

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.540 of 2017

Union of India through the General Manager, Eastern Railway, Kolkata.

... .. Appellant/s

Versus

- 1.1. Ajay Kumar Chourasia Son of Late Suresh Prasad Chaurasiya Resident of Village- Shahjadpur, P.O.- Shahjadpur, P.S.- Madhusudanpur, District- Bhagalpur.
- 1.2. Binay Kumar Bharti Son of Late Suresh Prasad Chaurasiya Resident of Village- Shahjadpur, P.O.- Shahjadpur, P.S.- Madhusudanpur, District- Bhagalpur.
- 1.3. Lal Bahadur Shastri Son of Late Suresh Prasad Chaurasiya Resident of Village- Shahjadpur, P.O.- Shahjadpur, P.S.- Madhusudanpur, District- Bhagalpur.
- 1.4. Manish Kumar Son of Late Suresh Prasad Chaurasiya Resident of Village- Shahjadpur, P.O.- Shahjadpur, P.S.- Madhusudanpur, District- Bhagalpur.
- 1.5. Pushpa Devi, (Married Daughter) Daughter of Late Suresh Prasad Chaurasiya Resident of Village- Shahjadpur, P.O.- Shahjadpur, P.S.- Madhusudanpur, District- Bhagalpur.
- 1.6. Anita Devi, (Married Daughter) Daughter of Late Suresh Prasad Chaurasiya Resident of Village- Shahjadpur, P.O.- Shahjadpur, P.S.- Madhusudanpur, District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Anil Singh, Advocate
For the Respondent/s : Mr. Rang Nath Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

Date : 19-02-2024

This Miscellaneous Appeal has been filed against the judgment and order dated 06.03.2017 passed by the Member (Judicial) Railway Claims Tribunal, Patna Bench, Patna in Claim Case No. OA00117 of 2011 whereby the claim application has been allowed and the railway/appellant has been directed to pay eight lacs to the applicants within three months from the date of furnishing of bank account details/mandate form by the claimant along with simple interest @ 9% per



annum from the date of filing of this application i.e. 15.05.2011 and in default further interest @ 2% in addition to 9% has been directed to be paid from the date of registration till realization.

2. Brief facts of the case, is that, on 20.07.2010, the deceased Akhilesh Kumar was coming from Gaya to Bhagalpur by Gaya Kamakhya Express (Train No. 5619 UP) after having a proper railway ticket of second class from Gaya to Bhagalpur Junction. While the train was about to reach at Bahgaglpur Junction, the deceased came near the door to get down from the train but due to heavy rush and sudden jerk of the train the deceased had accidentally fallen down from the gate of the train as a result of which head, leg and hand of the deceased were cut and the deceased sustained severe injuries on his bodies. The deceased died on the spot due to the said injury. The dead body of the deceased was lying on the railway track of platform no. 1 at Nathnagar Railway Station. The ticket and mobile phones were lost in the accident. The brother of the deceased (Manish Kumar) who was travelling with him reported the matter to Rail Police at Bhagalpur after getting down. The *fardbeyan* of Manish Kumar (AW-2) marked as A/1 dated 20.07.2010, whereby AW-2 has stated and supported that how the deceased died in an untoward incident. On 20.07.2010, when the



Nathnagar GRP was informed, an Inquest Report was prepared at Nathnagar Station and the dead body of the deceased was taken to Bhagalpur Railway Station. On 20.07.2010, at about 9:00 pm while the dead body of the deceased was brought at Bhagalpur GRP and Rail PS Bhagalpur UD case No. 38 of 2010 was registered. Later on the body of the deceased was sent to JLNMC Hospital, Bhagalpur for Post Mortem (which is marked as A/4) and it was done on 21.07.2010. The post-mortem report indicates that Akhilesh Kumar aged about 25 years had died due to hemorrhage and shock caused by hard and blunt object. After investigation S.I. Rail P.S. Bhagalpur also submitted final form dated 21.07.2010 saying that the deceased fell down from Gaya Kamakhya Train No. 5619 UP, sustained injuries and died(marked as A/3). The deceased died due to untoward incident and hence the deceased is entitled to compensation.

