

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.602 of 2014

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Sima Devi Wife o f Late Santu Kumar, resident of Village - Bhupatipur, P.S.-
Gaurichak, District- Patna (Bihar).

... .. 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, Advocate
For the Respondent/s : Mr. Ashok Kumar Keshri, Sr. Railway Advocate
Mr. Kalyan Shanker, Railway Panel Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 02-04-2019

Heard learned counsel for the parties.

2. This miscellaneous appeal has been preferred, under
Section 23 of the Railway Claims Tribunal Act, 1987, against the
judgment and order dated 10.03.2014, passed by the learned
Member (Technical), Railway Claims Tribunal, Patna Bench in
Claim Application No.OA 00050 of 2005.

3. Appellant, *Sima Devi* had brought Claim Application
No.OA 00050 of 2005 before the Railway Claims Tribunal,
Patna, claiming compensation of Rs.4,00,000/- for death of her
husband, *Santu Kumar* on 04.02.2005 in an untowards incident
caused at Koilwar Railway Station by fall from a running train on
which the deceased was a passenger.



4. For the occurrence aforesaid, U.D. Case No.02 of 2005 was registered by the Rail Police Station-Ara on 04.02.2005, wherein it is mentioned that an unknown Hindu male aged about 25 years was found dead after sustaining injury by fall from Train No.3447. The non-F.I.R. is ***Exhibit A/3***. ***Exhibit A/4*** is Inquest Report dated 05.05.2005, which also mentions that the unknown dead body of a male aged about 25-30 years was found which had sustained injury by Train No.3447, Dadar Bhagalpur Express. The postmortem report also reveals that fracture at top of the head etc. were noticed by the Doctor performing postmortem examination and according to opinion heavy crushing injury had caused the death. The postmortem report is exhibited as ***Exhibit A/5***. ***Exhibit A/7*** is death certificate of victim *Santu Kumar*. ***Exhibit A/8*** is the family list of *Santu Kumar*. ***Exhibit A/6*** is saving bank account of the appellant and ***Exhibit A/2*** is the report submitted after preliminary investigation of the case dated 04.02.2005, which reveals that the dead body was of *Santu Kumar*.

5. It appears that the Tribunal has found that though railway ticket of the deceased was produced in evidence, however, there is no evidence, as to in whose presence the deceased had purchased the railway ticket. The Tribunal further



recorded anomaly in the dates mentioned in First Information Report, the Inquest Report and the Final Form submitted in the case and came to the conclusion that these documents were not reliable and genuine documents.

6. Learned counsel for the appellant submits that the Tribunal has adopted pedantic approach in appreciating the evidence on the record and instead of implementing the intention of the legislature of this beneficial legislation to compensate the dependents of victim of untowards incident has followed the principle of strict proof.

7. On the other hand, learned counsel for the Railway submits that there is apparent discrepancy in the dates of institution of the F.I.R. and submission of the report, which would reveal that that inquiry report was submitted prior to institution of the U.D. Case and the Inquest report was also submitted prior to the U.D. Case. Thus, all these leads to the conclusion that the documents were created and manufactured documents and the finding of the Tribunal cannot be said to be result of any error of record. Learned counsel further submitted that there is no other evidence on the record to substantiate that the dead body was of *Santu Kumar*.



8. It is a fact that except the appellant, no other oral evidence was produced in the case. However, while conducting enquiry for deciding just compensation, the Tribunal is required to examine preponderance of the probability of the case. Once, the Police after enquiry came to the conclusion that the dead body was of *Santu Kumar*, it was burden of the Railway to bring evidence to the contrary. The burden was heavier when list of the dependents of late *Santu Kumar* was certified by the Ward Councilor of Ward No.21 of Patna Municipal Corporation available on the record and one certificate issued by Department of Statistical, Government of Bihar in respect of death of *Santu Kumar* as well as the certificate of family history issued by the Circle Officer, Phulwarisharif at ***Exhibit A/8*** also reveals that late *Santu Kumar* died, leaving behind the heirs mentioned in the certificate.

9. Therefore, in my view, only for the minor discrepancy in date of registration of the U.D. Case, the date of Inquest report and date of submission of final form would not lead to believe that *Santu Kumar* had not died in an untowards incident. Therefore, finding of the Tribunal is not sustainable in law.



10. Likewise, once the valid ticket of the date of travel was produced before the Tribunal, claiming that the same was of the victim of untowards incident, the Tribunal was not justified in absence of specific provision of law requiring so, to say that no one had come to support that in whose presence the railway ticket was purchased by the deceased.

11. In the result, the impugned order is *set aside* and it is ordered that the Railways shall pay Rs.4,00,000/- along with interest of 9%, from the date of filing of the application to the appellant, within two months from today, failing which penal interest of 12% would be payable from the date of default to realization.

12. Accordingly, this appeal stands *allowed*.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	NAFR
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