

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.453 of 2015

1. Smt. Munmun Devi W/o Late Binod Rajak
2. Barasa Kumari (Minor), D/o Late Binod Rajak
3. Medha Kumari Minor, D/o Late Binod Rajak
4. Nitu Kumari Minor, D/o Late Binod Rajak

All daughters of Late Binod Rajak Address - at Imam Bari, Near Light House Cinema Hall, P.O. P.S. - Laheria Sarai, District - Darbhanga Bihar

... Applicants ... Appellant/s

Versus

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

... Respondent/s

Appearance :

For the Appellant/s	:	Mr. Arvind Kr. Sinha, Advocate
For the Respondent/s	:	Mr. Naresh Dikshit
		Mr. Sumit Shekhar Pandey, Advocates

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 19-04-2019

I.A. No.9154 of 2015:

Heard.

This interlocutory application has been filed for condoning the delay of 1 year 4 months and 9 days in preferring this appeal.

For the reasons as stated in the interlocutory application, this court is satisfied that appellants were prevented



from sufficient cause from filing this appeal within time. As such, the delay in filing the appeal is condoned.

I.A. No. 9154 of 2015 stands allowed.

M.A. No.453 of 2015:

Heard.

This miscellaneous appeal has been filed by the appellants for setting aside the order dated 14.1.2015 passed in Claim Case No.OA 00252 of 2003 by which Railway Claims Tribunal, Patna Bench has dismissed the claim case of appellants.

Appellants are widow and daughters of deceased late Binod Rajak who was travelling from Darbhanga to Hayaghat Railway Station by Train No.3186 Down Gangasagar Express. Deceased Binod Rajak boarded the train from Darbhanga with a second class express train ticket dated 9.6.2003 and when he reached at Hayaghat Railway Station, he fell down from running train due to heavy rush and sudden jerk of the train and his both legs got crushed and he was taken to D.M.C.H. Darbhanga for treatment, however, he died in course of treatment.

After his death, inquest report was prepared and postmortem was performed on 9.6.2003 and, thereafter, dead body was handed over to the relatives and was cremated at



Lahariasarai. U.D. case was registered and inquiry report was submitted in which cause of death was attributable to death in train accident.

Claim case was filed by the widow and daughters of the deceased under Section 16 of the Railway Claims Tribunal Act, 1987 for payment of rupees 4 lacs 50 thousand as compensation due to accidental death of husband of claimant in an untoward incident which was registered as Claim Case No.OA 00252 of 2003. Application of the appellants was accompanied by documents which were marked as Exts. A1 to A5 before the Tribunal.

Respondent – Railway opposed the claim of appellant by filing written statement and denied the claim of appellant. It was stated in W.S. that deceased was not a *bona fide* passenger and his death was not caused by any untoward incident and prayed to dismiss the claim case.

Tribunal on the basis of pleadings of parties framed four issues for adjudication and found that the claim case was maintainable and was within the territorial jurisdiction of the court. The issues framed by Tribunal is as follows:-

(1) Whether the deceased was a victim of the alleged untoward incident, as defined under Section 123(C) 2 of the



Railways Act, 1989?

(2) Whether the deceased Binod Rajak was a bonafide passenger of train No.3186 Dn. On 09.06.2003 at the time of the alleged untoward incident?

(3) Whether the claim application of the applicant is maintainable?

(4) Whether the Applicant/dependents of the deceased are entitled to receive compensation, as claimed for?

Fardbyan of Rakesh Kumar Rajak (informant) was recorded on 9.6.2003 at 11.30 a.m. in the D.M.C.H. Campus in which he stated before Sub-Inspector of Railway Police Station, Darbhanga that on 9.6.2003 in the morning his cousin brother, Binod Rajak had boarded a train to go to Hayaghat Railway station to meet his Fufa, Ramchandra Baitha and he got information at about 8.30 to 9 a.m. that Binod Rajak has fallen from the train and his two legs got amputated and the railway personnels have got him admitted in D.M.C.H. and when they reached D.M.C.H., he had already died. Inquest report was prepared on 9.6.2003 at about 11.45 a.m. in which both the legs below the knee were found amputated and cause of death has been stated to be injury sustained in a train accident. Postmortem report was also prepared on 9.6.2003 and cause of



death is attributable to some heavy hard and blunt objects with momentum like wheels of a running train.

In support of her claim case, claimant has examined two witnesses. Witness no.1 is claimant herself who in her examination in chief has stated that deceased was her husband. He was going Hayaghat from Darbhanga on 9.6.2003 by a passenger train. The incident took place in Hayaghat and due to heavy rush and overcrowded bogie, he fell from the train. His both legs got amputated and he died in D.M.C.H., Darbhanga. Information was given by Channu Baitha and, thereafter, she went to hospital. She has three minor daughters, Barasa Kumari, 13 years, Medha Kumari, 12 years and Nitu Kumari, 10 years. Railway ticket was not recovered and same was lost. She has proved F.I.R. which has been marked as Ext. A/1, Final report Ext. A/2, Fardebyan, Ext. A/3, Inquest report, Ext. A/4 and postmortem report, Ext. A/5. In her cross-examination, she stated that incident is of 6 a.m. Channu Baitha informed after one hour of the incident. All left for hospital at 8 a.m. She was not allowed to go to hospital. Postmortem was performed by 1 p.m. and dead body was brought to the house by 2 p.m. She has no personal knowledge of the incident. Incident took place near railway *Gumti*, he fell down while boarding the train. She has



denied the suggestion that he met the accident while crossing the railway Gumti.

