

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.233 of 2014

=====

Binod Kumar Sinha S/O Late Dukhharan Prasad Resident of Village- Parwati,
P.S. Kashichak, Dist.- Nawada Bihar.

... .. Appellant/s

Versus

The Union Of India Through The General Manager, East Central Railway
Hajipur.

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr.Harendra Pandey
For the Respondent/s : Mr.Mahesh Prasad

=====

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 24-09-2019

Heard the parties.

2. This miscellaneous appeal has been filed under Section 23 of Railway Claims Tribunal Act for setting aside the judgment and order dated 26.02.2014 passed in Claim Application No. OA 00033 of 2003 passed by learned Member (Technical) Railways Claims Tribunal, Patna by which the claim application of claimant/appellant has been dismissed by the claims Tribunal.

3. Claim application was filed by the claimant Binod



Kumar Sinha, husband of deceased Dharmshila Sinha claiming compensation of Rs. 4 lacs on account of death of his wife Dharmshila Sinha in an untoward incident while travelling on 23/24.08.2002 alongwith claimant from Deepnagar Halt to Bakhtiarpur by DMU train. After reaching Bakhtiarpur both got down and in order to continue their further journey, they again boarded EMU Train No. 507 up. from Bakhtiyarpur Station after purchasing second class ticket for Patna Junction but unfortunately Dharmshila accidentally fell down at Gulzarbagh Railway Station at about 2.30 A.M. on 24.09.2002 and slipped between the railway track and her lower limb and upper limb got crushed by moving train. She was taken to NMCH, Patna from where she was referred to Emergency Ward of Rajendra Surgical Block in PMCH and during course of treatment she died at 5.00 AM on 24.08.2002.

4. It has been submitted that the second class ticket was lost during the course of accident.

5. Written statement was filed on behalf of respondent Railways in which they have denied the claim of claimant. It has been stated that the claim application is not supported by any documentary evidence, as such is not maintainable. They have disputed claim of the claimant that deceased fell on 24.08.2002



at Gulzarbagh Station due to heavy rush. They have admitted in their written statement that on 24.08.2002, 507 Up. reached the Gulzarbagh Station at 2.05 AM and left at 2.06 AM, at that time there was no rush in the train. Coaches were empty, which is established from the station diary of Deputy Station Master, Gulzarbagh.

6. It has been further stated that station superintendent, Gulzarbagh had issued a station memo at 2.20 AM in the night to the GRP, Gulzarbagh and Nalanda Medical College stating therein that a lady has fallen on Gulzarbagh station and has been seriously injured and requires urgent medical treatment and as such claim of Claimant that she fell at 2:30 am is not correct.

7. Respondents have further stated in their written statement that deceased tried to alight from the running train when it had not fully stopped and as such she met accident on account her own reckless and negligent act, as such, she is not entitled for any compensation under Section 124A of the Railways Act, 1989.

8. In support of her claim case, the claimant has enclosed documentary evidences which has been marked as Exhibits by the Tribunal. Exhibit-A1 is the FIR, Exhibit-A2 is the inquest report, Exhibit-A3 is the final report, Exhibit-A4 is



the death certificate, Exhibit-A5 is the family Member certificate, Exhibit-A6 is the residential certificate of claimant, Exhibit-A7 is the residential certificate of Nita Kumar, Exhibit-A8 is the postmortem report.

9. In his examination-in-chief in form of affidavit, the claimant has supported his claim case as disclosed in his claim petition. In his cross-examination, he has stated that incident is of 23.08.2002. He has no paper of any treatment of NMCH. He has no paper of treatment of PMCH. No memo was given to him by the Gulzarbagh Station Master.

10. The tribunal or courts particularly in claim cases has to find out the truth after proper scrutiny and appreciation of evidence placed on record after ignoring the irrelevant facts and to arrive at the truth of the claim after separating truth from untruth. In claim cases some exaggeration and inconsistencies are bound to occur as in order to prove their case claimants make such claim but only on account of such inconsistencies and exaggeration whole claim case cannot be disbelieved and compensation denied.

11. From the records of the case, it is apparent that Deputy Station Master of Gulzarbagh Station issued station memo dated 24.08.2000 at 2.20 hours addressed to Doctor, In-



charge Emergency Duty, NMCH stating that one lady aged about 30 years fell down by empty coaching Danapur and injured at Gulzarbagh station. She is being sent to you for medical aid. Please admit her and do the needful. Her family member is also with her.

12. Inquest report was prepared on 24.08.2002 at 11:45 am in the PMCH in which it has been recorded that deceased sustained fatal injury due to fall from Train.

13. From the postmortem report of PMCH, it appears that the dead body was received at 12.30 PM on 24.08.2002 and postmortem commenced at 12.45 on 24.08.2002. Dead body was brought by a police constable and husband of the deceased.

