

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.943 of 2016

Indu Bhushan Tiwari S/o Late Harinandan Tiwari, resident of Village-
Kariyanna, P.S.- Silaw, District- Nalanda Bihar.

... .. Appellant/s

Versus

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

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Bipin Bihari Prasad, Advocate Mr. Bijay Kumar Pandey, Advocate
For the Respondent/s	:	Ms. Parul Prasad (CGC) Mr. Sailesh Anand, Advocate Mr. Aditya Anand, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

Date : 05-09-2024

In re: I.A. No.01 of 2024

Having heard learned counsel for the parties and having considered the averments made in the application, I.A. No.01 of 2024 (Limitation Application) is allowed and delay in filing the present appeal is condoned.

In re: M.A. No.943 of 2016

2. Heard learned counsel for the parties.

3. 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 appellant/applicant against the judgment dated 16.07.2015 passed in Claim Application No.OA00154 of 2007



(Comp.No.37 of 2007) by the Railway Claims Tribunal Patna Bench (hereinafter referred to as “learned Tribunal”) whereby the claim petition of the applicant has been dismissed.

4. The brief fact which appears from the record is that on 06.04.2007 after purchasing and having a valid second class ticket for Patna Junction to Bakhtiyarpur Junction, Raju Tiwari boarded Train No.542 Down Kamla Ganga Intercity express at Patna Junction for going to Bakhtiyarpur and due to heavy rush in the train he was travelling inside the bogie near its gate and due to heavy rush, the passengers were jostling one another. It is further claimed that as the said train was approaching Rajendra Nagar Terminal, he accidentally fell down from the running train on account of heavy rush and intense jostling of the passengers which resulted in his death. The F.I.R. bearing Rail P.S. Patna Junction U.D. Case No.29 of 2007 was registered on 06.04.2007 and the Inquest Report was prepared thereafter. The postmortem of the deceased was done at P.M.C.H., Patna on 07.04.2007. After investigation, the Investing Officer submitted final form on 08.04.2007 stating that the deceased Raju Tiwari died from falling down from Train No.542 Down. The deceased was aged about 25 years and was unmarried and was working as labourer. The claimant is father of the deceased who filed the



claim petition being OA00154 of 2007 for compensation before the learned Tribunal.

5. Upon notice the respondent Union of India through General Manager, East Central Railway, Hajipur appeared and filed its written statement/objection and objected the claim of the claimant and pleaded, *inter alia*, that the claim of the appellant is not maintainable. It is further stated that the deceased did not fall down on 06.04.2007 during going to Bakhtiyarpur from Patna by Train No.542 Down Kamla Ganga Intercity Express. He was not a bonafide passenger of the said train and as such the claim of the claimant is not maintainable and the respondent/Railway is not liable for payment of compensation to the claimant. It is further stated that if the ticket had been in possession of the deceased then at the time of preparation of Inquest Report, seizure list, journey Rail ticket could have been available with the deceased. Accordingly, in absence of journey Rail ticket, the deceased cannot be treated as a bonafide passenger and the applicant is not entitled to get any compensation.

6. However, no evidence has been adduced on behalf of respondent/Railways against the claim of the applicant.

7. During enquiry, the claimant filed his affidavit in



evidence supported his claim stating that he is father of the deceased Raju Tiwari, who was unmarried and the deceased on 06.04.2007 after taking valid ticket from Patna Junction to Bakhtiyarpur Junction boarded Train No.542 Down Kamla Ganga Intercity Express from Patna Junction to Bakhtiyarpur Junction but due to heavy rush and intense jostling of passengers he fell down from the train and became seriously injured and died on the spot and when his son could not reach his house then he along with family members started searching for him and from G.R.P., Rajendra Nagar Terminal to Patna Junction he identified his son from his clothes and photograph of the dead body. He categorically stated that valid ticket of the deceased was misplaced during incident. He has filed the copy of memo dated 06.04.2007 of Station Deputy Superintendent, Rajendra Nagar Terminal to G.R.P. Rajendra Nagar (T) (Ext.A-1), Inquest Report (Ext.A-2), Postmortem Report (Ext.A-3), Final Report in Patna Junction U.D. Case No.29 of 2007 (Ext.A-4), Death Certificate of the deceased (Ext.A-5) and the Voter ID Card of the applicant (Ext.A-7) and genealogical table of applicant (Ext.A-8). He was cross-examined on behalf of the respondent/Railway in which he has admitted that he has not seen the incident.



