

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.421 of 2015

Union Of India through the G.M., E.C. Railway Hajipur, Bihar

... .. Appellant/s

Versus

1. Gaurav Kumar Mishra
2. Saurav Kumar Mishra
3. Vaibhav Kumar Mishra
All Sons of Late Udaichandra Mishra resident of Village - Parsaditola, P.O. -
Chakuati, Via Ratanpur, P.S. - Jaley, District - Darbhanga, Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Bijoy Kumar Sinha, Adv.
For the Respondent/s	:	None

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

9 10-08-2022 Heard learned counsel for the appellant.

No one appears on behalf of the respondents.

The instant appeal has been preferred under section 23 of the Railway Claims Tribunal Act, 1987 against the order dated 24.7.2015 passed in Claim Application no.OA 00328 of 2006 by the learned Member, (Judicial), Railway Claims Tribunal, Patna Bench whereby the Railway was directed to pay a sum of Rs.1,50,000/ to the respondent no.1 and Rs.1,25,000/ each to the respondent nos.2 and 3 ie a total of Rs.4 lacs along with simple interest at the rate of 9% from the date of the application till the date of actual payment.

The facts in brief are that an application was filed by the applicant Gaurav Kumar Mishra to the effect that his father



Udai Chandra Mishra was a bonafide passenger of Train no.1124 (Gwalior-Barauni Mail) from Gwalior to Barauni Railway Junction on 28.8.2006. He boarded the train on 29.8.2006 at Hajipur Railway Station for going to Muzaffarpur Railway Station but in between Ram Dayalu Nagar and Muzaffarpur Railway Station, as a result of the pushing and shoving because of the rush, father of the applicant lost balance and met with an accident by falling under the train. As a result of the injury sustained, he died.

On the filing of the original application by the applicant, the same was registered as Claim Application no.OA 00328 of 2006. A written statement was filed on behalf of the Union of India represented by the General Manager, East Central Railway on 5.9.2013. On behalf of the applicant, the applicant Gaurav Kumar Mishra was examined as A.W.1 and cross-examined by the other side. Further, the applicants exhibited eight documents which were marked as Exts.A/1 to A/8.

So far as the respondents are concerned, no witness was examined, however, one document was exhibited which was marked as Ext.R/1.

Learned Tribunal vide order dated 24.7.2015 was



pleased to decide the above original application as stated above.

It is submitted by learned counsel for the appellant that as per the case of the applicant in the original application, the father of the applicant was a passenger of Train no.1124 (Gwalior-Barauni Mail) running from Gwalior to Barauni Railway Junction. He boarded the said train at Hajipur Railway Junction on 29.8.2006 for going to Muzaffarpur Railway Junction. In the same original application, in clause 6(b) itself at another place, it is stated that the father of the applicant was a passenger from Gwalior to Barauni Railway Station on 28.8.2006. It is thus submitted that while at one place, the deceased is said to be a passenger from Gwalior to Barauni on 28.8.2006, in the same application at the other place, he has been described as a passenger on 29.8.2006 from Hajipur to Muzaffarpur. Further, referring to the post-mortem examination report of the deceased which has been marked as Ext.A/5, it is submitted that the post-mortem examination commenced at 12.15 p.m. on 30.8.2006 and the time elapsed since death is said to be 48 hours to 60 hours approx. Thus, it is submitted that as per the post-mortem examination report, the death of the applicant's father took place sometime before 12.15 p.m. on 28.8.2006. This once again does not match the statement of the



applicant in the original application. It is submitted that the learned Tribunal while awarding the compensation has awarded interest at the rate of 9% which is much on the higher side. It is lastly submitted that in view of the points raised and the submission made, the very fact as to whether the father of the applicant was a genuine and bonafide passenger, specially in absence of any ticket having been exhibited, is doubtful and thus, the award of compensation and the decision of the Tribunal is also unsustainable. It is prayed that the same be set aside.

No one appears on behalf of the respondents.

