

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.643 of 2012

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Dropadi Devi, wife of Late Jai Prakash Sahani, resident of Village - Salkhua, P.S.
Salkhua, District - Saharsa (Bihar). Appellant.

Versus

Union of India, through Its General Manager, N.E. Railway, Gorakhpur
.... Respondent.

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Appearance :

For the Appellant/s : Mr. Pravin Kumar Gupta, Advocate.

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

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 15-05-2018

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

2. This miscellaneous appeal has been preferred against the order dated 15.03.2012 passed by the Railway Claims Tribunal, Patna Bench in Claim Application No.OA 00169/2000, whereby the learned Tribunal dismissed the claim case of the claimant-appellant (Smt. Dropadi Devi).

3. The factual matrix of the case is that claimant-appellant filed Claim Application No.OA 00169/2000 for awarding compensation to the tune of Rs.4,25,000/- (Four Lakhs and Twenty Five Thousand) on account of death of her husband in the railway accident with the case in succinct that on 09.12.1999 her husband, Late Jai Prakash Sahani was travelling from Vina Ekma Railway Station to Saharsa Junction with a valid second class ticket by train no.333 Up Farbisganj-Saharsa Passenger. There was heavy rush in the



compartment and resultantly her husband fell down from the compartment near north cabin of Saharsa Junction due to sudden jerk coupled with jostling of passengers with each other and died on the spot.

4. Opposite party-respondent filed its written statement and contested the case. After hearing the parties and perusing the record, the learned Tribunal dismissed the aforesaid case of the appellant vide impugned order.

5. Being aggrieved and dissatisfied with the impugned order, the claimant-appellant has preferred this appeal.

6. It is submitted by learned counsel for the appellant that the deceased was travelling by the said train as a bona fide passenger after purchasing the second class ticket. As there was heavy rush and jostling of the passengers in the compartment of the train, he fell down from the run train and sustained serious injury and died on the spot due to aforesaid injury. Thus, it happens to be case of an untoward accident and not the case of run over as observed by the learned Tribunal. It is further submitted that the ticket purchased by the deceased was in his pocket which was handed over to him by the doctor at the time of conducting autopsy of the dead body of the deceased and accordingly he filed the said ticket before the learned Tribunal but the same has not been relied upon by the learned



Tribunal on the flimsy grounds. It is further submitted by appellant that the co-passenger of the deceased, namely, Sri Muneswar Sahani, who happens to be brother of the deceased, by filing affidavit has also supported the case of the claimant but the learned Tribunal wrongly and illegally disbelieved the aforesaid evidence of Sri Muneswar Sahani, hence the impugned order passed by the learned Tribunal is liable to be set aside.

7. On the other hand, learned counsel for the respondent-Railway submitted that the deceased was not travelling by the aforesaid train and had not sustained any injury falling from the said train rather it was a case of run over as the deceased was found between the railway track with his one leg cut into two pieces above the thigh, while the other leg cut near the ankle. Though the appellant had filed ticket said to have been purchased by the deceased and handed over to Muneswar Sahani by the doctor at the time of conducting autopsy of the deceased but neither any postmortem report has been brought on record nor the said doctor has been summoned by the appellant in corroboration of her aforesaid case. It is further submitted that the alleged original ticket filed by the appellant bear the bloodstain while the photostat copy of the ticket filed at the time of claim case does not bear any such stain. Had the original ticket bore the bloodstain the said stain would have been reflected as a dark shade in its photostat



but it is not so. Moreover the name of Muneswar Sahani who is said to be travelling with the deceased at the time of accident is neither mentioned in the claim petition nor in the deposition of the claimant rather the said Muneswar Sahani put his appearance before the Tribunal by filing affidavit 10 years later to the occurrence. He also did not turn up before the Tribunal to face the cross-examination. Thus, the claimant has utterly and miserably failed to substantiate her case. As it is a case of run over, hence the claimant-appellant is not entitled to get any compensation from the respondent-railway and the learned Tribunal considering the facts and circumstances of the case and material available on record has rightly dismissed the claim case of the claimant.

