

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.506 of 2016

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Jitendra Paswan, son of Borhan Paswan, resident of village - Akania, P.S. -
Manasi, District - Khagaria.

... .. Appellant/s

Versus

The Union of India through The General Manager, East Central Railway,
Hajipur.

... .. Respondent/s

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Appearance :

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

For the Respondent/s : Mrs. Nivedita Nirvikar, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 19-07-2019

Heard the parties.

2. This miscellaneous appeal has been filed on behalf of claimant/appellant against the judgement and order dated 01.05.2015 passed in Claim Application No. OA 00343/2005 passed by Railway Claims Tribunal, Patna Bench, Patna by which claim application of claimant/appellant has been dismissed.

3. Applicant/appellant who is the father of deceased, in his claim petition has stated that on 11.12.2005 after purchasing a valid second class train ticket bearing No. 62960 dated 11.12.2005 from Gulzarbagh to Patna City his son S. Kumar Paswan boarded the train No. 502 Dn. (Patna Kiul Passenger) at Gulzarbagh for going to Patna Sahib. There was heavy rush in



compartment and due to sudden jerk while he was standing near the gate of rail compartment he fell down from the running train and was grievously injured. The local people took him to NMCH where he was admitted and from a paper in his pocket his identity was disclosed. Family members were informed from NMCH and he was taken to PMCH for better treatment, however, on 14.12.2005 he died during treatment.

4. After death of his son, Pirbahore police recorded the fardbeyan of Uncle of deceased on 14.12.2005 in PMCH at 1:00 PM in which the informant Sudama Paswan stated that his nephew S. Kumar Paswan on 10.12.2005 had gone to in-laws of his uncle in a marriage ceremony and on 11.12.2005 he was going to Patna City to visit AgamKuan for which he boarded the train No. 502 dn Patna Kiul Passenger from Gulzarbagh station after purchasing a ticket from Gulzarbagh to Patna City. However, due to intense jostling of passenger and heavy rush in the compartment and due to sudden jerk he fell down from the train and was seriously injured and was taken to NMCH and thereafter for better treatment he was shifted to PMCH where he died during treatment on 14.12.2005.

5. On the basis of fardbeyan recorded by ASI Pirbahore P.S. at PMCH, same was forwarded to Officer-in-Charge, GRP,



Patna City upon which FIR was instituted giving rise to U.D. Case No. 24/2005 and case was handed over to A.S.I. for investigation. Inquest report was prepared by ASI Pirbahore PS at PMCH on 14.12.2005 at 1:15 pm in which cause of death has been stated to be falling from Train and thereafter body was sent for post mortem on 14.12.2005 at 2:15 pm and post mortem commenced at 2:30 pm in which cause of death has been opined to be head injury caused by hard and blunt substance and its impact. After post mortem was conducted by the doctors in PMCH, dead body was handed over to the family members of deceased for cremation.

6. In their written statement, the respondent railway has denied the statement made in claim petition and prayed for dismissal of the claim case.

7. On the basis of pleadings of the parties, the Tribunal framed six issues for adjudication and determination.

8. In support of claim case, claimant/appellant alongwith claim petition filed copy of FIR, inquest report, dead body challan, letter dated 14.12.2005 of hospital authorities addressed to Sub-Inspector of Police, Pirbahore.

9. The claimant in his examination-in-chief in form of affidavit has supported his claim case as detailed in his claim



petition. In his cross-examination, he has stated that on the date of occurrence he was in Delhi and he is a labourer and not an eye witness of the occurrence and came to know about the accident from other persons. He has not produced the railway ticket in the court.

10. The tribunal has taken note of the claim case as set out in claim application that during journey the deceased accidentally fell down and got injured and subsequently died. Exhibit-A/2 is the fardbeyan which indicates the deceased died by falling down from train No. 502 Dn. FIR was instituted on 17.12.2005 and thereafter inquest report was prepared and postmortem was conducted on the body of deceased. U.D. Case No. 24/2005 dated 17.12.2005 was instituted and after investigation, police submitted its final report that deceased died due to fall from running train and has supported the claim case of claimant.

11. No documentary or oral evidence was adduced on behalf of respondent railways to oppose the claim of claimant.

12. It was submitted on behalf of respondent railways that since no train ticket was recovered from the body of deceased, as such he was not a bonafide passenger, as such he



is not entitled for any compensation.

13. It was argued on behalf of counsel for the appellant that the Tribunal failed to appreciate that incident took place on 11.12.2005, in which deceased got injured and thereafter he was admitted in NMCH and thereafter shifted for better treatment to PMCH, where he died on 14.12.2005 during treatment and from the certificate of death issued by PMCH the date of admission of deceased has been stated to be 12.12.2005 at 1:00 pm and date of death on 14.12.2005 at 10:35 am. In the letter addressed to ASI Pirbahore P.S, it has been stated that deceased was admitted under Doctor A.Q. Siddiqui and date of admission is 12.12.2005 and time of admission is 1:00 pm likewise date of death is 14.12.2005 and time of death is 10:35 am, as such FIR was instituted on 14.12.2005 after death of deceased on the recommendation of letter issued by PMCH to Pirbahore PS as it was an accident case upon which the fardbeyan of Informant was recorded by the ASI of Pirbahore PS at PMCH on 14.12.2005 at 1:00 pm and same was forwarded to GRP Patna City upon which UD Case No. 24 of 2005 was instituted on 17.12.2005.

14. In support of his claim case Claimant has examined himself as the sole witness and admittedly at the time



of accident he was in Delhi and came subsequently. No other witness has been examined on his behalf, even the Informant has not been examined. No eye witness has been examined on behalf of Claimant. Deceased was admitted in PMCH on 12.12.2005 at 1:00 pm when accident is said to be of 11.12.2005 between 8:00 am to 9:00 am. There is no documentary or oral evidence or any document issued by NMCH to support the case of Claimant that deceased was initially admitted in NMCH and thereafter shifted to PMCH. There is no report of Station Master that anyone had fallen from the running train as no Railway employee or passenger or staff of running Train disclosed about said incident. No information of such incident was reported in GRP, Patna City. Claim case of Claimant is only based upon the fardbeyan of Informant and final report submitted by police which are not supported by any corroborating or reliable evidence. Even the Informant has not been examined as witness on behalf of claimant.

15. The Claims Tribunal has disbelieved the claim case of Claimant giving specific reasons for not accepting the claim case of Claimant and lack of sufficient evidence in support of claim petition.

16. After perusal of the order passed by the Claims



Tribunal as impugned in this appeal and going through the materials available on record, this Court is not inclined to interfere in the order passed by the Claims Tribunal.

17. LCR of this case be returned to the concerned Tribunal forthwith.

Miscellaneous appeal is disposed of.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	13.09.2019
Transmission Date	N.A.