3. The original respondent filed claim before the Railway Claims Tribunal, Patna Bench, Patna under Section 125 of the Railways Act, claiming the compensation to the tune of Rs. 4 lacs on account of death of his unmarried son, namely, Akhilesh Kumar. The deceased father, namely, Suresh Pd. Chaurasia-original applicant filed all the relevant documents before the Tribunal and adduced evidence in support of his claim which are



as follows:-

- (i). FIR registered as Rail PS Bhagalpur UD Case No. 38 of 2010 dated 20.07.2010.
- (ii). The photocopy of the Inquest Report.
- (iii). The photocopy of final report.
- (iv). The photocopy of post-mortem report.
- (v). The photocopy of the death certificate.
- (vi). Parivarik Suchi issued by the Circle Officer, Nathnagar Bhagalpur vide Letter No. 151 dated 08.08.2015.

4. On the other hand, the respondent-railway filed a written statement in which it had contended that the claim application is not maintainable in law as well as in facts as a concocted story has been made by the applicant as there is no eye witness in this case. It is further contended that it is a case of tress passer/run over as no journey ticket was recovered from the possession of the deceased as per the inquest report, thus, the railway negates the claim of the applicant/respondent since the deceased was not a *bona fide* passenger. It is further contended that the said incident was not an untoward incident under Section 123(C) of the Railways Act, 1989 and the applicant is not entitled for compensation under Section 124(A) of the Railways Act, 1989. The railways filed inquiry report(Ext.-R1) against claim of the applicant in which it is stated that the death of the deceased was due to his own fault.



5. The applicant/respondent has examined himself as AW-1 and was also cross-examined by the learned counsel for the railway-appellant. The applicant/respondent has also examined AW-2, namely, Manish Kumar brother of the deceased Akhilesh Kumar, who was travelling in the same train. He adduced that deceased was his brother and he was coming with his brother from Gaya Junction to Bhagalpur Junction. It is further contended that on 20.07.2010 my brother Akhilesh Kumar purchased two second class railway tickets from railway counter at Gaya at about 12 O'clock and came to platform, he had kept tickets and other articles where both boarded in Gaya Kamakhya train in second class on 20.07.2010 at about 12:50 pm the train left Gaya Junction. When the said train reached at Jamalpur Junction, the coach was crowded and each passenger were jostling, while the train was to reach at Bhagalpur Junction Akhilesh Kumar came near the door of the train and I was away from him due to heavy rush and sudden jerk of the train, Akhilesh Kumar had accidentally fallen down from the running train near Nathnagar Railway Station. When the train reached at Bhagalpur Junction, I got down and informed the Bhagalpur Rail Police, the police reached at Nathnagar Railway Station and an inquest report was prepared at Nathnagar Railway



Station at platform no. 1. The ticket and mobile of the deceased was lost in the accident. He had got recorded his statement before the Rail Police Station, Bhaglapur and accordingly, Rail Police Bhagalpur lodged U.D. Case No. 38 of 2010 dated 20.07.2010. Ext.-A1 the *fardbeyan* of Manish Kumar was recorded by S.I. Shri Saryug Ram. Ext. A2 is the inquest report which indicated that the deceased had died due to falling down from the train. Ext. A3 is the copy of the police report. Ext. A4 is the post-mortem report which indicates that Akhilesh Kumar aged about 25 years son of Suresh Pd. Chaurasia had died due to hemorrhage and shock being hit by hard and blunt object.

6. On the other hand, the opposite party-appellant has produced DRM report as Ext. R1 which disclosed that the deceased was run over near the residence of the deceased which is the place of occurrence.

