

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.150 of 2014

1. Sharwan Kumar Yadav S/o Late Bidyanand Yadav Resident of Village- Bharthua Tola (Mathua Tola), P.S.- Beyan (Mithan), Distt.- Samastipur (Bihar).
2. Rambabu Yadav, S/o Late Bidyanand Yadav Resident of Village- Bharthua Tola (Mathua Tola), P.S.- Beyan (Mithan), Distt.- Samastipur (Bihar).
3. Shyam Yadav, S/o Late Bidyanand Yadav Resident of Village- Bharthua Tola (Mathua Tola), P.S.- Beyan (Mithan), Distt.- Samastipur (Bihar).
4. Bhola Yadav, S/o Late Bidyanand Yadav Resident of Village- Bharthua Tola (Mathua Tola), P.S.- Beyan (Mithan), Distt.- Samastipur (Bihar).
5. Anjani Kumari, D/o Late Bidyanand Yadav Resident of Village- Bharthua Tola (Mathua Tola), P.S.- Beyan (Mithan), Distt.- Samastipur (Bihar).

... .. Appellant/s

Versus

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

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Krishna Mohan Murari, Advocate
For the Respondent : Mr. Anshay Bahadur Mathur, C.G.C.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT

Date :31-07-2024

This Miscellaneous Appeal has been filed under Section 23 of the Railway Claims Tribunal Act, 1987 (hereinafter referred to as “Act of 1987”) on behalf of the appellants against the judgment dated 27.01.2014 passed by Railway Claims Tribunal, Patna in Case No.OA00465 of 2002 by which the claim application filed by the claimants under Section 16 of the Act of 1987 has been rejected.

2. The facts, if brief, giving rise to this appeal are that on 19.09.2002 the deceased Bidyanand Yadav along with his



minor son Shyam Kumar Yadav was travelling from Barauni Railway Junction to New Delhi Railway Junction by Vaishali Express bearing train no.2553 UP on proper and valid train journey tickets bearing nos.67106540 and 67106541. During course of journey, the deceased accidentally fell down from the running train near Ujiyarpur railway station and sustained injuries resulting his death on the spot. The co-passenger being the minor son of the deceased could not find his father in the compartment, he became nervous and got down from the train at Samastipur railway station and returned to his home on 28.09.2002 and narrated the entire story to his family. Thereafter the family members of the deceased reached at Samastipur railway station where they identified the deceased seeing his clothes, photographs etc.

3. The claimants filed application under Section 16 of the Act of 1987 in fixed format claiming compensation of Rs.4 lakhs before the Railway Claims Tribunal (in short “RCT”) as dependents claiming that due to an untoward incident the deceased who was a *bona fide* passenger sustained injury by falling from a running train causing his death. In paragraph 7 of the application, it is claimed that IInd Class journey ticket from Barauni Junction to New Delhi Junction was in possession of



G.R.P., Samastipur.

4. The respondent-Union of India (Railways) contested the claim by filing written statement denying the case to be an untoward incident. It is contended that the deceased was not a *bona fide* passenger because ticket from Barauni Junction to New Delhi Junction was not recovered from the body of the deceased at the time of body search by the Chaukidar. Since the deceased was not holding a valid ticket, he should be treated as trespasser and the claimants are not entitled to get any compensation.

5. The learned RCT on appreciation of rival pleadings framed the following issues:

(i) Whether the death of deceased caused due to untoward incident and whether the alleged untoward incident falls within the meaning of section 123(c)(2) of Railways Act, 1989?

(ii) Whether the deceased Bidyanand Yadav was a *bona fide* passenger of train no.2553 UP in question when the alleged untoward incident occurred?

(iii) Whether the claim petition of the claimant is valid.

(iv) Whether the claimant/dependents is/are entitled to the claim as mentioned in the claim petition?

6. During enquiry, in order to establish the claim, the claimant Nunubati Devi being wife of deceased and claimant



Shyam Yadav son of deceased had filed affidavit and they were examined as AW-1 and AW-2 respectively and they also produced documentary evidence which were marked as Exts.A-3 to A-13. Ext.A-3 is a copy of memo dated 19.07.2002 sent by ASM, Ujiyarpur to the In-charge, Rail Police, Samastipur stating that a person was run over in Ujiyarpur Yard on the basis whereof Rail P.S. U.D. Case No.22 of 2002 was registered. Ext.A-4 is a letter dated 30.09.2002 of claimant submitted to the S.H.O., Rail P.S., Samastipur regarding identification of the deceased by seeing photographs, towel, slippers and ticket, Ext.A-5 is final report under Section 174 Cr.P.C. submitted by Rail Police, Samastipur which shows that the deceased Bidyanand Yadav was run over by train no.2553 UP and the deceased was identified by his wife-claimant, namely, Nunubati by his photo, clothes, slippers and tickets. Ext.A-6 is Inquest Report of the deceased, Ext.A-7 is postmortem report dated 20.09.2002 of the deceased, Ext.A-8 is photocopy of journey tickets dated 19.09.2002 from Barauni Junction to New Delhi Junction handed over by Rail P.S., Samastipur to the claimants.

7. On behalf of Railways, Devendra Prasad, Station Superintendent, Ujiyarpur (RW-1) was examined, who has



stated that he has no knowledge about any documents of the case. He further stated that due to non-availability of any record in office, Station Superintendent, Ujiyarpur, he was unable to say anything in this case.

