

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1017 of 2016

1. Raj Kumari Devi W/o Late Vinod Ravidas.
2. Anil Ravi Das S/o Late Vinod Ravi Das.
3. Tribhuan Ravi Das S/o Late Vinod Ravi Das All Resident of village - Bajaura, P.S. Dobhi, District – Gaya.

... .. Appellant/s

Versus

Union of India, Through The General Manager, E. C. Railway, Hajipur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Alok Kumar @ Alok Kr Shahi, Advocate.
For the Respondent/s : Mr. Anil Kumar Sinha, Advocate.

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

Date : 30-07-2024

1. Heard learned counsel for the appellants as well as the learned counsel for the respondent.

2. 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 27.05.2016 passed by the learned Member (Judicial), Railway Claims Tribunal, Patna (hereinafter referred to as the “Learned Tribunal”), in Claim Application No. OA 00628 of 2014, whereby the claim application of the applicant for payment of compensation has been rejected.

3. The brief facts of the case is that the applicant



Raj Kumari Devi as dependent filed the claim application on 07.10.2014 before the Learned Tribunal for compensation of Rs.4,00,000/- (Rupees four Lacs) alongwith interest on it, as her husband i.e. Vinod Ravi Das (aged about 40 years) died in an untoward incident. The applicant has mentioned in her claim application that the deceased, on the fateful day, i.e. on 27.08.2014, after purchasing second class journey ticket was travelling from Gaya to Kodarma railway station. The compartment in which he was travelling was over crowded by the passengers. During the course of journey, the deceased accidentally fell down from the said running train due to push and pull of passengers in between Gurapa and Paharpur railway station, as a result of felling down from the said running train, he sustained multiple injuries due to which he died on spot and ticket was lost in accident.

4. The Union of India/Railways filed its written statement pleading inter alia, therein that there is no eye-witness of occurrence and the applicant has not proved that the deceased was died due to injury caused by falling from train. It is further stated that the deceased was not a *bona fide* passenger since journey ticket was not found from the deceased and applicant is not entitled to get any compensation.



5. During enquiry the applicant, Raj Kumari Devi filed affidavit and examined herself as AW-1 in support of her claim and also proved 10 documents (Ext.A-1 to A-10) which includes copy of GRP memo dated 27.08.2014 addressed to DMO (Exhibit A/1), inquest report (Exhibit A/3), post-mortem report dated 28.08.2014 of deceased (Exhibit A/5) showing that the unknown deceased was died due to sustaining grievous injury by falling from running train. The applicant also filed final report dated 28.09.2014 (Exhibit A/7) of U.D. Case No.80 of 2014 which shows that the deceased Vinod Ravi Das died due to grievous injury caused to him due to felling down from a running train while traveling from Gaya to Kodarma. Ext.A/4 is the application of appellant no.3 (son of deceased) dated 07.09.2014 stating therein that his father (deceased) was going to Kodarma but had not returned, during search at Gaya Railway Station, he identified his father after seeing photograph and clothes. Ext.A/8 is the death certificate of deceased. Ext.A/9 is the copy of Voter I.D. card of deceased and Ext.A/10 is the copy of Voter I.D. card of appellant no.1.

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

7. After considering the evidence and submissions



of the parties, the Learned Tribunal observed that the applicant has not proved that in which train the deceased was traveling at the time of occurrence. Inquest report does not show the fact that any rail ticket was found from the deceased. It has also been observed that from 27.08.2014 to 07.09.2014 (about 11 days) the deceased was not identified, which cannot be accepted in view of the acceptance of applicant that she had started searching after 4 days of occurrence.

8. The Learned Tribunal rejected the claim application concluding that the applicant failed to prove that the deceased was a *bona fide* passenger at the time of occurrence and the applicant is not entitled to get compensation arising out of the death of the deceased.

9. The learned counsel for the appellants has submitted that the deceased who was husband of the appellant no.1/ applicant was traveling alone due to which she could not give the name of train. The deceased was having valid train ticket, but she is not aware about his ticket which was over-carried in the train after his falling down. It is further submitted that the inquest report and final report shows that the deceased had died due to fall from the train but the Learned Tribunal illegally dismissed the claim application and the impugned



judgment is liable to be set-aside.

10. Learned counsel has submitted that the learned Tribunal has failed to appreciate that the Railways did not dispute the identity of the deceased as that of the husband of the applicant and there was no denial of the fact that the death had taken place due to the deceased meeting a train accident as the dead body was found on the Railway track on 26/27.08.2014.

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 applicant 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) submits that learned Tribunal has rightly dismissed the claim application after considering the facts of the case. He further submits that when the identification of the train is itself unknown to the applicant and even in investigation, the story narrated by the applicant as to the untoward story is not believable. It is merely a presumption that the death occurred in course of train journey and no recovery of journey ticket from the possession of the deceased has been made, therefore, he cannot be said to be *bona fide* passenger. It is further submitted that learned Tribunal has taken note of the fact that there is no consistency in the statement of Rajkumari Devi and Tribhuvan Ravidas, the appellant no.1 & 3 respectively. The wife of the deceased i.e. applicant was not eye-witness of occurrence or purchasing ticket. There is no missing complaint by the applicant or by the family members



even after 11 days since he left home till identification and it is only after a long gap the son of the deceased narrated the story of his father's journey which is doubtful, hence it cannot be said that the deceased was a *bona fide* passenger of any train as he has no journey ticket.

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 (Exhibit A/1) and post-mortem report of deceased (Exhibit A/5) read with final report (Exhibit A/7) of U.D. Case No.80 of 2014 shows that deceased Vinod Ravi Das died due to grievous injury



caused to him from a running train while traveling from Gaya to Kodarma. The untoward incident cannot be doubted in absence of any other material. The applicant has filed her affidavit stating the relevant fact and discharged her initial burden but the Railway has not filed any document or evidence in rebuttal or denial of the claim of the applicant.

21. 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. It was further held that this order



will not affect the award which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay.

22. 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**.

23. 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 27.05.2016 passed by the Learned Tribunal in Claim Application No. OA 00628 of 2014 is set-aside and the Miscellaneous Appeal stands **allowed**. Consequently, the claim application is also allowed.

24. 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.

25. 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/-.

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

(Sunil Dutta Mishra, J)

Ritik/-

AFR/NAFR	NAFR
CAV DATE	02.07.2024
Uploading Date	30.07.2024
Transmission Date	NA

