

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.173 of 2015

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1. Manju Devi wife of late Harish Kumar Choudhary.
 2. Sunil Kumar Choudhary son of Late Harish Kumar Chaudhary
 3. Vijay Kumar Choudhary son of late Harish Kumar Chaudhary
 4. Renu Kumari D/o Late Harish Kumar Choudhary
 All resident of village- Pachrukhi Itawa, P.S.- Dharhara, District-Munger.

.... Appellant/s

Versus

1. The Union of India through G.M. Eastern Railway, Kolkata.
 2. The G.M. Eastern Railway, Kolkata.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ram Sevak Choudhary
 For the Respondent/s : Mr. Anil Singh

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

CAV JUDGMENT

Date: 27 -06-2018

1. This miscellaneous appeal has been preferred by the applicants-appellants (hereinafter referred to as 'the applicants') against order dated 16.4.2015 passed by the Member (Technical) RCT/ Patna Bench in Claim Application no. MA (OA) 00024/2008 by which and whereunder he dismissed the claim of the applicants.

2. The brief fact, which lies to file this miscellaneous appeal, is that one late Harish Kumar Choudhary, who happened to be husband of applicant no.1, Manju Devi, was traveling by Kajra Cooli passengers train on 12.2.2007 having his valid pass for



traveling. The aforesaid pass had been issued in the year 2005 and was valid till superannuation of late Harish Kumar Choudhary who was an employee of Jamalpur railway workshop. The further case of the applicants is that on 12.2.2007 the aforesaid Harish Kumar Choudhary boarded in Kajra Cooli passengers train at Dharhara railway station for going to Jamalpur railway workshop but unfortunately, he fell down from the running train near Jamalpur railway workshop due to pull and push of other passengers. He was taken to railway hospital but was declared brought dead. The concerned attending doctor sent memo to GRP Jamalpur where GRP lodged UD case no. 05/2007 and submitted final report. The inquest report was prepared. Post mortem report of dead body was done at Sadar hospital, Munger. The applicants claimed themselves to be dependents of deceased Harish Kumar Choudhary and accordingly, they claimed compensation of Rs. 4 lakhs from the respondents.

3. Written report was filed on behalf of the railways in which railways denied the claim of the applicants and averred in the written report that the deceased Harish Kumar Choudhary was not a bonafide



passenger and, as a matter of fact, death of the deceased Harish Kumar Choudhary was a case of run over and accordingly, railways prayed for dismissal of the claim of the applicants.

4. On the basis of the pleadings of the parties, Railway Tribunal framed following issues:-

i) Whether the deceased was a bonafide passenger?

ii) Whether the deceased died due to the alleged untoward incident, as defined under section 123(c) (2) of the Railways Act, 1989?

iii) Whether the applicants are dependents of the deceased?

iv) Whether the applicants/dependents of the deceased are entitled to get compensation, if yes, to what extent?

5. The claimants adduced evidence in support of their claim but no evidence was adduced on behalf of the respondents. However, learned tribunal, having analyzed the materials available on record, held that applicants failed to prove that the deceased died due to untoward incident within the meaning of section 123-C of the Railways Act and mere run over by the train can not entitle the applicants to get benefit of sections 123-C and



124-A of the Railways Act.

6. Learned counsel for the applicants challenged the impugned order arguing that learned tribunal completely failed to take notice of this fact that the deceased Harish Kumar Choudhary was an employee of Jamalpur railway workshop and railway pass had been issued to him which was valid till his superannuation and moreover, even if it assumed that the railway pass was not found in possession of the deceased at the time of recovery of his dead body, then also, it can not be said that the deceased Harish Kumar Choudhary was not a bonafide passenger.

7. Learned counsel for the applicants further, submitted that the learned tribunal also failed to take notice of the materials available on record and, as a matter of fact, learned tribunal committed error in refusing the claim of the applicants.

8. Learned counsel for the applicants cited unreported order dated 24.9.1993 passed by a coordinate bench of this court in Misc. Appeal no. 531/2012 and submitted that coordinate bench of this court, in almost similar nature of case, held that case of run over is,



nowhere, distinguishable from untoward incident and every case of untoward incident is case of run over until railway administration proves by oral and documentary evidence that the occurrence falls within the category detailed in proviso to section 124-A of the Act. Learned counsel also relied upon unreported judgment dated 17.9.2010 passed in M.A. no. 308/2009 by coordinate bench of this court as well as unreported judgment dated 6.3.2012 passed in M.A. no. 109/2011.

9. On the other hand, learned counsel appearing for the respondents refuted the above stated submissions arguing that the learned tribunal rightly held that the deceased was not a bonafide passenger and, as a matter of fact, he died in a case of run over and the aforesaid fact has been supported by the documents brought on record on behalf of the applicants. He, further, submitted that the applicants are not entitled to get compensation in case of run over. He cited unreported judgment of Apex Court dated 1.2.2017 passed in Special Leave petition (C) no. 2266/2015, unreported judgment dated 14.8.2015 passed in M.A. no. 110/2013 delivered by coordinate bench of this court and unreported judgment of High Court of



Judicature Allahabad at Lucknow dated 16.7.2012 passed in first appeal from order defective no. 763/2011.