8. The learned RCT rejected the claim application and observed that final report is not liable to be accepted and the photocopies of journey tickets produced by the claimants did not establish that the said ticket was of the deceased and, therefore, the RCT held that the claimants were not entitled to any compensation.

9. The learned counsel for the appellants submitted that the deceased was a *bona fide* passenger travelling with proper and valid ticket which was recovered from the body of the deceased, during search. He further submitted that G.R.P., Samastipur lodged an U.D. Case No.22 of 2002 and after due enquiry submitted final report stating that deceased Bidyanand Yadav died due to fall from a running train. He next submitted that mere non-mentioning of the travelling ticket in the Inquest Report/*Panchnama*, it cannot be said that the deceased was not a *bona fide* passenger at the time of untoward incident. He also contended that the death of deceased was due to untoward incident because there was no criminal act or negligence on the



part of the deceased, the appellants/applicants are entitled to get compensation from respondent, but without considering the above facts illegally rejected the claim application and the impugned judgment is liable to be set aside.

10. Learned counsel for the appellants has submitted that the RCT has failed to appreciate that the Railway did not dispute the identity of the deceased as Bidyanand Yadav and there is no denial of the fact that the death of the deceased had taken place due to fall from Vaishali Express train near Ujiyarpur railway station.

11. Learned counsel for the appellants placed reliance on the judgment of the **Union of India vs. Rina Devi (2019) 3 SCC 572** and submitted that, the initial burden of being *bona fide* passenger has been discharged by the applicants and the onus has been shifted on the Railway Authorities which has not been discharged by them.

12. Learned counsel for the appellants has next submitted that there is no evidence that the deceased had boarded the train without taking a valid ticket. There is presumption of the passenger traveling any train with *bona fide* ticket, and the burden of proof lies on the Railway administration.



13. Section 55 of the Railways Act provides ticket/ proper pass/ permission mandatory while entering inside the Railway premises as well as to travel by train and is further punishable in terms of Section 137 of the Railways Act.

14. It is further submitted that in the light of judgment of **Union of India vs. Radha Yadav (2019) 3 SCC 410** because death is proved due to outcome of untoward incident of the deceased being *bona fide* passenger, the adequate amount of compensation may be awarded.

15. On the other hand, learned counsel for the Union of India (Railways) submitted that on enquiry at Ujiyarpur Railway Station two tickets i.e. one of adult and another of child (from Salauna railway station to Barauni railway station via Khagaria) were recovered by Chaukidar along with Rs.112/- from the body of deceased. The Chaukidar deposited the same with the A.S.M., Ujiyarpur which proves that the deceased had no valid ticket for the alleged journey. He further submitted that the two tickets i.e. from Barauni Junction to New Delhi Junction were not recovered from the body of deceased by Chaukidar at the time of search. The said tickets were in possession of G.R.P., Samastipur and it will be presumed that those tickets were arranged from elsewhere. Thus, those tickets would not be



legally valid for the alleged journey by the deceased. Therefore, this memo of appeal may be rejected.

16. It is well settled that mere presence of a dead-body on the railway premises will not be conclusive to hold that the injured or deceased was a *bona fide* passenger. However, mere absence of ticket with such injured or deceased will also not be a negative factor for rejection of the claim, but the initial burden is on the shoulder of the applicant which can be discharged by filing an affidavit of the relevant facts and the burden will then shift on the Railways.

17. The Hon'ble Supreme Court in the judgment of **Union of India vs Rina Devi** reported in **(2019) 3 SCC 572** held that death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor.

18. The right to receive compensation is contained in Section 124 and 124-A of the Railways Act, 1989. Section 124-A of the Railways Act, 1989 provides for payment of compensation to the injured passengers or dependents of a deceased passenger, irrespective of the fact that whether there



existed any negligence or default on the part of the Railways or not. The only exception is that the incident should not fall in any of the categories enlisted in the proviso.

19. The Hon'ble Supreme Court in the case of Rina Devi (*supra*) has held that mere presence of a body on the Railway premises would 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 would not negative the claim that he was a *bona fide* passenger. Initial burden would be on the applicant which could be discharged by filing an affidavit on the relevant facts and burden will then shift on 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.

20. In the present case, inquest report, post-mortem report and final report of U.D. Case No.20 of 2002 show that the deceased Bidyanand Yadav died due to fall from running Vaishali Express train while travelling from Barauni Junction to New Delhi Junction. The untoward incident cannot be doubted in absence of any other material. The claimants have filed their affidavits stating the relevant fact and discharged their initial



burden but the Railway has not filed any document in rebuttal or denial of the claim of claimants.

21. Having heard learned counsel for the parties and having gone through the record, it appears that the learned RCT has not correctly considered the evidence and materials available on record and not applied the settled principle of law as discussed above. Accordingly, the impugned judgment is set aside and the Miscellaneous Appeal stands allowed. Consequently, the claim application is also allowed.

22. The applicants/claimants are held entitled for compensation to the tune of Rs.4,00,000/- (Rupees four Lakhs) along with interest @ 6% per annum from the date of filing of the claim application till its realization. The amount of compensation be satisfied by the respondent/Railway within a period of two months from the date of receipt/production of a copy of this order.

23. Let L.C.R. be returned to the RCT, Patna.

(Sunil Dutta Mishra, J)

Harish/-

AFR/NAFR	NAFR
CAV DATE	08.07.2024
Uploading Date	31.07.2024
Transmission Date	

