

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.612 of 2011

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Pramod Kumar Sharma, Son of Late Kapildeo Sharma, resident of Village- Ram Garhia, P.S.- Ara Town, District- Bhojpur (Ara). Appellant.

Versus

The Union of India represented through the General Manager, East Central Railway Hazipur (Bihar). Respondent.

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Appearance :

For the Appellant/s : Mr. Sanjay Kumar, Advocate
Mr. Anant Kumar-1, Advocate.

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 16-08-2018

Heard learned counsel for the appellant on this appeal. None turned up on behalf of the respondent to advance the argument in this case, despite repeated calls.

2. This miscellaneous appeal has been preferred against the order dated 29.04.2011 passed by the Member (Technical), Railway Claim Tribunal, Patna Bench, Patna (hereinafter referred to as the 'Tribunal') in Claim Application/MA No.:63/09 arising out of OA:000202/2004 whereby the learned Tribunal dismissed the claim case of the appellant.

3. The factual matrix of the case is that appellant filed Claim Case No.OA:000202/2004 for awarding compensation to the tune of Rs.4 lakhs on account of death of his father, namely, Kapildeo Sharma in an untoward incident by falling from the running train with the case in succinct that on 29.04.2004 the deceased, Kapildeo Sharma along with co-passenger Shri Binod Kumar was proceeding



from Patna to Ara by 511 up Patna-Buxar passenger train purchasing valid train ticket. Both of them boarded the train at Patna Junction. While the said train was about to reach at Ara Railway Station the deceased and the Binod Kumar arrived at the gate of compartment in order to alight from it and were standing at the gate inside the compartment. As there was heavy rush inside the compartment and the train stops at Ara Railway Station for a brief, there was jostling among the passengers in a bid to alight from the train first and due to the said jostling the deceased fell down from the gate near the Ara Railway Station and died on spot. The matter was reported to the police and accordingly U.D. Case No.10/2004 was registered at the Railway Police Station, Ara.

4. Respondent puts its appearance in the case and filed written statement and contested the same. Appellant adduced ocular as well as documentary evidence in buttress of its case while no evidence was adduced by the respondent in rebuttal of the aforesaid case of the appellant.

5. After hearing the parties and perusing the record, the learned Tribunal dismissed the aforesaid case of the claimant/appellant finding it not to be an untoward incident rather a case of run over vide its order dated 29.09.2008.

6. Being aggrieved and dissatisfied with the aforesaid order dated 29.09.2008 the appellant preferred M.A. No.64 of 2009 before



this Court, which was allowed and after setting aside the aforesaid order of the learned Tribunal the matter was remitted back to it to decide the case afresh finding great error committed by the learned Tribunal in coming to its finding. After receiving the aforesaid case record on remand, the learned Tribunal heard the matter and again dismissed the claim case finding it to be case of run over vide its order dated 29.04.2011.

7. Being aggrieved and dissatisfied with the aforesaid order, the claimant/appellant again filed this miscellaneous appeal.

8. It is submitted by learned counsel for the appellant that the deceased was travelling by 511 Up Patna-Buxar passenger train with co-passenger Shri Binod Kumar by purchasing a railway ticket as a bona fide passenger. While the said train was about to reach at Ara Railway Station the deceased and the Binod Kumar rushed to the gate of compartment in order to alight from it Ara Railway Station and were standing at the gate inside the compartment. As there was heavy rush inside the compartment and the train stops at Ara Railway Station for a brief, there was jostling among the passengers in a bid to alight from the train first and due to the said jostling the deceased fell down from the gate near Ara Railway Station and died on the spot. Said Binod Kumar, who happens to be co-passenger of the train has been examined in the case as A.W.2 and he has deposed before the Court that the deceased was travelling by the said train along with him



