

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.767 of 2014

1. Razia Khatoon wife of Late Raquibur Rahman @ Rafibur Rahman
2. Rahila Rahman, daughter of Late Raquibur Rahman @ Rafibur Rahman
3. Aliya Rahman, daughter of Late Raquibur Rahman @ Rafibur Rahman
4. Habiba Khatoon, daughter of Late Raquibur Rahman @ Rafibur Rahman
5. Mariyam Rahman, daughter of Late Raquibur Rahman @ Rafibur Rahman
6. Md. Hafizur Rahman, Son of Late Raquibur Rahman @ Rafibur Rahman
7. Fahdul Basheer, Son of Late Raquibur Rahman @ Rafibur Rahman

All residents of village Bariaul, P.O. Bariaul, P.S. Keoti, District-
Darbhanga (Bihar).

..... Appellant/s

Versus

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

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Rakesh Kumar Sinha, Adv.
	:	Mr. Chandan Kumar Verma, Adv.
For the Respondent/s	:	Mr.Ramadhar Shekhar, Addl. S.C. (Railway)

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 09-08-2019

Heard the parties.

2. This miscellaneous appeal has been filed for setting aside the judgement and order dated 18.09.2014 passed in Claim Application No. O.A.00179 of 2006 by learned Member (Technical) of Railway Claims Tribunal, Patna Bench, Patna by which the application of claimant/appellant for grant of compensation on account of death of her husband in an untoward incident has been rejected.

3. Claimants/appellants are widow and children of deceased. The claim case as set out in the claim application is that on 23.09.2005 husband of the claimant No. 1 was travelling



by Train No. 3186 (Gangasagar Exp.) on valid journey ticket and when the train started from Platform No. 3 of Darbhanga Railway Station he accidentally fell down from the train due to heavy rush of the passengers and slipped between railway track and was run over by moving train. He was carried to DMCH, Darbhanga where he was declared brought dead.

4. The respondent Railways filed their written statement in which they have denied their liability to pay the compensation as deceased tried to board the running train and fell down, as such, it was a self inflicted injury for which compensation is not payable.

5. On the basis of pleadings of the parties, six issues were framed by the Tribunal for its determination.

6. Claimant in her examination-in-chief on affidavit has stated that she is the widow and dependent of the deceased and one son and one daughter are also dependent. She has further stated that on 23.09.2005 deceased was going from Darbhanga Junction to Samastipur Junction after purchasing the valid train ticket and he was bonafide passenger and was boarding train No. 3186 (Gangasagar Exp.) at Darbhanga Junction to go to Samastipur Junction and as the train moved due to heavy rush and jostling of passengers, he lost his balance and fell down on



platform No. 3 and slipped between the railway tracks and was run over by the moving train and died.

7. Exhibit A/1 is memo issued by Head Ticket Collector Suresh Mahto which was sent to G.R.P. Darbhanga, upon which U.D. Case No. 24/05 dated 23.09.2005 was instituted. Copy of FIR, Inquest Report, Railway Ticket and Postmortem Report were enclosed which were marked as Exhibits by the Tribunal. Exhibit-1 is the Memo issued by Ticket Collector, Darbhanga to the Officer In-Charge, Railway Police Station, Darbhanga informing that one male passenger aged about 55 years was run over by Gangasagar Exp. at platform No. 3 and on basis of said memo U.D. Case No. 24/05 dated 23.09.2005 was instituted. Exhibit-2 is the institution of U.D. Case in which it has been stated that deceased died as he was run over by the train which was registered on 23.09.2005. Exhibit-4 is the final report of the U.D. Case in which after enquiry, enquiry officer has found that deceased died as he fell down from the running train and slipped between the railway track where he was run over by the moving train. Exhibit-5 is the photocopy of railway ticket which was recovered from the possession of deceased. Exhibit-6 is the inquest report in which it has been stated that a dead body was retrieved from platform



No. 3 of Darbhanga Railway Station and cause of death has been stated to be run over by the running train and it also discloses recovery of ticket from the possession of deceased and train number has been given as 3186. Exhibit-7 is the postmortem report which also supports the claim case of claimant that the deceased died in a rail accident.

8. Postmortem was conducted on 24.09.2005 and dead body was found to be separated in two parts. Cause of death has been opined as haemorrhage and shock on account of injuries sustained by heavy and hard objects.

9. The contention of the respondent railways that it was a self inflicted injury cannot be accepted in view of law laid down by Apex Court in the case of **Union of India vs. Rina Devi since reported in (2019) 3 SCC 572**, has held as follows:-

“16.6. We are unable to uphold the above view as the concept of 'self inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. We may in this connection refer to judgment of this Court in *United India Insurance Co. Ltd. v. Sunil Kumar* 2017 (13) SCALE 652 laying down that plea of negligence of the victim cannot be allowed in claim based on 'no fault theory' Under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an



'untoward incident' entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor.”

10. The Apex Court in the case of **Union of India vs. Prabhakaran Vijaya Kumar** since reported in 2008 ACJ 1895(SC), has held as follows:-

“17. Section 124A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124A it is wholly irrelevant as to who was at fault.”

11. The Apex Court in the case of **Jameela and Ors vs. Union of India** since reported in **2010 ACJ 2453 (SC)**, has held as follows:-

“5. We are of the considered view that the High Court gravely erred in holding that the applicants were not entitled to any compensation under Section 124A of the Act, because the deceased had died by falling down from the train because of his own negligence. First, the case of the Railway that the deceased M. Hafeez was standing at the open door of the train compartment in a negligent manner from where he fell down is entirely based on speculation. There is admittedly no eyewitness of the fall of the deceased from the train and, therefore, there is absolutely no evidence to support the case of the Railway that the accident took place in the manner suggested by it. Secondly, even if it were to be assumed that the deceased fell from the train to his death due to his own negligence



it will not have any effect on the compensation payable under Section 124A of the Act.”

12. The tribunal has rejected the claim case of applicant on ipse dixit, conjecture-surmises and assumption-presumption and not on correct reading and appreciation of material evidence on record. There has been minor contradiction but on said minor contradiction whole claim case of Claimant cannot be disbelieved and rejected. On the basis of oral as well as documentary evidence the court has to arrive at the correctness or falsity of the claim case. In claim case, chances of improvement and exaggeration is always there and Tribunals/Courts on the basis of materials available on record has to decipher the truth.

13. On the basis of oral and documentary evidences brought on record claimant has been able to establish that deceased after having purchasing a valid train ticket tried to board Ganga Sagar Express on platform No. 3 of Darbhanga Railway Station but accidentally fell and slipped between the railway track and was runover by the moving train and railway ticket was recovered from his possession, as such he died in an untoward accident and claimants are entitled for grant of compensation.

14. For the reasons as stated the judgement and



order passed by Tribunal is not sustainable and is, accordingly, set aside and the claim application of appellant is allowed and Railways are directed to pay compensation of Rs. 4 Lacs to the Claimant-appellant within three months from the date of production/receipt of a copy of the order passed by this Court with interest @ 6 per cent per annum from the date of accident till its payment.

15. The miscellaneous appeal stands disposed of.

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

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	27.11.2019
Transmission Date	N.A.

