

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.176 of 2019

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Munari Devi Wife of Late Sohray Das Resident of Village and Post Office-
Amathi, Police Station- Wazirganj, District- Gaya.

... .. Appellant/s

Versus

Union of India Through the General Manager, East Central Railway, Hazipur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Arun Kumar

For the Respondent/s : Mr.Anil Kumar Sinha

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**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

CAV JUDGMENT

Date : 24-04-2024

I have already heard the learned counsel for the
appellant.

2. None appeared on behalf of the Union of
India/Railways.

3. This appeal has been preferred against the judgment
dated 27.11.2018, passed in Claim Application No. 0A 0821 of
2015, whereby the claim of the appellant has been rejected.

4. The appellant, Munari Devi is the widow of Late
Sohray Das. She filed an application for claim of Rs. 4,00,000/-
(rupees four lacs) as compensation with interest on account of
the death of her husband, caused due to untoward incident,
defined under Section 123(c) (2) of the Railways Act, 1989,
hereinafter to be referred to as 'the Act'. As per the averment in



the application, her husband Late Sohray Das, having a valid ticket, was travelling by train no. 53625 UP on 16.09.2015. His journey was started from Warsaliganj and the destination was Wazirganj Station. The deceased was standing near the gate of the train, which was overcrowded by the passengers. Due to jolting and jerking of the train, he fell down from the train, became injured and died on the spot.

5. The respondent filed his written statement by stating that it was not a case of falling from the train, but was a case of running over while trespassing. The respondent also claimed that the deceased was not a *bona fide* passenger, as he was not having a valid ticket.

6. Two witnesses have been examined on behalf of the appellant. AW-1 is the appellant herself and AW-2 is a milk vendor Sudhir Sao, who stated that he had seen the deceased falling from the train. The appellant, in support of her averments, filed the following documents:-

1.	Copy of Station Memo	Ext.A1
2.	Copy of Fardbayan of Nand Kishore	Ext.A2
3.	Copy of Inquest report	Ext. A3
4.	Copy of FIR	Ext.A4
5.	Copy of Final Report	Ext.A5
6.	Copy of Postmortem report	Ext.A6
7.	Copy of Death Certificate	Ext.A8



8.	Copy of voter identity card of Sohray Das	Ext.A9
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7. The Tribunal rejected the application on the ground that the claimant could not prove that the deceased was a *bona fide* passenger. No valid ticket was recovered from the possession of the deceased, nor the applicant examined any witness before the Tribunal who had seen her husband purchasing his train ticket. The case of the claimant was also disbelieved by the learned Tribunal on the ground that the FIR was registered at 12.45 p.m. on 16.09.2015, whereas the *fardbayan* of the son of the deceased, on the basis whereof the FIR was registered, was recorded at 16.00 hours on 16.09.2015. This aspect of the matter itself shows that the FIR could not be registered prior to recording of the *fardbayan*.

8. The learned counsel for the appellant relied upon three decisions in support of her submissions. The first decision is of ***Smt. Kaushalaya Devi and others Vs. The Union of India, through the General Manager, North Eastern Railway, Gorakhpur, U.P., reported in 2008 (3)PLJR, page 711.*** The learned counsel has submitted that in this case also no ticket was recovered from the shirt or trouser of the deceased. Despite the fact that no ticket was recovered, the Division Bench of this Court allowed the claim of the widow of the deceased.



9. This decision is quite distinguishable from the present case. In case of *Smt. Kaushalya Devi* (supra), one witness Lakshman Paswan was and he deposed that he had seen the deceased purchasing the ticket. In the case in hand, no witness has been examined on behalf of the appellant, who deposed that she had seen the deceased purchasing the ticket, nor the affidavit of any person on this point has been filed. In the case of *Union of India Vs. Rina Devi, reported in AIR 2018, SC 2362 : 2018 (4) ABR 217*, the Hon'ble Supreme Court held that if no ticket has been found from the possession of the deceased, the claimant can prove the fact that the deceased was a *bona fide* passenger by filing affidavit of a person who had seen the deceased purchasing the ticket.

The second decision is a decision rendered by a coordinate Bench of this Court *reported in 2012 (3) PLJR, page 765 (Aasha Gupta Vs. The Union of India through the General Manager, Eastern Railway, 3-Koelaghat Street, Kolkata)*. In this Case, the coordinate Bench has held that if the death occurs due to fall from a running train or within the premises of the Railways, presumption would be that the person was a *bona fide* passenger. In such situation, onus lies



on the Railways to prove that the deceased passenger was a ticketless traveller.

10. In my view, the decision of the coordinate Bench is contrary to the decision of the Hon'ble Supreme Court held in the case of ***Union of India Vs. Rina Devi (supra)***, in which it has been held that the claimant had at least to prove that the deceased was a *bona fide* passenger by filing affidavit of any person who had seen the deceased purchasing a valid ticket.

Paragraph 17.4 of this decision is extracted hereinbelow:-

“17.4 We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

The learned counsel for the appellant relied upon



another decision of Hon’ble the Supreme Court reported in *2008 (4) PLJR, page 40 (Union of India Vs. Prabhakaran Vijaya Kumar and others)*, submitting that it is the beneficial legislation and the Court should not go into technicality.

11. The claimant should prove at least that the deceased was a *bona fide* passenger and the claimant fails to prove this fact that the onus will shift on the shoulder of the respondent/Railways.

12. In the present case, the *fardbayan* of the son of the deceased was recorded at 16.00 hours on 16.09.2015, whereas the FIR on the basis of the *fardbayan* was registered at 12.45 p.m. the same day. It is surprising that the FIR was registered prior to recording of the *fardbayan*, which makes the claimant’s case untrustworthy.

13. On the basis of above-mentioned observations, the appeal stands dismissed.

(Nawneet Kumar Pandey, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	06.03.2024
Uploading Date	24.04.2024
Transmission Date	