7. Learned Tribunal after hearing the parties, considering the materials on record and evidence adduced by the parties has held that the ticket as per the claimant, was lost in the incident and in such circumstance it was for the Railways to establish that the son of the claimant was a ticket-less passenger. It is further held that there is no evidence in support of DRM report Ext.-R1 and allowed the claim of the applicant-respondent and



further directed to pay rupees eight lacs to the applicant within three months with interest.

8. Being aggrieved by the said judgment and order dated 06.03.2017 the appellant filed the present Miscellaneous Appeal. The learned counsel for the appellant submitted that the deceased was neither a *bona fide* passenger nor there is any document to show or prove that the deceased had fallen down from the train. Learned counsel for the appellant further submits that the Tribunal has erred in granting 9% interest and in default further interest of 2% is contrary to the decision of the Hon'ble Supreme Court in the case of ***Thazjhathe Purayil Sarabi and others Vs Union of India and another*** reported in ***AIR 2009 SC 3098***.

9. On the other hand learned counsel for the respondents submitted that the burden of proof lies with the Railway Administration if the Railway Administration claims the said deceased person is not a *bona fide* passenger. In this regard, no such evidence/documents have been adduced by the Railway Administration which can prove that the deceased was not a *bona fide* passenger at the relevant time of incident.

10. Mere absence of ticket with such injured or deceased will not negate the claim that he was a *bona fide* passenger.



Initial burden will be on the claimant which can be discharged by filing an affidavit of the averments/facts and burden will then shift on the railways and the issue can be decided on the facts shown or attending circumstances. This aspect of the matter has been decided in the case of *Sushila and others vs Union of India and others* reported in **2022 SCC Online Bom 7444**. Learned counsel for the respondent further submits that Rail Police Station Bhagalpur U.D. Case No. 38 of 2010 dated 20.07.2010 was instituted by SI Shri Saryug Ram Rail Police Station Bhagalpur which shows that the death was due to run over by the train. Ext. A1 is *fardbeyan* of Manish Kumar brother of the deceased and Ext. A2 which is inquest report and Ext. A3 is the final report of UD Case No. 38 of 2010. Ext.A4 is the post-mortem report of the deceased which indicates that the deceased had died due to run over by the running train.

11. After scrutinizing the impugned order and materials on record, it is evident from Ext. A4 that train had run over the deceased, namely, Akhilesh Kumar, who died due to injury caused by falling down from the train. Ext. A2 who is the brother and co-passenger of the said train and he informed the Bhagalpur railway police. On the information, the Bhagalpur rail police reached at Nathnagar railway station with Manish



Kumar and prepared inquest report at Nathnagar railway station at platform form no. 1. The applicant-respondent has proved his case about untoward incident due to which Akhilesh Kumar (deceased) died.

12. Considering the submissions made by the parties, this Court finds that the learned Tribunal has considered the material evidence which shows that the son of the applicant died due to run over by the train as a result of falling down from the train. The post-mortem report also supported the claim of the applicant-respondent. So far objection raised by the appellant with regard to interest in view of judgment of Hon'ble Supreme Court reported in ***AIR 2009 SC 3098 (Supra)***. In the aforesaid case the Hon'ble Supreme Court has considered all the aspects of the matter and lastly concluded at paragraph no. 39 which reads as under:-

We, therefore, allow the appeal and modify the order of the High Court dated 24.05.2007 affirming the order of the trial court and direct that the awarded sum will carry interest @ 6% simple interest per annum from the date of the application till the date of the award and, thereafter, at the rate of 9% per annum till the date of actual payment of the same. The appeal is allowed to the aforesaid extent.



13. 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].”

14. 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.”

15. 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.”

16. Accordingly, this Miscellaneous Appeal is dismissed.

17. In the light of judgment passed by the Hon'ble Supreme Court in the cases of *Union of India vs Dilip and others* (Civil Appeal No. 9124 of 2019) and *Union of India vs Radha Yadav (Supra)*, the interest of the compensation should be calculated accordingly. 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.

(Khatim Reza, J)

prabhat/-

AFR/NAFR	NAFR
CAV DATE	N/A
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