

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1140 of 2016

=====

Smt. Shashi Devi wife of Shri Kashi Prasad Gupta, Resident of Village-
Ramanujganj, Police Station- Ramanujganj, District- Sarguja Balrampur,
Chhattishgarh.

... .. Appellant/s

Versus

The Union Of India Through The General Manager, Ec Railway, Hazipur

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Parashuram Singh, Advocate
For the Respondent/s : Mr. Alok Kumar Jha, C.G.C.

=====

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

11 17-08-2023 This Miscellaneous Appeal has been filed against the

judgment and order dated 15.07.2016 passed by learned

Member (Judicial), Railway Claims Tribunal, Patna Bench in

Claim Application No. 56 of 2004 whereby, the claim

application has been rejected.

2. Brief facts of the case, is that, on 14.07.2003, Shri
Naveen Kumar Gupta (unmarried son of the applicant) after
having a valid second class monthly season Ticket bearing No.
21169081 issued on 07.07.2003 from Patna Sahib for going to
Patna Junction, had boarded Lalquila Express Train at Patna
Junction. It is pleaded that due to heavy rush and sudden jerk of
the train, the deceased had accidentally fallen down from the
running train near Rajendra Nagar Terminal. He had sustained
injuries and was brought to Patna Medical College and Hospital



at Patna for his medical treatment, where he had succumbed to his injuries during his treatment.

3. The appellant filed claim application under Section 125 of the Railways Act, claiming the compensation to the tune of Rs. 5,00,000/- (five lacs) on account of death of her unmarried son, namely, Shri Naveen Kumar Gupta.

4. The appellant filed all the relevant documents before the Tribunal and adduced evidences in support of her claim.

5. On the other hand the respondent-Railways filed a written statement in which it had contended that the claim petition is not maintainable under the law. The respondent denied about the occurrence of the aforesaid accident. They have avered that the applicant has to prove that the deceased was a bonafide passenger of the said train, otherwise, he would be treated as trespasser, as per Section 55 of the Railways Act.

6. The claimant-appellant has examined herself as AW-1 and was also cross-examined by the learned counsel for the respondent on behalf of the Railways. The appellant has also examined an important witness, namely, Amit Kumar Gupta as AW-2, who was with the deceased in the train, and he is the eye witness of the occurrence. He adduced that deceased was his cousin. He was coming along with his cousin, namely, Naveen Kumar Gupta from Patna City to Rajendra Nagar Terminal



having their respective journey monthly pass. The monthly pass of the deceased lost in the accident. He had got recorded his statement before Pirbahore, police station and accordingly UD Case No. 52 of 2003 was lodged (Ext. A), the fardbeyan of Amit Kumar Gupta recorded by Shri D.K. Singh, ASI, Pirbahore on 15.07.2003. Ex-2 is the F.I.R. which indicated that the deceased had died due to fall from the train. Ext.-4 is the copy of the police report. Ext.-5 is the inquest report which indicates that the deceased had died during his medical treatment due to injuries caused by falling down from the train. Ext.-13 is the post-mortem report which indicates that Naveen Kumar Gupta, aged about 20 years, son of Shri Sashi Prasad Gupta had died due to hemorrhage and shock caused by hard and blunt object.

7. On the other hand, the opposite party-respondent has filed the report of SM/RJPB, marked as Ext.-R1, according to which no information about run over of any person after alleged falling down from the train is mentioned in the station diary dated 14.07.2003.

8. After hearing the parties, learned Tribunal upon considering the materials on record and the evidences adduced by the parties has held that the railways-respondent has filed only one document Ext.-R1. The learned Tribunal held that eye witness AW2 is not reliable as no person can fall while using



wash basin when the gate of the coach was fully loaded with vegetables baskets. It is also held that there are major contradiction in the oral evidence of the applicant (AW2). So much reliance cannot be placed upon the oral evidence of AW2. It has been further mentioned that the date in the final report have been overwritten. In the report of SM/RJPB (Ext.-R1) it categorically mentioned that no information about said accident is mentioned in the station diary of the said date. It is also held that no journey ticket or Railway Pass/certificate has been filed by the applicant despite the details of monthly pass have been supplied by the applicant. The applicant has failed to prove the case beyond all probabilities. As per the Indian Railways Act, the burden of proof lies on the applicant to prove her case for getting the compensation from the Railways.

9. Learned counsel for the appellant submits that the inquest report Ext.-5, shows that the deceased had died during his medical treatment due to the injuries caused by falling down from the train.

