

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No. 64 of 2016

1. Dilip Mallik, S/o Late Bindesar Mallik, resident of Gudari Bazar, Ward No. 6, P.S.- Dalsinghsarai, District- Samastipur, Bihar.
2. Usha Devi, D/o Bindesar Mallik, W/o Pappu Mallik, Vill P.O.- Mahanar, P.S.- Mahanar, District- Vaishali.
3. Asha Devi, D/o Bindesar Mallik, W/o- Shambhu Mallik, Vill P.O.- Bachwara, District- Begusarai.

... .. Appellants

Versus

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

... .. Respondent

Appearance :

For the Appellants : Mr. Niraj Kumar Verma, Adv
For the Respondent : Mr. Bijoy Kumar Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 01-07-2019

Heard the parties.

This miscellaneous appeal has been filed for setting aside the order dated 28.03.2004 passed by learned Member (Technical) Railway Claims Tribunal, Patna Bench passed in Claim Application No. OA0175 /2005 by which the claim application of applicant has been dismissed on technical grounds.

Claimants are children of deceased Bindesar Mallik, who in their claim application have stated that their father on 15.08.2004 boarded train No. 412 Dn. Sonapur Barauni Passenger on Mahanar Road for Vidyapati Nagar after



purchasing journey ticket of 2nd class. As the train proceeded Harpur Bachawara station due to heavy rush he fell down from running train and died on the spot. Respondent railways have denied the claim of claimants/ appellants.

Claimants in their claim application have enclosed the final report of U.D. Case No. 9/2014 and except it no documentary evidence was enclosed. Claimant appeared before the tribunal but did not produced any document for his identification as such his evidence could not be recorded. The second witness on behalf of claimants appeared but stated that he was not aware with the facts as stated in his affidavit as such his affidavit was discarded. The tribunal has held that except the final report of U.D. Case no other document or death certificate or dependent certificate has been filed on behalf of claimant and on the day when the matter was taken up there was no representation on behalf of counsel for the claimant/appellant as such the tribunal held that the death of the deceased due to fall from train was not established nor any relation from the claimants is established and rejected the claim case of claimant/appellant on the ground of lack of evidence.

The evidence of claimant has not been recorded only for the reason that he could not bring any proof of his



identity and this being a claim case on such technical pleas the claim case cannot be rejected accordingly the order passed by the tribunal is set aside and tribunal is directed to re-consider the claim case of petitioner after granting opportunity to claimants to be examined and cross-examined before the tribunal and also to produce documentary evidence in support of their claim case and claim case to be decided within six months from the date of receipt/production of copy of order passed by this court.

With aforesaid observation and direction the claim case is remitted to the claims tribunal for its *de novo* trial in accordance with law.

(S. Kumar, J)

Rajiv/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

