

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.744 of 2014

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Palkhusri Devi @ Kal Kusari Devi W/o Late Parmeshwar Das @ Parmeshwar
Tanti Resident of Village Balaha, P.S. Bangawn, District Saharsa Bihar.

...Applicant in Tribunal... Appellant/s

Versus

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

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Anant Kumar-1, Adv
For the Respondent/s : Mr. Siddharth Prasad, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

CAV JUDGMENT

Date : 20-08-2019

Heard learned counsel for the parties.

2. This miscellaneous appeal has been filed for setting aside the judgment and order dated 16.09.2014 passed by learned Member (Technical) Railway Claims Tribunal, Patna Bench, Patna, passed in Claim Application No. OA 00135 of 2005 by which Claims Tribunal has dismissed the claim application of claimant-appellant.

3. The claim application was filed by Parmeshwar Das @ Parmeshwar Tanti father of deceased, for payment of compensation of Rs. 4,00,000/- on account of death of his son due to injury sustained by him in an untoward incident. However, during the pendency of claim case, the original applicant died and was substituted by mother and widow of



deceased.

4. It was stated in the Claim Application that Bijendra Kumar on 31.05.2005 purchased a second class ticket bearing No. A-65539979 dated 31.05.2005 and boarded Train No. 4083 (Mahananda Exp) for going to Tundla from Khagaria from where he had to get Agra by Bus and boarded the Train on 31.05.2005 and while the train was passing between Dumraon and Baruna in the early hours on 01.06.2005, he accidentally fell down from the running train and died.

5. Written statement was filed on behalf of respondent-Railways in which it was stated that the deceased was not a bonafide passenger and no ticket was recovered from his possession as such claimants are not entitled for any compensation. On the basis of pleading of the parties, four issues were framed by the Tribunal for its determination.

6. Exhibit-1 is station memo dated 01.06.2005 at 5:00 pm issued by Deputy Station Manager of Buxar Railway Station intimating the Officer-in-charge of GRP, Buxar, that he has received information that one dead body is lying between Dumraon and Baruna station who appears to have fallen from the running train. The time of issuance of station memo is 5:00 pm and on the basis of said memo UD Case No. 17 of 2005



dated 01.06.2005 at 6:00 pm was registered by the GRP, Buxar, which has been marked as Exhibit-2.

7. After registration of UD Case, inquiry was entrusted to Assistant Sub Inspector of GRP by the Incharge of GRP, Buxar. Exhibit-3 is the inquest report prepared on 02.06.2005 at 6:15 am in which it has been reported that between Dumraon and Baruna station near Gopaldera village south of up-line Pole No. 647/25 a dead body was found aged about 30 years and it was suspected that the deceased died of head injury by falling from running up-train. Exhibit-4 is the Post Mortem Report dated 02.06.2005. The post mortem was conducted on the dead body of unknown male person aged about 30 years at 11:15 am on 02.06.2005, in which rigor mortis was found present on all the four limbs. Head and skull were found fractured which was the cause of death and time elapsed since death has been found to be 24 hrs

8. Exhibit-5 is the final report submitted by the police. Exhibit-6 is the ticket which was recovered from the clothes of deceased by the family members which is dated 31.05.2005 from Khagaria to Tundla junction. Exhibit-7 is the death certificate issued by the competent authority with respect to death of Bijendra on 02.06.2005.



9. During investigation the Enquiry Officer has recorded statement of witnesses and has found that the deceased died by falling from Mahananda Express and submitted its final report.

10. The mother of the deceased in her examination-in-chief had stated that deceased was her son who was 21 years old and had purchased a ticket on 31.05.2005 from Khagaria to Tundla Junction and boarded Train No. 4083 Up-Mahananda Express on Khagaria station from where he had to go to Agra. However, due to heavy rush her son accidentally fell from running train between Dumraon and Baruna station and died. She recognized her son from her clothes and photograph. Original ticket of her son was with Sanoj Kumar which was shown to the police but this fact was not recorded by the police in its final report. She did not appear for cross-examination as such her examination-in-chief in form of affidavit cannot be look into as same cannot be treated as evidence. No oral evidence was adduced on behalf of Claimants.

11. The Claims Tribunal rejected the claim application by impugned order which appears to be totally misreading and improper appreciation of evidence on record. The judgment and order passed by Tribunal is based upon *ipse-dixit*, conjecture-surmises and assumption-presumption and not on correct



reading and appreciation of material evidence on record which rules out any probability of death of deceased other than falling from the Train which is fully supported by the inquest report as well as post mortem report and final report submitted by the police as well as attending circumstances.

12. Claim case can be established by documentary evidence, if there is no eye witness there cannot be any oral evidence, and claim case has to be decided on the basis of documentary evidence and surrounding circumstances.

13. On the basis of documentary evidence produced before the Tribunal and materials available on record, it is apparent that by memo dated 01.06.2005 at about 5:00 pm the Deputy Station Master informed GRP that a dead body is lying between Dumraon and Baruna station and probably he died by falling from the train upon which UD Case No. 1705 dated 01.06.2005 at 6:00 pm was registered in which it has also been recorded that a dead body of unidentified person aged about 30 years was found lying between Baruna and Dumraon station and there is likelihood that he died due to falling from Up-line running train. The inquest report was prepared on 02.06.2005 at 6:15 am and same was sent and in the inquest report it has also been stated that the identity of the dead person aged about 30



years was not known.

14. After preparation of inquest report, the dead body of unknown person was sent for post mortem by the police which was conducted on 02.06.2005 at 11:15 am, and it was found that rigor mortis was present over all limbs and death was caused by haemorrhage due to head injury and time elapsed since death was found to be 24 hours which fully corroborates with the claim case of claimants that deceased boarded the Train on 31.05.2005 and when Train was passing between Baruna and Dumraon station deceased accidentally fell and died, as such the reasons for dismissal of claim case of claimant by the Tribunal is not sustainable and accordingly, set aside.

15. On the basis of materials available on record and attending circumstances it can be safely held that deceased boarded train at Khagaria station and died due to falling from train between Baruna and Dumraon station and there cannot be any other reason or explanation for recovery of dead body of deceased from said place as he was not resident of said place and nature of injury also suggests that he received same while falling from Train and dead body was found near railway track.

16. Although ticket was not recovered from the dead body of the deceased as same does not find recorded in inquest report



but non recovery of train ticket does not disentitle Claimant-appellant from compensation as train ticket can be lost in aftermath of accident and same cannot be ruled out.

17. 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."

18. For the reasons as sated above the judgment and order dated 16.09.2014 passed by learned Member (Technical) Railway Claims Tribunal, Patna Bench, Patna, passed in Claim Application No. OA 00135 of 2005, is not sustainable either in law or on facts and is accordingly, set aside.

19. Deceased died in an untoward incident as such, the Claimants who are the widow and mother of the deceased are entitled for compensation and accordingly, railways is directed



to pay the compensation of Rs. 4 lacs to the Claimants-
appellants along with interest @ 6 per cent per annum from the
date of accident till its payment after due identification.

20. The miscellaneous appeal is disposed of.

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

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	27.06.2019
Uploading Date	26.10.2019
Transmission Date	NA