after purchasing ticket and due to jostling in the said train he fell down from the running train but no evidence has been adduced on behalf of the respondent in rebuttal of the aforesaid case of the appellant. It is further submitted that in final report the Investigating Officer after grilling the aforesaid Binod Kumar and after making proper investigation in the case has found the deceased died in the accident falling from the running train but the learned Tribunal without any basis and evidence in rebuttal capriciously and arbitrarily held it to be a case of run over instead an untoward incident. It is further submitted that in the Railway Act there is no definition of 'run over'. There is only definition of 'untoward incident' and the learned Tribunal has evolved his own category of accident transgressing its jurisdiction. Section 124 A of the Railway Act, 1989 (hereinafter referred to as the 'Act') provides for compensation on account of untoward incident. Said term 'untoward incident' has been defined under Section 123 (c) of the Act. Even when the provisions of Section 124-A of the Act casts strict liability on the railway administration to pay compensation in any case of untoward incident unless happening of such would be attributed to any of the cases set up in the proviso to the said provision, a new class, i.e., 'run over' has been created by the Tribunal to reject the claim. Hence, the impugned order passed by the learned Tribunal is liable to be set aside.

9. From perusal of the record, it appears that the deceased



was travelling by 511 UP, Patna-Buxar passenger train along with co-passenger Binod Kumar. The said Binod Kumar has deposed before the learned Tribunal that the deceased was travelling in the said train by purchasing ticket before him as bona fide passenger and he fell down from the running train due to jostling inside the compartment and met the fatal accident. The railway has not adduced any evidence in rebuttal of the aforesaid evidence of the appellant. Moreover, From perusal of the final report (Ext. A/6) submitted by the Investigating Officer after investigating the case, it appears that deceased has died by falling from the said train. The said report further indicates that during the course of investigation he had grilled the aforesaid Binod Kumar and on the basis of the account given by him as well as material available on record and on the investigation of the case he has reported it to be a case of untoward incident by falling from the running train. The inquest report marked as Ext.A-4 indicates that the dead body of the deceased was found on the up-line at pole no.590, 10 yards east of Chalisa bridge located near the Ara Railway Station. In the inquest report in column no.8 meant for probable cause of death the police officer has reported the death of the deceased due to slitting from the train.

10. From perusal of record, inquest report and the postmortem report, I do not find the said report to be doctored one. Moreover, the railway has not adduced any evidence either ocular or



documentary in rebuttal of the aforesaid case of the appellant. The finding of the learned Tribunal that the deceased had died by cutting into pieces, indicates it to be case of run over does not appear to be convincing and appreciable in view of un-rebutted and convincing evidence of the appellant that at the time of accident the deceased was travelling along with Binod Kumar and he fell down from the compartment of the train at the Chalisa bridge near the Ara Railway Station due to jostling and sudden jerk. The dead body of the deceased was found near the railway track though severed into two pieces, which might have happened due to falling of the deceased from running train on the railway track and passing of the wheel of the train over him.

11. In the facts and circumstances of the case, I find and hold that the deceased had died in an untoward incident by falling from the running train near the Chalisa bridge located near the Ara Railway Station.

12. From perusal of the record, it appears that the incident had taken place on 29.04.2004 and at the relevant time, the amount of compensation in case of an untoward incident was payable to the tune of Rs.4 lakhs as per Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 which was in vogue at that time now by way of amendment w.e.f. 1st January, 2017 by notification dated 22nd December, 2016 the amount of compensation has been enhanced to



Rs.8 lakhs. The Hon’ble Apex Court in the case of **Union of India Vs. Rina Devi** reported in **2018 (2) PLJR (SC) 447** relying upon earlier judgment of the said Court rendered in **Pratap Narain Singh Deo Vs. Srinivas Sabata** (Four Hon’ble Judges Bench decision) reported in **(1976) 1 SCC 289** has been pleased to held that compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given.

13. In view of the facts and circumstances of the case the discussions made by me hereinabove and in view of aforesaid case law, the impugned order passed by learned Tribunal is hereby set aside. The respondent is directed to pay compensation to the tune of Rs.8 lakhs alongwith interest @ 6% per annum from the date of this judgment to the appellant within two months from today. Accordingly, this appeal stands allowed.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
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