Witness no.2 is Channu Baitha who has filed his examination-in-chief by way of affidavit. In his cross-examination, he has stated that he was a co-passenger with deceased and had purchased two ordinary second class express train ticket from Darbhanga to Hayaghat Railway Station dated 9.6.2003. One train ticket for deceased and one for himself and, thereafter, both boarded the Gangasagar Express in General bogie on Darbhanga Railway Station and due to heavy crowd, they were standing near the gate of bogie and as the train reached Hayaghat Railway Station, deceased fell down from the train due to rush and pushing of the crowd and his both legs were crushed by the wheel of the train. In his cross-examination, he has stated that both were travelling together and tickets of both were purchased by deceased and one he gave to him and other he kept himself. They boarded the train at 3 a.m. and reached Hayaghat at 4 a.m. and due to heavy rush and push, he fell down and his legs were cut. He went to the Ticket Master and he was sent by another train. He also reached D.M.C.H. where doctor told that he is dead and, thereafter, he went to his house by Tempo. He has denied the suggestion that he was not



travelling along with the deceased.

U.D. case was registered on the statement of informant and same was handed over to A.S.I. for inquiry by the officer-in-charge of the Rail Police Station who in his report, submitted to the Magistrate has found that on 9.6.2003, deceased was travelling from Gangasagar Express and had boarded the train at Darbhanga and while deboarding the train at Hayaghat Railway Station, he fell down and was seriously injured and was sent to D.M.C.H. by Train No. 531 UP by railway authorities and said information was communicated to Divisional Medical Officer, East Central Railway Darbhanga and officer-in-charge, Rail P.S. Darbhanga.

The Tribunal has rejected the claim of appellant on the ground that there is material contradiction in the ocular evidence of both the witnesses and, as such, has disbelieved them as being not trustworthy and reliable. The claimant who has been examined as witness no.1 has stated that she is not an eye witness of the occurrence and her information is based upon hearsay. Witness no.2 who claims himself to be a co-passenger in his affidavit has stated that he had purchased both the tickets whereas in his cross-examination he has stated deceased had purchased both the tickets and finding such material



contradiction, the Tribunal has disbelieved the evidence of witnesses no.2 to be a co-passenger of deceased. However, the Tribunal has not dealt with the documentary evidence produced by the claimant while rejecting the claim of appellant.

The investigating officer of U.D. case No.141 of 2003 during his inquiry has found that deceased was travelling on 9.6.2003 on Gangasagar Express from Darbhanga to Hayaghat and while deboarding the train at Hayaghat Station, he fell down and got seriously injured and, thereafter, he was sent back for treatment to Darbhanga hospital by Train No.531 UP by railway authorities and same was communicated to the Divisional Medical Officer, East Central Railway, Darbhanga and Officer-in-Charge, Police Station, Darbhanga. As such, there were documentary evidence in support of claim of appellant which was found true during investigation of U.D. case that deceased was travelling from Darbhanga to Hayaghat and due to heavy rush and crowd, he fell down at Hayaghat railway station and his both legs were crushed and, thereafter, he was sent to D.M.C.H. by the railway administration from Train No. 531 UP to Darbhanga for which information was also given to Divisional Medical Officer as well as Officer-in-Charge, Railway Station, Darbhanga and this documentary evidence has



not been considered and appreciated by the Claim Tribunal and only on the basis of oral evidence the claim has been rejected. If the tribunal found that oral evidence is not reliable then it could have disbelieved such evidence but for said reason, whole claim case cannot be rejected. The Tribunal has also not considered other documentary evidence which fully supports the claim of appellant and was very much relevant for consideration with respect to claim of appellant and same has been overlooked by the tribunal. The Tribunal has given no finding with respect to said documentary evidences which were produced and exhibited by the appellant and is completely silent on documentary evidences. The order suffers from non-consideration of relevant document and material and, as such, is not sustainable and is, accordingly, set aside. The ocular evidence also corroborates the FIR in material particulars which is to be broadly construed in claim cases and cannot be thrown away for minor discrepancies.

The matter is remanded to the Claim Tribunal to consider the claim case of claimant afresh on the basis of ocular as well as documentary evidence produced by the claimant and decide the claim case within six months from the date of receipt/production of a copy of this order.



Let the L.C.R. be sent back immediately to the
concerned Tribunal.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.06.2019
Transmission Date	NA

