

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1029 of 2016

Chanda Devi W/o Late Kunal Kumar Resident of village - Hulashi Tola, P.S.
Maner, District Patna

... .. Appellant/s

Versus

Union Of India, Through The General Manager, West Central Railway,
Jabalpur

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Alok Kumar @ Alok Kr Shahi, Advocate Mr. A. Sinha, Advocate
For the Respondent/s	:	Mr. Manoj Kumar Singh, CGC Mr. Ankit Kumar Singh, JC

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

8 22-08-2023 This Miscellaneous Appeal has been filed against the judgment dated 20.07.2016 passed by Railway Claim Tribunal, Patna in Claim Application No. OA 00077 of 2011, whereby claim of the claimant has been rejected.

2. The facts of the case, in brief, is that on 21.08.2010, Kunal Kumar was travelling with a valid second class mail express Ticket No. 13944735 dated 21.08.2010 from Arrah Railway Station to Dadar Railway Station by Train No. 2142 Rajendra Nagar CSTM Super Fast Express. The General compartment of the train in which he was travelling was overcrowded by passengers. On 22.08.2010 when the train was crossing through Maihar Bhadanpur Section, the deceased accidentally fell down from the said running train near Kherva



Gate at 1100 Km. 31/8 due to impact of sudden jerk and overcrowding, as a result of which he sustained multiple injuries and died on spot. Thereafter, the appellant filed claim before Railway Claims Tribunal, Patna which has been dismissed.

3. Learned counsel for the appellant submit that the appellant filed all the relevant documents before the Tribunal and also adduced evidence in support of her case. Learned counsel for the appellant submits that the learned Tribunal has failed to consider the F.I.R, Inquest Report, Final Report and Post Mortem report which clearly proves that deceased died due to fall from the running train.

4. Learned counsel for the appellant submits that claimant had filed 9 documents as Exhibit 'A-1' to 'A-9'. It is further submitted that UD No. 121 of 2010 (Exhibit A-1) was registered on 22.08.2010 by the officer-in-charge, Maihar, which mentions that dead body of an unknown person aged about 25 to 30 years was found between the up and down railway track. Naksha Panchnama (Exhibit A-2) shows that a railway ticket from Ara to Dadar was recovered from the pocket of the deceased and specific allegation is that the deceased died due to falling down from the train. The body was released on the identification of family members of the deceased. Post Mortem



report (Exhibit A-5) also support the claim of the appellant.

5. Learned counsel for the appellant further submits that the Railway has not filed any written statement and filed a document or report which was not affidavited as per the Railway Act. Post Mortem report shows that the cause of death of the deceased is due to head injury. Learned counsel for the appellants further submits that report of the Railway Authority (Exhibit R-1) has filed without any pleadings, evidence or affidavit.

6. Learned counsel for the Railway submits that deceased died due to his own negligence. It is submitted that the deceased was travelling without valid ticket. The ticket mentioned the Train No. 2142 was issued at Ara Railway Station on 13.43 hrs, but the scheduled time of the said train was 12.12 hrs which falsify the case of the claimant.

7. Considering the submission of the parties and after scrutinizing the order of Railway Claim Tribunal, Patna, it is admitted that deceased was found between the railway track, and UD case was instituted, after identification, the dead body was given to the relatives of the deceased. Police also mentioned that a railway ticket was recovered from the pocket of the deceased which shows that the deceased was a bonafide



passenger of Train No. 2142 and also clear from the UD case that the said deceased had fell down from the train. The learned Tribunal wrongly relied on the report of the railway authority accepting the report of the authority, marked as R-1, without any pleadings. The said report was not verified on affidavit.

8. Considering the aforesaid facts and circumstances of the case, I am of the opinion that the claimant has proved his case on the basis of material available on record.

9. 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].”

10. 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.”

11. 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.”

12. Accordingly, this Miscellaneous Appeal is allowed. The Hon'ble Supreme Court in Civil Appeal No. 9124 of 2019 (arising out of SLP (c) No. 6486 of 2018 has ascertained the modalities with regard to quantum of compensation.

13. 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, preferably, within three months from the date of receipt/production of a copy of this order.

(Khatim Reza, J)

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