

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.225 of 2014

=====

Saliha Khatoon @ Slaha Khatun W/o Late Md. Jabar Resident of Village
Madarpur, P.S. Rafiganj, District Aurangabad.

... .. Applicant in tribunal

Appellant

Versus

The Union Of India Through The General Manager, Eastern Railway Kolkata

... .. Respondent in tribunal

... Respondent

=====

Appearance :

For the Appellant/s : Mr. Anant Kumar-1, Advocate
For the Respondent/s : Mr. Bijoy Kr. Sinha, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 21-08-2019

I.A. No. 878 of 2015:

Heard.

This interlocutory application has been filed for
condoning the delay of 1 year 4 months and 20 days in
preferring the present appeal.

For the reasons mentioned in this interlocutory
application, this Court is satisfied that the appellant was
prevented for sufficient reasons from preferring this
miscellaneous appeal within time.

As a result, this interlocutory application is allowed and
the delay in filing this miscellaneous appeal is hereby



condoned.

M.A. No.225 of 2014:

Heard parties.

2. This miscellaneous appeal has been filed for setting aside the judgment and order dated 16.08.2012 passed by Railway Claims Tribunal, Patna Bench, Patna passed in claim application No.OA 00180 / 2002 by which the Tribunal has dismissed the claim application filed on behalf of the claimant/appellant for grant of compensation on account of death of her husband in an untoward incident.

3. Claimant – appellant had filed a claim application before the Railway Claims Tribunal, Patna stating therein that on 08.05.2002, the husband of the claimant was going Jakhim railway station from Gaya railway station after purchasing a valid train ticket bearing No.23889208 and boarded the train No.051 UP EMU Gaya – Mughalsarai passenger at Gaya and while the train was crossing Rafiganj railway station, he accidentally fell down from the running train as a result of which he died on the spot.

4. Station Master, Rafiganj railway station issued a memo dated 8.5.2002 (Ext.1) to GRP, Son Nagar upon which Son Nagar UD Case No.11/2002 was registered by the Railway



P.S. Son Nagar on 8.5.2002 and, thereafter the case was handed over to the ASI Mahesh Mandal for investigation who reached the place of occurrence, i.e., Rafiganj railway station and prepared the inquest report at 5 p.m. (Ext.2) and send the dead body for postmortem and same was received in the Sadar Hospital, Sasaram at 5.15 a.m. on 9.5.2002 and postmortem was conducted at 7.30 a.m. on 9.5.2002 and, thereafter, dead body was handed over to the family members for cremation.

5. Written statement has been filed on behalf of the respondents- Railways in which they have denied the claim of claimant/appellant and have stated that alleged incident was not an untoward accident. They denied that deceased accidentally fell down from the said train on 08.05.2002. It is further stated that it is for the appellant to establish that the case does not come within the purview of the exceptions carved out under Clause (a) to Clause (c) of Section 124 A of the Railway (Amendment) Act, 1994.

6. On the basis of pleadings of the parties, the Tribunal framed four issues for its determination.

7. In support of her claim case, claimant Saliha Khatoon in her examination-in-chief in the form of affidavit has supported her claim case. In her cross-examination, she has



stated that at the time of accident, she was in her home and did not see her husband purchasing ticket. She had not seen the incident. She saw the dead body of her husband in her house and his right leg was amputated and there were other injuries on the different parts of the bodies. From the wedlock, three children were born.

8. Apart from her oral evidence, documentary evidence has also been produced by the claimant in support of her claim case which has been marked as exhibits by the Railway Claims Tribunal. Ext. 1 is Memo dated 8.5.2002 issued by Station Master, Rafiganj railway station addressed to In-charge, Railway P.S. Sonnagar in which it has been stated that one man aged about 65 years has fallen down from 051 UP Passenger train at Rafiganj railway station and died and his dead body is lying near the RPF office and he was directed to take necessary steps for disposal of the dead body.

9. On the basis of said memo, Sonnagar UD P.S. case no.4/02 dated 8/5/2002 was instituted by in-charge, Railway P.S. and case was handed over to ASI, Mahesh Mandal for investigation. The investigating officer Mahesh Mandal prepared the inquest report on reaching the place of occurrence at Rafiganj railway station near RPF Post at 5 p.m. which has



been marked as Ext. 2 in which it has been stated that on platform near RPF Post on 8.5.2002 at 5.00 P.M., a dead body was lying of whose right leg was amputated and there were several injuries on the body and head. The cause of death has been stated to be falling from the running train No.051 and death was due to injuries sustained in said falling.

10. The UD case was investigated by the investigating officer who submitted his report on 09.05.2002 which has been marked as Ext. 5 in which it was found that deceased died due to fall from the running train on the basis of statement recorded by nearby persons who were present on the platform and witnessed the accident.

11. The dead body was sent for postmortem and same was conducted at 7.30 a.m. on 9.5.2002 in which rigor mortis has been found on all the four limbs and cause of death is haemorrhage and shock due to injuries sustained by hard and blunt substance. Time elapsed since death is within 24 to 36 hours.

12. In the final report submitted by the investigating officer, it is stated that during inquiry, a bag of deceased was recovered in which Rail ticket was also found and after preparing the inquest report, the dead body was sent for



postmortem.

13. Claims tribunal has disbelieved the claim of claimant/appellant only on the ground with respect to recovery of hand bag alleged to be of deceased. The tribunal has observed that if the alleged bag was recovered during investigation then how the identity of the deceased was made as the identity of the deceased could be known only from the documents and ticket recovered from said bag.

14. Even ignoring the recovery of said bag during investigation, the case of claimant/appellant is otherwise also established as according to station memo which was issued by the Station Master, it is admitted fact that a passenger travelling on train No. 051 UP had fallen at Rafiganj railway station and died. The investigating officer in his final report has stated that deceased was identified by his co-villagers and family members who subsequently arrived at the railway station and, thereafter, inquest report was prepared and body was sent for postmortem. As such, the reasoning given by the claims tribunal is not sustainable and misreading of the material evidence on the record. Even the recovery of hand bag and railway ticket from said hand bag is disbelieved yet on the basis of material evidence and surrounding circumstances, the case of the



claimant that her husband died in an untoward incident stands established. The compensation cannot be denied even if ticket is not recovered from the possession of deceased if otherwise it is established that he was a bona fide passenger travelling on the train and died after falling from the running train as there is every possibility that rail ticket would have been lost after accidental trauma. It is the duty of the court to arrive at a correct conclusion after appreciation of evidence and to separate truth from untruth as chances of exaggeration and improvement in claim case is always there and tribunal / court has to find the truth after considering all the materials and evidences on record as well as surrounding circumstances of the case.

15. Identity of deceased was never disputed by Railways.

16. From the evidence and materials available on record and attending circumstances, it is established that deceased died due to fall from a running train which comes within the definition of untoward incident and in no circumstances, it can come within the exception as carved out under Section 124 A of the Railways Act.

17. As a result, the judgment and order of the Tribunal is set aside and Railways are directed to pay the compensation of



rupees four lacs with interest @ 6% to the claimant from the date of accident till its payment.

18. Miscellaneous appeal is allowed.

19. Let the LCR be returned forthwith to the court concerned.

Sanjay/-

(S. Kumar, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.10.2019
Transmission Date	NA