10. Having heard rival contentions of both parties, I went through the record.

11. Admittedly, in support of their claim, applicants produced inquest report, post mortem report, formal FIR of UD case no. 05/2007 as well as other documents. Furthermore, it is also an admitted position that only applicants Manju Devi got examined herself in support of the claim of the claim applicants but she in her cross-examination fairly admitted that she had not seen the alleged accident and she got information about the alleged accident from others and thereafter, she went to the place of occurrence and saw the dead body of the deceased on the same day. It is also admitted position that inquest report of the deceased was prepared on 12.2.2007 by the local police and the concerned police officer while preparing inquest report learnt that the deceased fell from running train as it has been mentioned by the concerned police officer at para 7 of the inquest report. The post mortem report of the deceased goes to show that lacerated cut wound of the lower interior neck and head attached



with trunk only by skin was found. The doctor opined that the aforesaid injury was caused by train. Therefore, it is not in dispute that the deceased died in a train accident.

12. Section 124-A of the Railways Act, 1989 says that when in course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependent of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration, if the passenger dies or suffers injury due to—

- (a) suicide or attempted suicide by him;
- (b) self-inflicted injury;
- (c) his own criminal act;
- (d) any act committed by him in a state of



intoxication or insanity;

(e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

13. Furthermore, the explanation of the aforesaid proviso says that for the purpose of this section “passenger” includes—

(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.

Untoward incident has been defined in section 123-C of the Railways Act, 1989 which says that untoward incident means (i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or



in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

2. the accident falling of any passengers from a train carrying passengers.

14. From perusal of the aforesaid proviso, it is obvious that if a passenger falls from a running train carrying passenger the said person or his dependent shall be entitled to get compensation.

15. In the present case, applicants claim that the deceased fell from a running train carrying passengers and died due to the aforesaid accident. It has not been denied by the railway that the applicants are not dependants of the deceased. Furthermore, it is an admitted position that the deceased was a railway employee and on the alleged date of the occurrence, he was going by the train to attend his duty. The applicants claim that the railway had issued a railway pass to the deceased. Therefore, even if it assumed that no valid pass was recovered from the possession of the deceased at the time of alleged occurrence, then also, deceased will come under the definition of passenger as per explanation



attached with section 124-A of the Railways Act, 1989.

16. The inquest report prepared by the concerned police officer just after alleged occurrence goes to show that the deceased fell from a running passengers train. Subsequently, after investigation police submitted report to the concerned Magistrate showing the deceased died in a run over case.

17. Section 124-A of the Railways Act, 1989 is a beneficial legislation and therefore, claim raised under section 124-A of the aforesaid Act can not be denied only on technical ground. The railway has right to reject the claim, if claim comes under the proviso of section 124-A of the said Act. The learned Tribunal has rejected the claim of the applicants holding that the deceased died in a run over case but it is a matter of common sense that every case of untoward incident is a case of run over and burden of proof lies upon railway to prove that accident falls within the proviso of Section 124-A of the Railways Act, 1989 but in the present case, the railway has not produced any evidence to show that the occurrence comes under the proviso of section 124-A of the Railways Act, 1989.



18. Learned counsel appearing for the railways relied upon the decision rendered by the Apex Court of this country in Special Leave Petition (C) no. 26625/2015 (Kamrunnissa vs. Union of India) and has argued that the post mort report of the deceased also does not support this fact that the deceased had fallen from a running train but I am not in agreement with the aforesaid submission because in the above stated case, dead body was found lying in two pieces on road whereas in the present case, admittedly dead body of the deceased was found lying on railway track. Moreover, in case of Kamrunnissa (supra) dead body was found in two pieces whereas in the present case, only head was found detached from trunk and the aforesaid injury is possible, if a person falls from a running train. Similarly, learned counsel for railway relied upon judgment delivered by coordinate bench of this court in M.A. no. 110/2013 dated 14.8.2015 as well as judgment delivered by Hon'ble Allahabad High Court Lucknow Bench in first appeal from order defective no. 763/2011 but the facts of the above stated cases are quite different to the fact of the present case and, therefore, in my view, the aforesaid



decisions are also not applicable in the present case. Furthermore, I am of the opinion that the applicants established this fact by placing inquest report that the deceased fell from running train while he was going to attend his duty and, therefore, I am of the opinion that the applicants are entitled to get compensation under Section 124-A of the Railways Act, 1989 and the impugned order of tribunal can not sustain in the eye of law because the impugned order of tribunal is based on conjectures and surmises.

19. On the basis of the above stated discussions and reasons, this appeal is allowed and the impugned order dated 16.4.2015 passed in Claim Application no. MA (OA) 00024/2008 is, hereby, set aside. Accordingly, the claim of the applicants is allowed together with interest at the rate of 6% from the date of filing of the claim case till the date of its realization.

20. The lower court record be returned to the tribunal forthwith.

Shahid

(Hemant Kumar Srivastava, J)

AFR/NAFR	NAFR
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