

29.09.2023
SL No.11
Court No. 551
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

FMA 2460 of 2013

**Kalpana Dey
Vs.
Union of India**

Mr. Saswata Bhattacharyya,
Mr. Sujoy Sinha,
....for the appellant-claimant.

Mr. Subrata Santra
.....for the Union of India/Eastern Railway.

The instant appeal has been preferred against the judgment and award dated 20th Day of June, 2011 passed by the Hon'ble Vice-Chairman, Railway Claims Tribunal, Kolkata Bench, in Railway Accident Claim Case no. U/406 of 2004.

The brief fact of the case is that the present appellant being the claimant filed an application before the learned tribunal for getting compensation on the ground that her husband died in an untoward incident by falling from the running train on 09.03.2004. The fact of the accident as stated by the claimant through his eye witnesses goes to show that the accident happened between 8.00 a.m. to 9.00 a.m. The dead body of the deceased was found near Agarpara Railway Station. The ticket which was alleged to have been recovered from the pocket of the deceased is a local ticket purchased at Naihati Station at 8.05 a.m. The Railway memo said the accident happened at 8.15 a.m. The inquest report

including the final investigation report of the police also stated the time of accident to be 8.15 a.m. After purchasing the ticket from the Naihati Railway Station at 8.05 p.m. how the person reached near Agarpara Railway Station which is situated at railway running distance about 33.00 to 37.00 minutes from Naihati Station. On the basis of such conclusion, the learned tribunal has dismissed the claim application finding the document i.e. the inquest report and the final police investigation report is not justified.

Learned advocate for the appellant submits that the memo of the Station Master which was treated to be the FIR of this case placed in page 59 of the paper book has mentioned the time to be 8.55 hours instead of 8.15 hours. The page 59 is a copy of Xerox memo. The matter cannot be investigated at this stage. Thus, I think it necessary that the matter should be go on remand for proper investigation in respect of the time of the accident as mentioned in the memo of the railway dated 09.03.2004 regarding the alleged accident.

Accordingly, the instant appeal is disposed of.

The entire matter be remanded back before the learned tribunal.

Claimants are at liberty to made appropriate application before the learned tribunal to investigate the time mentioned in the memo of the Railway.

After such investigation is made by the tribunal and after heard both the parties on that point, the learned tribunal shall pass a fresh order.

Parties are at liberty to file their respective evidences, if any, before the learned tribunal.

The instant claim case is pending since the accident of 2004 so learned tribunal is directed to disposed of the same within a short span of period i.e. more preferable within six month from the date of receiving of this order.

The instant FMA 2460 of 2013 is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

LCR alongwith the copy of this order be sent back immediately.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)