

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.817 of 2018

=====

Gandori Sah @ Bandori Sah Son of Ramphal Sah R/o Village - Chukti, P.S.
Mansi, District Khagaria.

... .. Appellant/s

Versus

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

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr.Hare Krishna Prasad, Advocate
For the Respondent/s : Mr. Tuhin Shankar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

Date : 28-11-2022

The present Memo of Appeal has been preferred by the appellant challenging the order dated 02.07.2018 passed by the Railway Claims Tribunal, Patna Bench (henceforth for short 'the Tribunal') in OA No. 00035/2008 (C.No. 176/2008) by which the claim for payment of compensation due to accident and death of his son was negated.

2. The matrix of facts giving rise to the present appeal is/are as follows :

3. That as per the case put forward by the appellant, his son, Hira Kanu, after purchasing a Second Class ticket was taking a train journey from Jamalpur to Bhagalpur on 24.09.2007. At Bariyarpur Railway station, due to jerk of



the train, he fell down between the train and the railway platform, suffered grievous injury and subsequently died.

4. Accordingly, U.D. case was instituted on the basis of the *fardbeyan* of the appellant before the Bariyarpur Police Station. The post-mortem report of the deceased was conducted at the Jawaharlal Nehru Medical College and Hospital, Bhagalpur (henceforth for short 'the hospital') and accordingly, the death certificate was issued by the concerned authority.

5. Thereafter, the petitioner-appellant moved from pillar to post and met several officers of the Railways in the process and having failed to get any relief, the aforesaid case vide OA no. 00035/2008 (C.No. 176/2008) was preferred for the compensation.

6. The matter was finally taken up by 'the Tribunal' in 2018. The appellant put forward his case and supported the fact that his son died while he was travelling in the train with valid ticket No. 240907 when he met with an accident and fell down between the platform and the train on 24.09.2007 which led to his serious injury and death. In support of his case, he submitted *fardbeyan* dated 26.09.2007 (Ext. A 1) as also postmortem report (Ext. A 4). Further, the



Inquest Report dated 25.09.2007 (Ext. A 2) and photocopy of the railway ticket (Ext. A 6) were also annexed in support of his case.

7. 'The Tribunal' took note of the photocopy of the railway ticket but held that the Report (Ext. A 2) does not talk about having found any railway ticket with the deceased. It further held that save and except the *fardbeyan*, no first information report/final report and/or the police report has been submitted and as such, it cannot be held that he was a *bona fide* passenger on the train.

8. It further held that the petitioner-appellant also failed to provide any document showing the report of the railway authorities/GRP and as such, it cannot be said that cause of death was due to accident from rail. 'The Tribunal' further observed that save and except the OA, there is no other document to support the fact that the deceased fell down from the train, got injured that led to his death.

9. Accordingly, 'the Tribunal' vide an order dated 02.07.2018 held that the petitioner-appellant herein failed to satisfy the Court that the deceased was a valid passenger and that the death was due to the injury caused on account of train accident dismissed the O.A 00035/2008 (C.



No. 176/2008).

10. Aggrieved, the present appeal has been filed.

11. Heard Mr. Hare Krishna Prasad, learned counsel for the appellant and Mr. Tuhin Shankar, learned counsel for the Railways.

12. The submissions put forward by the learned counsel for the appellant is/are that :

(i) the appellant's son (deceased) namely, Hira Kanu was having proper valid ticket vide No. 240907 and a photocopy of the same was part of the record before 'the Tribunal';

(ii) further, the original ticket was also in possession of the petitioner-appellant but was never demanded by 'the Tribunal';

(iii) once the appellant had brought on record the photocopy of the ticket and was ready to produce the original ticket dated 24.09.2007, the onus was on the Railways to prove that the deceased was not a bona fide passenger;

(iv) there is nothing on the record



to show that the Railways ever took such contention and 'the Tribunal' on its own without even asking the Railways to reply on the said point negated the petition.

(v) further, Section 124(A) of the Railways Act clearly envisaged concession on account of untoward incident.

13. Learned counsel for the appellant has brought on record a decision of the Apex Court in the case of **Union Of India Vs. Reena Devi** reported in **AIR-2018 SCC 2632** in support of his contention that once he had brought on record the photocopy of the ticket, the onus was on the Railways to prove otherwise.

14. Learned counsel for the appellant reiterated that a bare perusal of the said order shows that mere absence of ticket with injured or deceased will not negate the claim that he was a *bona fide* passenger. Once an affidavit was filed that he was a *bona fide* passenger, the burden has to shift on the Railways. He thus submits that in particular facts and circumstances of the case, where not only the statement was made on affidavit, even photocopy of the ticket was part of record, 'the Tribunal' wrongly



rejected the claim and as such the same is fit to be set aside.

15. *Per contra*, Mr. Tuhin Shankar, learned counsel for the Railways submit that Pradeep Roy claimed to have been travelling with the deceased on the said train and as such, was an important witness to the occurrence. However, he was not examined. The further contention of the learned counsel is that the statement of the parent of the deceased that his son's legs were amputated does not found clearly incorporated in the Inquest and P.M. Reports where only hard and blunt abrasions stands recorded.

