

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.685 of 2013

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Bal Kishore Sao, Son Of Late Ram Dhani Sao, Resident Of Mohalla- Bichali
Khandakpar, P.O. and P.S.- Biharsharif, District- Nalanda (Bihar).

... .. Appellant

Versus

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

... .. Respondent

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Appearance :

For the Appellant/s	:	Mr. Shanti Pratap, Adv, Mr. Arvind Kumar Verma, Adv, Mr.Harendra Pandey, Adv.
For the Respondent/Railway	:	Mr. D.K. Sinha, Sr. Adv. Mr. (Dr.)Anand Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 09-08-2019

Heard the parties.

2. This miscellaneous appeal has been filed on behalf of claimant/appellant against the judgment and order dated 12.09.2013 passed in Claim Application No. OA 00232 of 2005 passed by Member (Technical), Railway claims Tribunal, Patna Bench, Patna, by which the learned tribunal has rejected the claim of grant of Rs. 4,00000/- (four lacs) as compensation on account of death of daughter of claimant in an untoward incident.

3. Claim application was filed on behalf of claimant inter alia stating that on 27.05.2005 his daughter



Savita Kumari aged about 20 years was going to Patna with her brother Ravi Ranjan Kumar Gupta by 2391 Up Shramjivi Express, after purchasing ticket for Patna she and her brother entered the bogie of train but the daughter of claimant slipped from the footrest and fell between the railway track and was run over by the moving train. The brother got down from the train at Harnaut and informed the family members and they went to Biharsharif railway station where they were told that the girl fell down from Shramjivi Exp. and died and her dead body was sent to Sadar Hospital, Biharsharif for postmortem and on such information they went to the Sadar Hospital, Biharsharif, where the claimant identified the dead body and same was handed over to him for cremation. The U.D. Case was registered being U.D. Case No. 11 of 2005 dated 27.05.2005 by G.R.P. Biharsharif and officer-in-charge, Sanjay Kumar Singh himself took the investigation of the U.D. Case.

4. Written statement was filed on behalf of respondent/railways denying the claim of claimant and stated that deceased was not a bonafide passenger of train no. 2391 Up Rajgir New Delhi Shramjivi Express, as no ticket was received from her possession as per inquest report prepared by the police. This is the only ground taken by the railways to deny the claim



of claimant. They have not disputed the factum of the incident that dead body was found on the southern side of platform no.1 lying between the railway track and deceased was run over by train.

5. On the pleadings of the parties the claims Tribunal framed 6 issues for its determination.

6. In support of his claim case claimant was examined as witness no.1 and in his examination-in-chief in form of affidavit he has stated that his daughter was 20 years old and on 27.05.2005 he along with his brother after purchasing ticket boarded the train at Biharsharif to go to Patna but due to heavy rush and jostling she fell down from the footrest of the train and slipped between the railway track and was run over by the moving train .

7. In his cross-examination, he has admitted that he was not accompanying his daughter and he received information of the accident from his younger son. He did not saw her purchasing tickets and she was 20 years at the time of her death.

8. No other witness has been examined on behalf of claimant.

9. It has been argued on behalf of



respondent/railways that adverse inference may be drawn because of non-examination of brother of deceased according to claimant who was accompanying the deceased while she was boarding the train and slipped down.

10. In support of his claim case 12 documentary evidences have been adduced which has been marked as Exhibit A/1 to Exhibit-A/12. Exhibit-1 is the sanaha recorded by the G.R.P. in which it has been stated that G.R.P. received information from station master that on platform no.1 near J copling, an unidentified girl aged about 20 years is lying dead after being run over by a train and on such information U.D. Case No. 11 of 2005 on 27.05.2005 was instituted and inquiry was undertaken by the officer-in-charge, Biharsharif, Rail P.S.

11. Exhibit -2 is inquest report in which the dead body has been held to be of an unidentified girl which was found on platform no.1 between the railway track on 27.05.2005 at 10 :00 A.M., and the reason of death is stated to be run over by the train.

12. Exhibit-3 is the post mortem report. Postmortem was conducted on 27.05.2005 in Sadar Hospital, Biharsharif at 1:00 P.M., in which cause of death has been stated to be hemorrhage and shock caused by hard and blunt



object. Time elapsed since death is within 24 hours.

13. After inquiry police submitted the final report on 27.05.2005 under Section 174 of the Cr.P.C. to the Magistrate in which the inquiry officer has found on the basis of statement of eye-witnesses and evidence collected during inquiry that deceased after purchasing the ticket was trying to enter train no. 2391 Up Shramjivi Exp. at platform no.1 but she slipped down from the train and fell between the railway track and was run over by the train.

14. The girl was not identified at the initial stage and at the time of preparation of inquest report or postmortem and after taking the photograph of unknown dead body and preparation of inquest report, unknown dead body was sent for postmortem to Sadar Hospital. However, the identity of the deceased was subsequently disclosed when her relatives came to the hospital who came to know that the girl had died as she slipped from the train and fell between the railway track and was run over by the train.

15. The trial court has disbelieved the case of claimant only on the ground that in claim case it has been stated that the brother of deceased was accompanying her but he has not deposed as a witness before the claims Tribunal and



his presence with deceased at the time of accident is doubtful and rejected the claim case of the claimant without taking into account other evidences on record.

16. The Tribunal or Court on appreciation of materials and evidences on record has to arrive at the truth or falsity of the case. Chances of exaggeration in claim case by the claimants in order to make their claim case more reliable and believable is a known fact and claim case cannot be thrown out only on the ground that some facts pleaded in claim case is not believable. Truth has to be separated from untruth and it is duty of Tribunal/Court to find out the truth.

17. Even it is disbelieved that the deceased was not accompanied by his brother while she was boarding the train, there is sufficient evidence on record to support the claim case that the deceased was boarding the Shramjivi Exp. train and she slipped down and fell between the track and was run over by the train which comes within the definition of untoward incident.

18. Initial onus certainly lies upon the claimant to establish that deceased died in an untoward incident and once said initial onus is discharged by the claimant it is for the railways to establish that the case comes within the exceptions



as carved out under Section 124 (A) of the Railways Act, 1889 which reads as follows:

“Compensation on account of untoward incident.- When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependent of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident: Provided that no compensation shall be payable under this section by the railway administration if the passenger



dies or suffers injury due to-

- (a) suicide or attempted suicide by him;
- (b) self-inflicted injury;
- (c) his own criminal act;
- (d) any act committed by him in a state of intoxication or insanity;”

19. There is nothing on record to suggest that the present incident comes within the exceptions as carved out under Section 124 (A) of the Railway Act, 1989.

20. 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 Manager (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 traveling by the train, compensation should be paid irrespective of whether bonafide authority to travel has been produced or not.”



21. For the reasons as stated above the judgment and order passed by the Tribunal is neither sustainable in law nor on facts and is accordingly set aside. The deceased died in an untoward incident and as such claimant/appellant is entitled for grant of compensation. Railways are directed to pay the compensation amount of Rs. 4,00,000/- (four lacs) to the claimant/appellant with 6% interest from the date of accident till its payment within three months from date of receipt/production of a copy of the order passed by this court.

22. This miscellaneous appeal is allowed.

23. Let the L.C.R. be immediately returned to the court below.

(S. Kumar, J)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.10.2019
Transmission Date	NA