14. Postmortem report has been brought on record before the Tribunal in which cause of death has been attributed to amputation of left lower limb at level of upper part of thigh, crushed lacerated wound, amputation of right leg, multiple abrasions, time lapse from death is 12 hrs. In the postmortem examination, cause of death has been stated as Haemorrhage and shock. Nature of violence-hard and blunt object and its impact. Postmortem report also supports the case of claimant.

15. FIR was instituted on the basis of fardbeyan of claimant Binod Kumar Sinha recorded by Assistant Sub



Inspector of Pirbahor Police Station on 24.08.2002 at PMCH Emergency Ward at 10.45 AM. in which he has stated that on 24.08.2002 at about 2.30 AM when the train reached Gulzarbagh Station his wife while alighting from said train accidentally fell down and slipped and went within the railway track, as a result of which her left leg and right leg was amputated by the moving train and she became unconscious and thereafter she was brought to PMCH at 4.00 AM where she was being treated, however, she died at 5:00 am.

16. On the basis of fardbeyan U.D. case was instituted by the Incharge G.R.P. Railway police Station, Patna Sahib and the case was handed over to Ram Sumer Ram for investigation and submission of final report. The investigating Officer on 24.08.2002 at 11.45 AM prepared the inquest report of deceased in PMCH in which it has been recorded that deceased sustained injuries due to fall from train. After investigation the final report was submitted by the Investigating Officer to the competent authority in which he has recorded that after enquiry he found that deceased boarded the train at Railway Station Deepnagar Halt to Bakhtiarpur Jn. by D.M.U. Train and thereafter boarded 507up for Patna Junction and while alighting on railway station Gulzarbagh she fell down accidentally and went between the



railway line where her legs were crushed by the moving train and she became unconscious and thereafter she was brought for treatment to PMCH, Patna by her husband where she died during treatment and Dr. Arun Kumar Singh has recorded the cause of death as Haemorrhage and shock and the nature of violence- Hard and blunt object and its impact.

17. In the death certificate issued by the Registrar, Department of Orthopaedics, PMCH, Patna the date of admission of deceased has been stated to be 24.08.2002 and date of death on 24.08.2002 and cause of death has been shown as amputation of both limb.

18. The claims tribunal on appreciation of evidence has found that incident took place at Gulzarbagh railway station platform on 24.08.2002 at about 2:30 AM, however, the tribunal had rejected the claim of the claimant that although it is established that the lady was injured but she was not travelling with valid ticket by the alleged train as her husband claimed in the O.A. she might have boarded the empty coaching train for reason best known to her without any bonafide ticket. Empty coaching train is not a train for carrying passenger and hence the tribunal is of the opinion that though the lady was injured she was not a bonafide passenger travelling by the alleged train.



Boarding a non-passenger train and getting injured thereby is not covered by section 123(c) of the Indian Railways Act.

19. The finding recorded by the claims tribunal is factually incorrect as Railways in their written statement have admitted that deceased fell down from Train No. 507-UP at Gulzarbagh Station while alighting the Train due to her own negligent and reckless act and has also stated that Train No. 507-UP reached Gulzarbagh Station at 2:05 am and left at 2:06 am and station memo was issued at 2:20 am by the Deputy Station Master, Gulzarbagh, which supports the claim case that deceased fell from said Train. Railways have nowhere stated that any Empty Coaching Train had arrived at Gulzarbagh Station before or after arrival of Train No. 507-UP although Empty Coaching, Danapur, is mentioned in station memo but nowhere in the written statement it has been stated that said Train reached Gulzarbagh Station before or after 507UP train.

20. As far as denial of claim of claimant that deceased was not a bonafide passenger is also not sustainable as chances of train ticket being lost under such circumstances cannot be ruled out and there are oral evidence that deceased had boarded the train after purchasing a valid train ticket. Once it is established that deceased died in an untoward incident then



claim cannot be denied that no train ticket was found from her possession.

21. As far as non-recovery of train ticket from the possession of deceased is concerned, railways have issued a circular dated 11.11.1997 vide No.96/T.C.-III-85-87 addressed to the General Managers (Claims) in which it has been directed that compensation should be paid irrespective of bona fide authority to travel has been produced or not. Relevant extract of said circular is quoted below:-

"In the event of a train accident resulting in the death of a passenger travelling by the train, compensation should be paid irrespective of whether bonafide authority to travel has been produced or not."

22. For the reasons, as stated above, the judgment and order passed by the claims tribunal is not sustainable either in fact or in law and is accordingly set aside and the claim application of appellant is allowed and Claimant is entitled for grant of compensation to be paid by the Railways within two months from the date of receipt/production of copy of order passed by this Court.



23. The miscellaneous appeal is allowed.

Let LCR be returned to the court concerned
forthwith.

(S. Kumar, J)

veena/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

