

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.354 of 2004

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1. Sheela Devi, W/o Late Badri Narain Singh.
 2. Ram Narain Singh, father of late Badri Narain Singh.
 3. Ranjeet Kumar, S/o Late Badri Narain Singh
 4. Madhu Kumari, D/o Late Badri Narain Singh
 5. Puja Kumari, D/o Late Badri Narain Singh
 6. Chotti Kumari, D/o Late Badri Narain Singh.

All residents of village – Rampur, P.O.-Rampur, P.S.-Surajgarha, District –
Lakhisarai.

.... Appellants

Versus

The Union of India represented General Manager, Eastern Railway, Kolkata.

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Rakesh Kumar Sharma, Advocate.

Mr. Rup Anand Krishna, Advocate.

For the Respondent/s : Mr. Anil Singh, Advocate.

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

ORAL JUDGMENT

Date: 27-08-2018

Heard learned counsel for the appellants and learned
counsel for the respondent on this miscellaneous appeal.

2. This miscellaneous appeal has been preferred by the
claimants against the judgment dated 23.04.2004 passed by the
Member (Judicial), Railway Claims Tribunal, Nagpur at Patna in
Claim Application No. OA9800089 whereby the learned Tribunal



dismissed the claim application of the claimants.

3. Factual matrix of the case is that the claimants filed Claim Application No. OA9800089 under Section 16 of the Railway Claim Tribunal Act, 1987 for awarding compensation to the tune of Rs. 2,00,000/- on account of death of Badri Narayan Singh in an untoward incident with the case in succinct that said Badri Narayan Singh was travelling from Kiul to Patna by Vikramshila Express train on 10.08.1997 by purchasing a second class ticket. As there was heavy rush inside the compartment of the train and he had to alight at Patna Junction, hence he arrived near the gate in a bid to alight from the train smoothly and conveniently, but unfortunately he fell down near Rajendranagar Station due to jostling and hustling of the passengers and jerk in the train and died on the spot. Claimants happen to be widow, father, son and daughters of the deceased.

4. The respondent put its appearance in the case and filed written statement. Claimants adduced ocular as well as documentary evidence in buttress of their case, but the respondent did not.

5. After hearing the parties and perusing the record, the learned Tribunal dismissed the aforesaid claim case of the claimants vide judgment dated 23.04.2004.

6. Being aggrieved and dissatisfied with the aforesaid



judgment, the claimants have preferred this miscellaneous appeal.

7. It is submitted by learned counsel for the appellants that the deceased Badri Narayan Singh was travelling by Vikramshila Express train as a bonafide passenger and he fell down from the running train at Rajendranagar Station and died on the spot. Appellants have adduced ocular as well as documentary evidence in buttress of their case. Witnesses of the appellants have stated that the police personnel had recovered the blood stained ticket purchased by the deceased for travelling by the said train from possession of the deceased and the witness Anil Kumar has deposed before the Tribunal that he had purchased second class ticket for the deceased and handed it over to him and saw him off at the Kiul Railway Station. He did not enter at the platform as he could not purchase the platform ticket for him due to heavy rush and crowd. Two other witnesses have unanimously stated that they had witnessed the deceased sustaining injury by falling from the running train (Vikramshila Express) at Rajendranagar Station. Respondent has not adduced any evidence in rebuttal of the aforesaid evidence of the claimants and moreover said witnesses have not been cross-examined by the respondent. Thus the appellants have successfully substantiated that the deceased was a bonafide passenger and was travelling by Vikramshila Express train and fell down from the said



train at Rajendranagar Station and died on the spot in an untoward incident. So the claimants are entitled to get the compensation. It is further submitted that learned Tribunal has denied to award the aforesaid compensation to the claimants wrongly and illegally finding that it was self inflicted injury of the deceased as the deceased had intentionally boarded the overcrowded compartment. Aforesaid finding of the learned Tribunal is without any basis and arbitrary and capricious.

8. On the other hand, learned counsel for the respondent submitted that though the ticket was handed over to Ranjit Kumar who happens to be the son of the deceased by the police personnel, but no such ticket was produced before the Tribunal and moreover Tribunal has not discussed any documentary evidence adduced by the appellants in its judgment and the judgment of the Tribunal is contradictory as at one place it has stated that the deceased was a bonafide passenger as the ticket was handed over to the son of the deceased by the police personnel recovering it from the person of the deceased and on the other hand it has stated that the ticket was lost in the accident.