8. From perusal of the record, it appears that as per the case of the claimant the deceased was travelling from Vina Ekma Railway Station to Saharsa Junction with a valid second class ticket by train no.333 Up Farbisganj-Saharsa Passenger as a bona fide passenger. As there was heavy rush in the compartment and the passengers were jostling with each other, the deceased fell down from the running train and died on the spot. From perusal of the report furnished by the G.R.P. in UD case marked as Ext.A-3, first information report and inquest report marked as Ext.A-5, it appears that in none of the aforesaid documents it has come that the deceased



had died falling from the running train. The inquest report further indicates that the dead body of the deceased was found between the railway track with head towards west and leg towards east and his right leg amputated above the thigh while the left leg above the ankle. The postmortem report of the deceased has not been brought on record. The aforesaid documents go to indicate that the deceased has died in the accident met by the running train on the railway track. Though Muneswar Sahani, who is said to be co-passenger of the train and own brother of the deceased, by filing affidavit has made an abortive bid to support the above case of the claimant to the effect that he was travelling along with the deceased by purchasing two tickets one for the deceased and another for him and there was heavy rush in the train and passengers were jostling with each other so they could not manage the seat and were standing. In the meantime, the deceased fell down from the train due to said jostling and died on the spot but the aforesaid affidavit has been filed by the aforesaid Muneswar Sahani 10 years later to the occurrence and during the said period neither there was any such case of the claimant nor the said Muneswar Sahani turned before the learned Tribunal with the aforesaid affidavit nor the claimant either in her claim case or in the affidavit filed before the learned Tribunal has taken such case of travelling of Muneswar Sahani with the deceased at the time of accident. Moreover, the said



witness also did not turn up before the learned Tribunal to face the cross-examination as evident from the impugned order. Hence, the aforesaid evidence of Muneswar Sahani does not appear to be reliable and worth credence.

9. The appellant has filed original ticket which is said to have been purchased by the deceased for travelling by the aforesaid train in a bid to establish that the deceased happened to be a bona fide passenger of the aforesaid train. From perusal of the record, it appears that she had also filed photostat copy of the said ticket at the time of filing of claim petition. Albeit the said original ticket bears some bloodstain on it but the photostat copy of the said ticket does not bear any such stain. As the photocopy has been procured from the original one it must also bear such mark as a dark black shade but there is no such shade in the photocopy of the ticket which goes to creates serious doubt about the aforesaid case of the claimant of travelling the deceased by purchasing the ticket by the said train.

10. As per the case of the appellant the said ticket was handed over to the witness Muneswar Sahani by the doctor at the time of conducting autopsy but neither any autopsy report is on record nor the aforesaid doctor has been summoned by the claimant to corroborate the same. Moreover from perusal of the affidavit of the said Muneswar Sahani it appears that he has no where stated about



handing over the said ticket to him by the doctor conducting the autopsy of the deceased. Ext.A-7 which is the dead body receiving letter indicates that the dead body of the deceased was received by one Jaykant Sahani and not by Muneswar Sahani. Claimant in para-8 of her cross-examination has also stated that Jaykant Sahani had received the dead body in Saharsa hospital after autopsy. The aforesaid document and evidence of claimant itself also goes to rule out handing over of the ticket to Muneshwar Sahani by the doctor at the time of postmortem. Had the Muneswar Sahani was present at the time of postmortem, he would have received the dead body after autopsy but instead someone else naming Jaykant Sahani had received the dead body. The said Jaykant Sahani has not come before the Tribunal for his examination. The most important aspect of the case is that at the time of preparation of inquest report the police had not found said ticket with the deceased. As the police has not mentioned finding any ticket with the deceased at the time of preparing the said report. It is not the duty of the doctor conducting autopsy of the deceased to search the person of the deceased.

11. In the facts and circumstances of the case, I find and hold that the appellant has utterly and miserably failed to substantiate that the deceased was travelling by the said train as a bona fide passenger and died on the spot falling from the running train



rather the inquest report and other documents on record indicate it to be a case of run over made by the running train. Hence, the impugned order passed by the learned Tribunal does not suffer from any illegality or impropriety and it does not warrant any intervention in appeal by this Court and same is upheld and this appeal is dismissed accordingly.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

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