

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.29 of 2015

=====

Kiran Devi W/o Late Umesh Prasad, Resident of Village / Mohalla Saidpura
Khagaul, P.S. Khagaul, District Patna.

... .. Appellant

Versus

The Union Of India through the General Manager East Central Railway,
Hajipur

... .. Respondent

=====

Appearance :

For the Appellant/s : Mr. Anant Kumar-1, Advocate

For the Respondent/s : Mr. Ram Anurag Singh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 16-01-2023

Heard learned counsel for the appellant and learned
counsel for the Department of Railways.

2. The appellant, in the present case, is aggrieved by and
dissatisfied with the order dated 30.12.2014 passed in Claim
Application No. OA 00024 of 2006 by Hon'ble Member
(Technical), Railway Claims Tribunal, Patna.

3. Learned counsel for the appellant submits that the
learned Member (Technical), Railway Claims Tribunal, Patna
(hereinafter referred to as the 'Tribunal') has recorded a finding in
the impugned order that the applicant is not able to establish the
identity of the deceased by producing evidence. Taking note of the
fact that the applicant is herself a beneficiary, the learned Tribunal
says that her evidence could have been accepted only if other
supporting documents were submitted.



4. Learned counsel submits that on a bare perusal of paragraph '8' of the impugned order, it would appear that in support of her claim the appellant produced a number of documentary evidences. She had produced the identity card and ticket, voter ID and the death certificate of her deceased husband who had died in the said accident.

5. Learned counsel submits that the learned Tribunal has not recorded any reason as to why the oral evidence of the applicant duly supported by the documentary evidences could not be believed. In fact, the submission is that the Tribunal has not at all considered the fact that the evidence of the applicant had remained uncontroverted and in the cross-examination the Railways had not even thrown a suggestion to the applicant that her statements were not correct.

6. Learned counsel submits that no doubt the burden to prove the identity of the deceased lies upon the claimant at the first instance but according to him, the moment the claimant discharges that burden by producing prima-facie materials before the Tribunal, in case the Tribunal disputes the said evidence the burden would lie upon the Railways to adduce reliable evidence to discard the evidences brought by the claimant. Referring to her evidence filed on affidavit and the cross-examination, learned



counsel submits that in her affidavit the applicant has categorically stated that she happened to be the wife of the deceased Umesh Prasad. She has stated in paragraph '5' of her deposition that after receiving information the family members of her deceased husband had gone to Rail Police Station, Danapur where they had identified the victim from his cloths and photographs. She has further stated in paragraph '6' that on the basis of the memo prepared by the Railways one UD Case No. 31/2005 was registered with Rail Police Station, Danapur on 25.12.2005 which was investigated by police and the occurrence was found true. The investigation found that in the said accident a person had died after falling from the Train.

7. Learned counsel further submits that in course of cross-examination this witness stood by her affidavit. The witness was never suggested any question so as to take a contradiction and no suggestion was thrown that her statements on affidavit were false or wrong. It is submitted that in this manner the applicant/claimant had discharged her burden. The railways did not bring any evidence either oral or documentary to controvert the case of the applicant. In such circumstances, the learned Tribunal was not justified in rejecting the case of the claimant on the



solitary ground that she had failed to establish the identity of the deceased.

8. Learned counsel for the Department of Railways has opposed this appeal. It is submitted that the husband of the claimant allegedly died on 25.12.2005 but the claimant did not lodge any complaint as regards his missing for at least four days. It is submitted that the post-mortem report was prepared on 25.12.2005 itself showing that it was of an unknown male aged about 30 years. According to him, the Railway pass and Identity Card were not recovered by Rail Police and those documents have been brought on record later on. Learned counsel, however, does not dispute that in course of cross-examination of the applicant no suggestion was thrown to her that her statements were wrong or false. Learned counsel for the Railways submits that the police report was not exhibited in this case otherwise that would have thrown some light on the identity of the deceased.

9. Having heard learned counsel for the parties and on perusal of the records, this Court finds that the learned Tribunal has rejected the application on the solitary ground that the applicant had failed to establish the identity of the deceased. To this Court, it appears that the applicant had brought herself in the witness box, deposed on the identity of the deceased, the manner



in which the deceased was identified through his photographs produced by police but on these points no contradictions were taken from her by the Railways. She has, thus, discharged her initial burden and in such circumstances it was the Railways who had to lead evidences either oral or in form of documents in accordance with rules to demonstrate that the identity of the deceased could not be established. In Paragraph '8' of the impugned order, the learned Tribunal has recorded about the various exhibits which were produced on behalf of the claimant but then in Paragraph '9' of the impugned order the Tribunal has refused to accept the rail ticket certified by the Rail Police as evidence only because the inquest report did not mention recovery of any ticket.

10. In the opinion of this Court, the circumstances under which the ticket was certified by the Rail Police was required to be looked into and it could not have been thrown outrightly only because the recovery of the said ticket was not mentioned in the inquest report. Atleast in the cross-examination of AW, no suggestion was made on behalf of the Railways on this issue and the claimant has categorically stated that the ticket was with the police itself.



11. In ultimate analysis, therefore, this Court finds that the impugned order suffers from non-consideration of the materials available on the record. The impugned order is, therefore, set aside. The matter is remitted to the Tribunal to consider it afresh after giving due opportunities to the claimant as well as the Railways to place on record all such documentary evidences which they may be advised to bring and/or to lead oral evidence, if so desired.

12. After giving such opportunities to the parties, the Tribunal shall decide the matter on the basis of the materials available on the record and in accordance with law within a period of six months from the date of receipt/communication of a copy of this order.

(Rajeev Ranjan Prasad, J)

Tusharika/-
Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	17.01.2023
Transmission Date	