9. From perusal of the record, it appears that it is the case of the appellants that the deceased was a bonafide passenger. He boarded Vikramshila Express train at Kiul Railway Station



purchasing IInd Class ticket to travel to Patna and fell down from the aforesaid train at Rajendranagar Station and died on the spot in an untoward incident. In buttress of their case, the claimants have examined four witnesses. Witness Anil Kumar has deposed that Badri Narayan Singh was travelling by Vikramshila Express on 10.08.1997. He saw him off. Badri Narayan Singh boarded the general bogie of the train which was at rear side. Said witness has further stated that he did not purchase the platform ticket for him as there was heavy rush and he left the deceased at the platform of Kiul Railway Station. The deceased somehow managed to board the train due to heavy rush. Said witness has further stated that he purchased one ticket from Kiul to Patna at Rs. 32 and handed over the same to his brother-in-law (deceased). Applicant no.4 who happens to be son of the deceased has deposed before the Tribunal by filing affidavit that the police personnel at Rajendranagar Surgical Emergency ward had handed over the materials recovered from the possession of the deceased including blood stained railway ticket no. 66061 Ex. Kiul to Patna to him. Witness Vikash Kumar has deposed on affidavit that on 10.08.1997, when he arrived near the Rajendra Nagar Station, he saw one man falling down from Vikramshila Express which was passing through Rajendranagar Station while witness Salauddin in his affidavit has deposed that on 10.08.1997, he was at Rajendra Nagar



Station when one unknown passenger had accidentally fallen down from Vikramshila express in evening hours and got badly injured. Said two witnesses have not been examined by the respondent. Hence, for want of cross-examination, aforesaid statements of said two witnesses stand admitted to the respondent. The respondent has not adduced any evidence in rebuttal of the aforesaid evidence of the appellants. Thus from perusal of the aforesaid evidence of the appellants and aforesaid aspect of the case, I find that the deceased was travelling by Vikramshila Express on 10.08.1997 from Kiul to Patna by purchasing second class ticket as a bonafide passenger and he fell down from the aforesaid train at Rajendranagar Station and sustained injury which proved fatal in an untoward incident. Learned Tribunal has also found the deceased to be bonafide passenger. But the learned Tribunal has denied the claim of the appellants merely on the ground that injury sustained by the deceased is self inflicted injury as he had intentionally boarded the overcrowded train as irresponsible and imprudent person, it is not a case of an untoward incident. But the aforesaid finding of the learned Tribunal does not appear to be convincing and appreciable as self-inflicted injury would require intention on the part of the victim to inflict such injury and not mere negligence of any particular degree. As the deceased had boarded the overcrowded train, his intention must be only to



board the train and not to miss the train. He must not have had any intention to inflict injury to him in a bid to get compensation from the Railways.

10. Hon'ble Apex Court in **Union of India Vs. Rina Devi** reported in **2018 (2) PLJR SC 447** has been pleased to held that the the concept of self-inflicted injury would require intention to inflict such injury and not mere negligence of any particular degree. Death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will not fall under the proviso to Section 124A of the Workmen's Compensation Act merely on the plea of negligence of the victim as a contributing factor.

11. Submission of the learned counsel for the respondent that learned Tribunal has passed its judgment without discussing any documentary evidence adduced by the appellants and it has given contradictory finding regarding the ticket as at one place it has found that as per the witnesses account the blood stained ticket was handed over to the son of the deceased by the police personnel at Rajendranagar Surgical Emergency Ward and on the other hand it has found that the ticket was lost is not tenable as the respondent has not assailed the aforesaid judgment and finding of the learned Tribunal by preferring any appeal. Moreover in view of the



consistent unrebutted ocular evidence and evidence of non-cross-examined witnesses of the appellants establishing the deceased to be bonafide passenger and meeting the untoward incident by falling from the train, the aforesaid submission of learned counsel for the respondent does not appear to be convincing and appreciable.

12. Hon'ble Apex Court in **Union of India Vs. Rina Devi (Supra)** has also been pleased to rule that Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 is a beneficial legislation and compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts. However, this order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay.

13. In the facts and circumstances of the case and in view of the aforesaid case law of the Hon'ble Apex Court, respondent is directed to pay the amount of compensation to the tune of Rs. 8 lakhs to the claimants which is prevalent at present within two months from this judgment else respondent will be liable to pay



interest at the rate of 6% on the aforesaid amount of compensation
from the date of this Judgment.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	01.09.2018
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