

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.44 of 2013

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Shri Balbir Singh son of Diyal Singh, residnet of village – Chakpaika, P.S. -
Raikot, Distt. - Ludhiyana (Punjab)

... ..Applicant / Appellant/s

Versus

Union Of India through its Gnral Manager, N.F., Railway, Guwahati

... ..Respondent / Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Pravin Kumar Gupta, Advocate
For the Respondent/s	:	M/s Awadhesh Kumar Pandey, Sr. Panel Counsel
		Ravinder Kumar Sharma, CGC
		Saket Anand, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
Date : 08-09-2022

Heard learned counsel for the appellant and learned
counsel for the Union of India.

The instant appeal under section 23(1) of the
Railway Claims Tribunal Act, 1987 has been preferred against
the order dated 17.10.2012 passed in Claim Application no. OA
00038 of 2001 by the learned Member (Technical), RCT, Patna,
whereby he was pleased to dismiss the claim application filed
by the appellant.

At the outset it is submitted by learned counsel for
the appellant that I.A. no. 8281 of 2017 has been filed by the
appellant praying therein for condonation of delay of two days
in filing of the appeal.

Having heard learned counsel for the appellant and



learned counsel for the Union of India and having perused the contents of the interlocutory application, the delay in filing of the appeal is condoned.

Learned counsel for the parties have been heard on merits of the appeal.

The facts in brief are that as per the case of the applicant in the claim case, Late Pola Singh boarded Train no. 5610 UP (Awadh Assam Express) at Kishanganj Railway Station with a valid ticket. As a result of accidental fall from the train near the originating station itself as a result of heavy rush inside the compartment, he sustained injuries and subsequently died in course of treatment.

A claim case was filed by the original applicant, namely, Late Jagir Kaur on 10.4.2000 for the accidental death of her son Late Pola Singh. However, as the original applicant died during pendency of the appeal, the instant applicant, namely Shri Balbir Singh who happens to be the brother of the deceased was substituted in her place.

The learned Tribunal issued notices to the respondents pursuant to which the respondent Union of India filed their written statement contesting the claim case. Issues were framed and various documents as detailed in paragraph no.



5 of the judgment which included the affidavits of the present applicant, affidavits of the co-passenger, FIR, chalan, inquest report, postmortem report etc. were exhibited on behalf of the applicant.

By order dated 17.10.2012 the learned Tribunal was pleased to dismiss the claim application filed by the applicant holding that the applicant had filed a forged / fabricated document (station memo) as Ext. A/5 to mislead the Tribunal, the deceased brother of the present applicant had not died as a result of accidental fall as claimed in the claim application but has been run over by another train, he was not even a passenger of any train as claimed and that on the death of the original applicant ie the mother of the deceased, the present applicant who happens to be the brother of the deceased and admittedly a major on the date of death / accident of Late Pola Singh, would not come under the definition of dependant as defined under the Railways Act and thus he would not be entitled for compensation.

It is submitted by learned counsel for the appellant that the learned Tribunal has committed an error in deciding the claim case. So far as doubting the genuineness of the memo which has been marked as Ext A/5 is concerned, in absence of



examination of the Station Master concerned, the learned Tribunal could not have arrived at the conclusion that the same was a forged and fabricated document. The learned Tribunal wrongly concluded and disbelieved the co-passenger Amarjeet Singh who was an eye witness to the occurrence having purchased the ticket and having travelled with the deceased on the fateful day. The conclusion adduced from the inquest report of the GRP, Kishanganj which is Ext. A/7 has not been confirmed from the postmortem report, non recovery of the original train ticket from the accident site could not make the deceased passenger any less bona fide and lastly the original applicant being the mother of the deceased, there is no applicability of section 124(A) of the Railways Act in the facts of the instant case. As such it is prayed that so far as the judgment impugned is concerned, the same be set aside and the prayer made by the original applicant in the claim case be allowed.

The appeal is opposed by learned counsel for the Union of India who submits that the judgment of the Railway Tribunal is well reasoned based on the material that has transpired in course of the oral evidence as also the documentary evidence brought on record. It is thus submitted



that there being no merit in the instant appeal, the same be dismissed.

Heard learned counsel for the appellant and learned counsel for the Union of India.

The facts relevant for deciding the instant appeal are that the brother of the applicant Late Pola Singh met with an accident which as per the contents of the claim petition was as a result of his having accidentally fallen down from the train Awadh Assam Express (Train no. 5610 UP) near the originating station ie Kishanganj railway station. The facts further not in dispute are that it was reported by the on duty gateman Shri S.N.Jha and one civilian Shri Alam, that the deceased was run over / knocked down by train no. 5657 Kanchanjungha Express, while crossing the track near the Up gate signal of Kishanganj Station.

While in the original claim application dated 9.9.2001, there was no mention of any eye witness to the occurrence of the deceased having fallen from Awadh Assam Express but surprisingly more than 10 years after the incidence, an eye witness, namely, Amarjeet Singh turned up who claimed that he had travelled with the deceased and had also purchased a valid ticket for the travel. However, this witness Amarjeet



Singh is not to be found either in the station or in the inquest report of GRP, Khagaria (Ext. A/7) and thus in the opinion of this Court the Tribunal has rightly disbelieved this witness. Further from perusal of the record it transpires that so far as the deceased was concerned, he was unmarried and had died issueless. On account of the death of the original applicant, the present applicant, namely, Balbir Singh who happens to be brother of the deceased was substituted. It is also not in dispute that the applicant Balbir Singh was aged about 31 years at the time of the death of Pola Singh on 10.4.2000. Section 124(A) of the Railways Act talks about an injured passenger or a dependant of the passenger in case who has killed to be entitled to maintain an action and recover damages in respect of an accident. Further section 123(b) of the Act defines dependant and the same is quoted hereinbelow for ready reference:

“123. (b) “dependant” means any of the following relatives of a deceased passenger, namely:—

(i) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his parent;

(ii) the parent, minor brother or unmarried sister, widowed sister, widowed



daughter-in-law and a minor child of a pre-deceased son, if dependant wholly or partly on the deceased passenger;

(iii) a minor child of a pre-deceased daughter, if wholly dependant on the deceased passenger;

(iv) the paternal grand parent wholly dependant on the deceased passenger;

From the reading of the above definition of ‘dependant’ it would clearly be evident that in case the deceased passenger is unmarried as in the present case, his dependant would only be his parents. The claimant in the instant case of a passenger who is said to have died in the so-called accident is his 31 year old brother. Thus in no manner would he come under the definition of a ‘dependant’ as defined under section 123(b) of the Act quoted hereinabove.

For this reason also, the Court finds no merit in the instant appeal.

The appeal is dismissed.

(Partha Sarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	9.9.2022
Transmission Date	