8. Learned counsel for the appellant submits that the learned Tribunal erred in holding that the deceased had no valid ticket and was not a bonafide passenger without any basis. The law is well settled that hyper technical approach is not required by the Tribunal to adjudicate the matter as a criminal trial. The incident is not in dispute and the law is well settled that mere not finding the ticket with the deceased cannot be said that he is not a bonafide passenger of the train. He further submits that the applicant has filed the affidavit of the relevant facts with respect to the purchase of valid ticket by deceased which was lost and thus discharged his initial burden but Railway failed to bring any evidence to show that the deceased was not a bonafide passenger. Accordingly, the finding of the learned Tribunal is perverse and is liable to be set aside. He has referred the case of **Union of India Vs Rina Devi, reported in (2019) 3 SCC 572** in para 29 thereof, it has been held as follows:

“29. 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 he 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.”

(emphasis added)

9. He also referred the case of **Kamukayi & Ors. Vs Union of India and Ors.**, reported in **2023 SSC OnLine SC 642** in which it was held that mere absence of a ticket on the injured or deceased will not negate the claim that he was a bonafide passenger.

10. 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.

11. 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.

12. 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.

13. *Per contra*, learned counsel for the



respondent/Railway submits that the learned Tribunal rightly rejected the claim of the claimant as the appellant has not proved his case. The learned Tribunal rightly observed that there is some interpolation in the final report of U.D. Case No. 29 of 2007. She further submits that since the witnesses of the Inquest Report have not been examined and also the I.O. who has submitted final report in U.D. case has also not been examined in this case, the appellant has not duly proved his claim case. She further submits that the claimant/appellant has failed to discharge the burden cast on him to explain the circumstances under which the ticket was purchased and train journey was undertaken. She referred and relied upon a judgment dated 15.11.2022 of High Court of Delhi in the case of **Raj Kumar & Anr. Vs. Union of India (FAO 587/2016)** in which the appeal was dismissed on the ground that appellants failed to discharge the burden cast upon them. Learned counsel lastly submits that this appeal having no merit is liable to be dismissed.

14. 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.

15. 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.

16. 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.

17. 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.

18. In the present case, Inquest Report (Ext.A-2) and postmortem report of deceased (Ext. A-3) read with final report (Ext.A-4) of U.D. Case No.29 of 2007 show that the deceased Raju Tiwari died due to grievous injury caused to him from a running train while travelling from Patna Junction to Bakhtiyarpur Junction. The untoward incident cannot be doubted in absence of any other material. The applicant has filed his affidavit stating the relevant fact and discharged his initial burden but the Railway has not filed any document or evidence in rebuttal of denial of the claim of the applicant.

19. It is brought to the notice that after the date of accident and filing the claim application, Railway Accident and Untoward Incidents (Compensation) Rules, 1990 were amended



w.e.f. **01.01.2017**. In Rina Devi (**supra**), the Hon'ble Supreme Court observed that whenever it is found that the revised amount of applicable compensation as on the date of award of the Tribunal is less than the prescribed amount of compensation as on the date of accident with interest, higher of the two amounts ought to be awarded on the principle of beneficial legislation. The Hon'ble Supreme Court concluded that the compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in the accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of award of Tribunal, the applicant will be entitled to higher of the two amounts.

20. The said judgment was further explained by Hon'ble Supreme Court in **Union of India vs. Radha Yadav** reported in **(2019) 3 SCC 410** and the said view was also affirmed by the Hon'ble Supreme Court in **Union of India vs. Dilip & Ors.** reported in **2019 SCC OnLine SC 2119** and **Kamukayi & Ors. vs. Union of India & Ors.** reported in **2023 SCC OnLine SC 642**.

21. Having heard learned counsel for the parties and having gone through the record, it appears that the learned



Tribunal 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 dated 16.07.2015 passed by the Learned Tribunal in Claim Application No. OA00154 of 2007 is set-aside and the Miscellaneous Appeal stands **allowed**. Consequently, the claim application is also allowed.

22. The applicant is held entitled for compensation to the tune of Rs.4,00,000/- (Rupees four Lacs) 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. It is made clear that after applying the rate of interest, if the final figure is less than Rs.8,00,000/-, then the applicant shall be entitled to get compensation of Rs.8,00,000/-.

24. Pending applications, if any, stand disposed of.

(Sunil Dutta Mishra, J)

Harish/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	07.09.2024
Transmission Date	

