

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.190 of 2012

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Mirja Mugal Beg, Son of Late Mirja Mohiddin Beg, Resident of village – Bardari,
P.S.-Sasaram, District-Rohtas.

.... Appellant/s

Versus

The Union of India through the General Manager, Eastern Railway, Kolkata.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kr. Uday Bhanu Roy, Advocate.

Mr. Anant Kumar-1, Advocate.

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

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

ORAL JUDGMENT

Date: 10-05-2018

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

2. This miscellaneous appeal has been preferred by the
appellant against the order dated 19.12.2011 passed by the Member
(Technical), Railways Claims Tribunal, Patna Bench, Patna in Claim
Application No. OA000112/2002 whereby the learned Tribunal
dismissed the claim application of the appellant.

3. Factual matrix of the case is that the appellant filed
Claim Application No. OA000112/2002 for awarding compensation



to the tune of Rs. 4,00,000/- on account of death of his son in the Railway accident with the case in succinct that on 07.04.2002 his son, namely, Mirja Jafir Beg was travelling by Train No. 3151 UP Sealdeh-Jammu Tawi Express from Dehri-On-Sone to Sasaram. The compartment of the aforesaid train in which his son was travelling was crowded. There was heavy rush inside the coach and the passengers were jostling with each other. So his son was standing near the gate and due to aforesaid rush and jostling, he fell down from the running train at Km 556/15 near Mathuri Bridge (1.5 Km away from Dehri-On-Sone station) and died on the spot near the track. In buttress of his case, the appellant examined himself as AW-1 and one other witness namely Shabbir Ahmad as AW-2.

4. After hearing the parties and perusing the record, the learned Tribunal dismissed the aforesaid claim case of the appellant.

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

6. It is submitted by learned counsel for the appellant that the appellant was travelling by Train No. 3151 UP Sealdeh-Jammu Tawi Express from Dehri-On-Sone to Sasaram and he fell down from the train due to heavy rush and jostling inside the coach and died on the spot. AW-2 Shabbir Ahmad has supported the factum of witnessing the deceased in the aforesaid train. In the inquest



report, police has reported the death of the deceased due to falling from the running train. Post mortem report also goes to corroborate the aforesaid case of the claimant as the doctor has found several injuries on the head of the deceased including fracture injury as anti-mortem injury and has opined the cause of death due to shock and hemorrhage caused by heavy hard and blunt substance. I.O. after investigation of the case submitted final report finding that the deceased has died due to falling from the running train. But the learned Tribunal ignoring the aforesaid evidence dismissed the case of the appellant merely on conjecture and surmises, hence the impugned order is liable to be set aside.

7. On the other hand, learned counsel for the respondent advocating the correctness and validity of the impugned order submitted that it is not a case of untoward incident rather of run over and there is no evidence on record that the deceased was travelling by the aforesaid train and died due to falling from the running train. It is further submitted that the dead body was found near the railway track which itself rules out the death of the deceased due to falling from the running train as in the case of falling from the train, dead body would have been found far from the track and not closed to the track. It is further submitted that the I.O. of the case without making proper investigation of the case and examining the



local witnesses has submitted the final form on the very date of reporting of the accident by the Station Master and the said report is doctored one.

8. From perusal of the record, it appears that AW-2 Shabbir Ahamad has stated in his examination-in-chief that on 07.04.2002 he went Dehi-on-Sone station along with Mirza Zafir Beg who was going to Sasaram from Dehri-on-Sone. Mirza Zafir Beg had purchased a valid second class ticket at Dehri-On-Sone station and boarded the Train No. 3151 UP Sealdah-Jammu Tawi Express to travel from Dehri-On-Sone to Sasaram. There was heavy rush in the general compartment and due to said rush, the deceased was standing near the gate inside the compartment. In Paras-1, 2 & 3 of his cross-examination, the said witness has also stated that on 07.04.2002, the deceased was travelling by the said train from Dehri-on-Sone to Sasaram and he had come to the station to see him off. Nothing convincing and cogent has been elicited in his cross-examination having potential to discard his aforesaid testimony to the effect that the deceased had boarded the said train after purchasing ticket and was travelling by the said train and he was standing near the gate inside the compartment due to heavy rush in the said general compartment. The aforesaid evidence of AW-2 goes to indicate that the deceased was travelling by Train No. 3151 UP Sealdah-Jammu



Tawi Express from Dehri-On-Sone to Sasaram purchasing ticket and he was standing near the gate in the compartment as there was heavy rush in the compartment.

9. First Information Report marked as Exhibit-A/1 indicates that the said Station Master has reported that the deceased had died due to falling from the running train in the column of the cause of death. Inquest report marked as Exhibit-A/3 indicates that the police has opined the cause of death due to falling from the running train. Inquest report also indicates that the dead body of the deceased was found near the railway track at Pole No. 556/15 towards west of the railway station in front of the bridge. The post mortem report (Exhibit-A/4) indicates that the doctor found several head injuries including the fracture injury on his head as anti-mortem injury and opined the cause of death due to shock and hemorrhage due to the aforesaid injury caused by hard and blunt substance and after investigation of the case, I.O. who happens to be personnel of GRP submitted Final Report (Exhibit-A/5) finding that the deceased has died due to falling from the running train. Though the said Final Report has been submitted by the I.O. on the very date of reporting the matter but mere submitting the report within 24 hours after investigation does not make it doubtful and the said report cannot be dubbed as doctored report rather it indicates the sensitiveness and



promptness of the police officer which ought to be appreciated.

10. In the inquest report, it is not mentioned as to at what distance from the railway track, the dead body was found. Railway has also not adduced any evidence about distance of place of finding the dead body from the railway track to establish that the deceased has died due to running over by the train and not by falling from the running train.

11. Aforesaid ocular and documentary evidence in totality goes to establish that the deceased Mirza Jafir Beg was travelling by Train No. 3151 UP Sealdah-Jammu Tawi Express from Dehri-On-Sone to Sasaram on 07.04.2002 and during the course of travelling, he fell down from the running train at Km 556/15 near Mathuri Bridge (1.5 Km away from Dehri-On-Sone station) and died near the track.

12. In the facts and circumstances of the case and in view of the discussions made by me hereinabove, I find and hold that it is a case of untoward incident as defined under Section 123(c) of the Railways Act, 1989 and not a case of run over as found by the learned Tribunal. Hence, the impugned order passed by the learned Tribunal is set aside.

13. As the deceased has died falling from the running train during the course of travelling, the appellant who happens to be



father of the deceased is entitled to get compensation to the tune of Rs. 4,00,000/- from the respondent. Hence, the respondent is directed to make payment of compensation to the tune of Rs. 4,00,000/- within two months from the date of receipt/production of a copy of this order to the appellant.

14. Accordingly, this appeal is allowed.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	14.05.2018
Transmission Date	