10. It is submitted that UD Case No. 52 of 2003 dated 15.07.2003 was instituted by G.R.P. Patna which shows that the death was due to run over by the train. Ext.-A1 is the fardbeyan of Amit Kumar Gupta and Ext.-2 is F.I.R. of U.D. Case No. 52 of 2003 which indicates that the deceased had died due to run



over by a train.

11. Learned counsel for the Railways vehemently opposed the claim of the appellant. It is submitted that deceased was neither a bonafide passenger nor there is any document to show or prove that the deceased had fallen down from the train. It is also submitted that no station memo has been filed to show that the alleged accident had occurred.

12. After scrutinizing the impugned order, materials on record and also lower court records, it is evident from the Ext.-5 that train had run over the deceased, namely, Amit Kumar Gupta, who died due to the injuries caused by falling down from the train. AW2, who is the eye witness of the occurrence, and also the informant of Patna Junction G.R.P. U.D. Case No. 52 of 2003, supports the F.I.R. and supported the case of the applicant and proved the accidental death of Naveen Kumar Gupta, who died due to falling down from the train.

13. Considering the submissions made by the parties, this Court finds that the learned Claims Tribunal failed to consider the material evidence which shows that the son of claimant died due to run over by the train as a result of falling down from the train. Post-mortem report also supported the claim of the claimant.

14. In such view of the matter, the claim petition of the



appellant is allowed.

15. Now, with regard to question of amount of compensation in respect of accident, the same has been settled by the Hon'ble Supreme Court in the case of ***Union of India vs Dilip and others*** (Civil Appeal No. 9124 of 2019) which reads as follows:-

“The question, whether in respect of accidents that occurred before the Railways Accidents and Untoward Incidents (Compensation) Rules, 1990 were amended w.e.f. 27.12.2016, the amount of compensation has to be arrived, taking into account the base figure of Rs 4 lakhs or Rs 8 lakhs was considered by this Court in Union of India vs. Rina Devi [(2019) 3 SCC 572].”

16. The aforesaid judgment was further explained by the Hon'ble Supreme Court in the case of ***Union of India vs. Radha Yadav*** reported in **2019 (4) SCC 410** which reads as under:-

“10. The issue raised in the matter does not really require any elaboration as in our view, the judgment of this Court in the case of Rina Devi is very clear. What this Court has laid down is that the amount of compensation payable on the date of accident with reasonable rate of interest shall first be calculated. If the amount so calculated is less than the amount prescribed as on the date of the award, the claimant



would be entitled to higher of these two amounts. Therefore, if the liability had arisen before the amendment was brought in, the basic figure would be as per the Schedule as was in existence before the amendment and on such basic figure reasonable rate of interest would be calculated. If there be any difference between the amount so calculated and the amount prescribed in the Schedule as on the date of the award, the higher of two figures would be the measure of compensation. For instance, in case of a death in an accident which occurred before amendment, the basic figure would be Rs.4,00,000/-. If, after applying reasonable rate of interest, the final figure were to be less than Rs.8,00,000/-, which was brought in by way of amendment, the claimant would be entitled to Rs.8,00,000/-. If, however, the amount of original compensation with rate of interest were to exceed the sum of Rs.8,00,000/- the compensation would be in terms of figure in excess of Rs.8,00,000/-. The idea is to afford the benefit of the amendment, to the extent possible. Thus, according to us, the matter is crystal clear. The issue does not need any further clarification or elaboration.”

17. In the aforesaid judgment, the Hon'ble Supreme Court has held that “The compensation be computed taking interest @



7.5% per annum in accordance with both the modalities namely;

(a) Which was in existence before the amendment with
Rs. 4 lakhs as the base figure.

(b) Which came into existence after the amendment, with
Rs. 8 lakhs as the base figure.

The compensation shall thereafter be payable in
accordance with the sum which is greater of the two, as laid
down in the aforesaid judgments.”

18. Accordingly, this Miscellaneous Appeal is allowed in
the light of order passed by the Hon'ble Supreme Court in Civil
Appeal No. 9124 of 2019 (arising out of SLP (c) No. 6486 of
2018.

19. The learned Tribunal is directed to calculate the
amount of compensation in the light of the judgment of the
Hon'ble Supreme Court quoted above and ensure the payment of
the same at the earliest.

(Khatim Reza, J)

prabhat/-

U			
---	--	--	--