16. The further submissions made by Mr. Shankar is that the train ticket or the FIR report were not submitted and by mere submissions of photocopy of the train ticket, it cannot be said that the victim was a *bona fide* passenger. Further, there is no copy of Railway memo either by the Station Master or by the GRP or any First Information Report to show the alleged incident. He as such, submits that 'the Tribunal' rightly came to the conclusion the appellant failed to prove his case and accordingly dismissed the petition. He thus submits that the order is perfectly justified and need no interference.

17. The facts relating to the case is/are that



the son of Mr. Bandori Shah, namely, Hira Kanu was taking a train journey from Jamalpur to Bhagalpur and at Bariyarpur Railway Station, he fell down between the platform and the train, got injured which finally led to his death in 'the hospital'. The appellant had brought on record the photocopy of ticket no. 240907 dated 24.09.2007 on affidavit to show that his son was a valid passenger on the train.

18. Subsequently, the Inquest Report and Post-Mortem Report shows death on 26.09.2007. The appellant had also produced the Death Certificate as also the '*fardbeyan*'.

19. Further, the appellant being a rustic person, it was for the authority in a welfare State to take steps in continuation of the *fardbeyan* by lodging the F.I.R, get the matter investigated and submit a final report. Failure on the part of the authorities to do so is/are their fault and for such non-action on the part of the authorities, the appellant cannot be allowed to suffer.

20. Again, so far as the absence of any report of the Railway authorities of the concerned Railway Station is concerned, once the accident occurred and the injured



passenger was rushed to the hospital, it was their duty to get the accident reported and accordingly act in the matter. The appellant was not supposed to go to the Railway Station to check whether the accident has been reported or not when his son was fighting with his life in 'the hospital'.

21. So far as the absence of examination of co-passenger is concerned, this Court holds that to appear or not in a case is in exclusive domain of the person concerned and his/her non-appearance cannot be taken as a ground to deny the compensation amount by the Railways.

22. Further, section 124(A) of the Railways Act, 1989 (henceforth for short 'the Act') read as follows:

“Section 124(A) 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 have been injured or the dependent of a passenger who has been killed to maintain an action and recover the 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 suffer 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;*
 - (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.*
- Explanation- For the purpose of this section, “passenger”, includes -*
- (i) a railway servant on*



duty; and
(ii) a person who has
purchased a valid
ticket for travelling by
a train carrying
passengers, on any
date or a valid
platform ticket and
become a victim of an
untoward incident.”

23. The appellant preferred the O.A No. 00035/2008 (C. No. 176/2008) in which the photocopy of the railway ticket was annexed and in that backdrop, it was for the Railways to prove that the appellant's son was not a bona fide passenger.

24. It is important to record here the order of the Apex Court in the case of **Union Of India Vs. Reena Devi** (supra) and its concluding paragraphs read 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.

Re: (iv) Rate of Interest

18 As already observed, though this Court in Thazhathe Purayil Sarabi (AIR 2009 SC 3098) (supra) held that rate of interest has to be at the rate of 6% from the date of application till the date of the award and 9% thereafter and 9% rate of interest was awarded from the date of application in Mohamadi (supra), rate of interest has to be reasonable rate at par with accident claim cases. We are of the view that in absence of any specific statutory provision, interest can be awarded from the date of accident itself when the liability of the Railway arises upto the date of payment, without



any difference in the stages. Legal position in this regard is at par with the cases of accident claims under the Motor Vehicles Act, 1988. Conflicting views stand resolved in this manner.

The appeal will stand disposed of accordingly.

Order accordingly.

25. As would reflect from the order dated 02.07.2018 passed in OA No. 00035/2008 (C.No. 176/2008), 'the learned Tribunal' on its own took up the entire matter and negated the claim of the appellant without even asking the Railways to prove that appellant's son was not a bona fide passenger.

26. The learned counsel for the appellant on a query by this Court about presence of original ticket, not only produced the said Ticket No. 240907 dated 24.09.2007, the same was also checked by Mr. Tuhin Shankar, learned counsel for the Railways.

27. This Court thus holds that the son of the appellant died of the injuries caused due to falling down from the train and was a valid passenger with Ticket No. 240907 dated 24.09.2007.



28. Further, following the Apex Court decision in **Union Of India Vs Reena Devi** (supra), once the appellant-petitioner was able to put on record the affidavit that his son was a *bona fide* passenger and also annexed photocopy of the Rail ticket, onus was on the Railways to negate the same. As the Railways failed to do so, 'the Tribunal' erroneously rejected the claim put forward by the appellant.

29. Thus in the aforesaid facts and circumstances, the order dated 02.07.2018 passed by 'the Tribunal' in O.A. No. 00035 of 2008 (C. No. 176/2008) is hereby set aside. This Court further holds that the appellant is entitled to the compensation amount with 6% interest from the date of the accident till the payment is finally made. The Railway Authorities are directed to complete the entire exercise within a period of two months.

30. The M.A. No. 817 of 2018 is accordingly allowed.

(Rajiv Roy, J)

Jagdish/Neha/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	30.11.2022
Transmission Date	