Having heard learned counsel for the appellant and having perused the material on record, it transpires that the father of the respondents was a passenger in Train no.1124 (Gwalior-Barauni Mail) which started on 28.8.2006 from Gwalior for Barauni Railway Junction. So far as the father of the respondents is concerned, he boarded the said train on 29.8.2006 at Hajipur Railway Junction for going to Muzaffarpur. On the Gwalior-Barauni Mail train reaching near Gate no.6B-KM-48/3-4 between Ram Dayalu Nagar and Muzaffarpur Railway Junction, as a result of the push and pull in the overcrowded train, as a result of the jerk caused by the



sudden brake, the deceased accidentally fell down from the running train as a result of which, he suffered serious injuries and died. Information was given by the key-man to the Station Superintendent, East Central Railway, Ram Dayalu Nagar and the said Superintendent on 29.8.2006 at 11 a.m. passed on the information to the Officer-in-Charge, G.R.P., at Ram Dayalu Nagar. Accordingly, U.D. Case no.49 of 2006 was registered on 29.8.2006 at the Rail Muzaffarpur police station. The body was sent for post-mortem examination on 30.8.2006 wherein the doctor was of the opinion that the cause of death was haemorrhage and shock due to injuries caused by hard and blunt substance which might be due to a train.

So far as the contention of learned counsel for the appellant with respect to the deceased having been described to be a passenger from Gwalior to Barauni on 28.8.2006 and at another place in the same application having been described as a passenger on 29.8.2006 from Hajipur to Muzaffarpur is concerned, it may be stated that from perusal of the claim application filed by the son of the deceased in the Tribunal, there is no confusion with respect to the fact that the Train no.1124 (Gwalior-Barauni Mail) had started from Gwalior on 28.8.2006 for Barauni Railway Junction. There is also no



confusion on the fact that so far as the deceased is concerned, he had boarded the said train at Hajipur Railway Junction on 29.8.2006 for going to Muzaffarpur Railway Junction and on way, he met with an accident near Gate no.6B-KM-48/3-4 between Ram Dayalu Nagar and Muzaffarpur Railway Junction. On information having been passed by the key man and the Station Superintendent to the concerned police station, U.D. Case no.49 of 2006 was registered on 29.8.2006. In the final report submitted by the police in the said case on 31.8.2006, the police found the facts to be correct that the death had occurred as a result of an accident consequent to the deceased falling down from the train on brake being applied and the train being crowded.

Learned counsel for the appellant further submits that the fact as to whether the deceased was a bonafide passenger or not is not confirmed in view of the fact that no valid ticket was found on the person of the deceased. With respect to the same, it may be stated here that the Court is in agreement with learned Tribunal wherein it holds that the death of the deceased having taken place in train journey, so far as the burden of proving as to whether the deceased was a bonafide passenger or not would lie on the Railways.



With respect to the post-mortem examination report, it has been submitted by learned counsel appearing for the appellant-Railways that the post-mortem examination of the deceased commenced on 30.8.2006 at 12.15 p.m. and as per the report, the time elapsed since death is said to be between 48 hours to 60 hours. Thus as per the said report, the death would have taken place sometime on 28.8.2006 between 00.15 hours and 12.15 hours. Thus, it is submitted that the train accident of the deceased took place sometime on 29.8.2006 is falsified. With respect to this submission made on behalf of the appellant, it may be stated here that so far as the death of father of the respondents is concerned, the same is not in dispute. With respect to the contents of the post-mortem report, for example, the time of death etc., it was once again on the Railways to examine the doctor who conducted the post-mortem examination to prove their case. Death of the father of the respondents in a train accident not being in dispute, in absence of examination of the doctor, no benefit can be taken by the appellant-Railways with respect to the contents of the post-mortem examination report.

Having heard learned counsel for the appellant and having gone through the materials on record, the Court is of the



opinion that there remains no doubt that the father of the respondents died while travelling in Train no.1124 (Gwalior-Barauni Mail) between Hajipur Railway Junction and Muzaffarpur Railway Junction when he met with an accident and accidentally fell down from the said running train. The learned Tribunal has rightly taken into note all the materials on record and has correctly come to conclusion granting a total sum of Rs.4 lacs by way of compensation along with simple interest at the rate of 9% per annum.

The Court finds no error in the order of the learned Tribunal. There being no merit in the instant appeal, the same is dismissed.

(Partha Sarthy, J)

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