singh who happens to be GRP personnel has stated that the deceased was travelling sitting on the roof of the train and fell down from the roof of running train at the outer signal of the Barauni Junction and sustained injury. He was rushed to the hospital where he succumbed to his injury during the



course of treatment. It is also worth noting that if the deceased was travelling by sitting inside the compartment of the train and there is no case or evidence of the appellant that the deceased was travelling standing at the gate of the train or there was any jostling or hustling by the passenger in the train or the deceased had arrived at the gate of the train to alight from the train at Barauni Junction and fell down from the running train due to jostling among the passengers, then million dollar question arises that when the deceased was travelling sitting inside the compartment of the train, then how he fell down from the running train from the said compartment which remains unanswered.

10. In the facts and circumstances of the case, I find and hold that the deceased was not a bonafide passenger of the train as he was travelling by sitting on the roof of the train and fell down from the roof of the running train and met the accident which proved fatal. Hence, the appellant is not entitled to get any compensation for the fault of the deceased himself in the accident and it is not a case of untoward incident. Accordingly, this appeal is dismissed.

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	29.08.2018
Transmission Date	29.08.2018

