

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.151 of 2014

1. Dhaneshwar Ram S/O Ram Swarup Ram
2. Smt. Renu Devi W/O Dhaneshwar Ram.
Both Are Resident of Village- Sarmera, P.S. Sarmera, Distt Nalanda (Bihar).

... .. Appellant/s

Versus

The Union of India, through the General Manager, Northern Railway, Baroda House, New Delhi.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Krishna Mohan Murari, Adv.
For the Respondent/s : Mr. Bijoy Kr. Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 22-07-2019

Heard the parties.

2. This appeal under Section 23 of the Railway Claims Tribunal Act, 1987 has been filed for setting aside the order dated 14.01.2014 passed in Claim Application No. OA00316/2003 passed by learned Member Technical of the Railway Claims Tribunal, Patna by which the claim application of the claimants/appellants has been dismissed.

3. Claimants/appellants are parents of deceased Niranjana Kumar who died in an untoward incident on 08.07.2003 while travelling from 2401Up Shramjivi Express near Gajraula railway station. It has been stated in the claim application that son of claimants/appellants was a labourer and left his home alongwith two others co-villagers/relatives



Abhimanyu Kumar and Suraj Kumar on 07.07.2003 for New Delhi by 2401A Rajgir New Delhi Nalanda Express after purchasing valid rail tickets and train No. 2401A becomes 2401Up Saramjivi Express from Patna to New Delhi. It is further stated that as train proceeded from Muradabad to New Delhi due to sudden jerk of the train he fell down from the running train and died.

4. Respondent railways have stated in their w.s. that deceased died on account of self inflicted injuries and his case comes within the exception carved out under Section 124A of the Railways Act.

5. On the basis of pleading of the parties, tribunal framed four issues for its determination.

6. Claimant in his examination in-chief in form of affidavit has stated that his son was unmarried and alongwith two co-villagers/relatives had boarded train from Biharsharif after purchasing a valid second class train ticket for New Delhi and fell down from running train near Gajraula Railway Station due to sudden jerk and died. Awadhesh Ram has also been examined as witness No. 2 on behalf of claimant who has supported the claim case of claimant and has further stated that deceased had purchased railway ticket from Biharsharif railway



station in his presence and subsequently he came to know that he died due to fall from running train near Gajraula railway station.

7. Exhibit-A/8 is station memo issued by Station Master, Gajraula to the officer-in-charge, Gajraula dated 08.07.2003 in which it has been stated that Railway porter has informed that one unknown person has died from falling from some passenger train and his dead body is lying near line No. 1 of Up starter signal and to take further steps in the matter. On the basis of said station memo a U.D. case was registered on 08.07.03 at 8.15 A.M. giving rise to U.D. case No. 168/03 and case was enquired by Arun Kumar Tyagi Assistant Sub Inspector and O/C Rail P.S. and in presence of constable Vikash Kumar and constable Chhatrapal Singh, inquest report was prepared but the identity of the deceased could not be ascertained and after taking his photographs and finger prints the inquiry officer found that deceased died due to falling from running train near Up starter signal and thereafter the dead body was sent for postmortem.

8. Postmortem was conducted on 08.07.03 at 5.30 PM and rigor mortis has been found to be present on all four limbs and time of death was stated to be about 1 day before.



Fractured injury has been found on occipital bone, temporal bone, parietal bone and clothes and belongings of deceased were seized and sealed in a bundle and sent to S.H.O. G.R.P., Gajraula. Cause of death has been opined as haemorrhage and shock as a result of injuries.

9. AW-2 Awadhesh Ram alongwith others reached the Gajraula G.R.P. on 12.07.2003 after telephonic information received from police and identified the deceased from his photographs and clothes. Inquiry Officer Arun Kumar Tyagi who is also the in-charge Officer G.R.P., Gajraula in its final report submitted to the S.P. Railways, Muradabad has also reported that deceased died due to fall from running train and he prepared the inquest report on 08.07.2003 and on 12.07.2003 four relatives of the deceased came and identified deceased from his photographs and clothes. Death certificate has been issued by Nagar Panchayat, Gajraula dated 30.07.2003 in which Niranjana Kumar has been certified to have died on 08.07.2003.

10. The Railways in their written statement have denied the compensation as deceased died on account of self inflicted injuries as such he was not entitled for grant of compensation. The contention of the Railways is noted to be rejected. The 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.”

11. 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.”

12. 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.”

13. The tribunal has rejected the claim case of applicant on the ground that identity of the deceased and genuineness of the ticket as produced are not established. The respondent railways in their written statement have nowhere doubted the identity of the deceased or that deceased was not the son of claimant. Photographs of deceased and his death certificate are on record, as such, the identity of the deceased was never disputed by the respondent Railways, as such claim of claimant could not have been dismissed on said ground.

14. As far as second ground regarding genuineness of railway ticket as produced before the Tribunal is concerned certainly a doubt can be raised about its genuineness, the manner in which the railway ticket were produced before the Claims Tribunal, but even assuming that railway ticket was not recovered from the possession of deceased whether claim can be rejected on said ground. The Apex Court in the case of **Reena Devi (supra)** in paragraph no. 17.4 of the judgment has held as



follows:-

“17.4. We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

15. Oral evidence has been laid on behalf of claimants with respect to purchase of ticket by the deceased and ticket being lost in aftermath of accident cannot be ruled out. Moreover, the Railways themselves have issued a circular that in absence of railway ticket, claimant cannot be denied compensation. In an accident or untoward incident the presumption is always in favour of passenger to be a bonafide passenger and travelling with a valid ticket unless contrary is proved. Claimants have discharged their initial burden to establish that deceased was a bonafide passenger travelling with a valid train ticket.

16. 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 bonafide authority to travel has been produced or not. Relevant extract of said circular is quoted hereinbelow:-

"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."

17. After hearing the counsel for the parties and on perusal of LCR and other materials, oral and documentary evidences available on record, this Court finds that the claim case of the claimant/appellant that his son boarded train on 07.07.2003 for Delhi after purchasing ticket and fell down from the running train near Gajraula Station between 07/08.07.2003 is established as there can be no other explanation of dead body of deceased being found near the railway line ahead of Gajraula station. In a case where deceased was found dead where he could not have otherwise been unless he was travelling in a Train and as such it will be presumed that he died from falling from running Train. The inquest report, postmortem report as well as final report supports the claim of claimant/appellant that his son died in an untoward incident and as such are entitled for grant of compensation.

18. For the reasons as stated above, the appeal is allowed and order passed by the Railway Claims Tribunal is set



aside and railways are directed to pay compensation of Rs. 4 lacs with interest @ 6% p.a. from the date of accident till its payment to the claimant/appellant within three months from the date of receipt/production of a copy of this Order.

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

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	26.11.2019
Transmission Date	N.A.

