

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1065 of 2016

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Karu Singh Son of Late Brij Nandan Singh, residnet of Village- Tira, P.O.- Nehusa, P.S- Harnaut, District- Nalanda, at present residing in Hargovind Nivas, Shivaji Path, Mohalla- Yarpur, P.S.- Gardanibagh, District- Patna.

... .. Appellant

Versus

The Union Of India, through The General Manager, East Central Railway, Hajipur

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Bibhakar Tiwary
For the Respondent/s	:	Mr.Anil Kumar Sinha, SC Mrs. Shail Kumari, CGC

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CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV JUDGMENT

Date : 09-05-2024

I have already heard the learned counsel for the parties.

2. This appeal is directed against the order dated 23.02.2016 passed by the Member (Judicial), Railway Claims Tribunal, Patna Bench, in Claim Application No. OA 000125 of 2011, whereby the claim application of the appellant for payment of compensation has been rejected.

3. The brief facts of the case is that the appellant Shri Karu Singh filed his claim application before the Railway Claims Tribunal, Patna Bench, for compensation of Rs. 4,00,000/- (Rupees four lacs), as his unmarried son Shyam Updesh Singh died in an untoward incident. The appellant has



mentioned in his claim application that the deceased, on the fateful day, i.e. on 06.02.2011, after purchasing second class train ticket from Patna Junction to Athmalgola railway station, had boarded E.M.U. Special Train at Patna Junction. When the train reached at Bakhtiarpur railway station, he deboarded the train for drinking water. Again, he attempted to board the train, but due to heavy rush, jolting of the train and jostling of the passengers, he fell down from the train between KM 497/24 and 497/26, as a result of which, he suffered serious injuries and died on the spot.

4.The Union of India/Railways filed its written statement, pleading *inter alia*, therein that it was not a case of untoward incident and the deceased was not a *bona fide* passenger since he was not holding a valid journey ticket, rather he should be treated as trespasser.

5. The examination-in-chief of the applicant was filed in affidavit on 15.09.2015, which is Ext.AW1/A. Ext. A/1 is the Station Memo, addressed to GRP/BKP, which shows that one person, aged about 30 years, had died due to fall from the train near RPF barrack. Ext. A/2 is the letter/statement of Shri Karu Singh/appellant. Ext. A/3 is the inquest report, which shows that Shri Shyam Updesh Singh (deceased, aged about 17



years), had died. Ext.A/4 is the FIR and Ext.A/5 is the post-mortem report, which shows that the deceased died due to Hemorrhage and shock.

6. The main ground for rejection of the claim application is that the deceased was not a *bona fide* passenger. At the time of travelling, he was not possessing a *bona fide* train ticket, and if he was not a *bona fide* passenger, no claim can be made for compensation, arising out of the death of the deceased.

7. The learned counsel for the appellant submitted that the son of the appellant was having a *bona fide* train ticket, but it was kept inside the bag of the deceased which was over-carried in the train after his falling down.

8. There is no evidence in this case, which shows that the deceased was having a valid train ticket. The claimant has not even filed an affidavit of any person who had seen the deceased holding/purchasing a ticket, as laid down by the Hon'ble Supreme Court in the case of ***Union of India Vs. Rina Devi, reported in 2018 ACJ 1441.***

9. It appears from perusal of the record that the identity card of the deceased was recovered from his pocket, but the train ticket was not recovered from his pocket. The appellant/claimant failed to prove that the deceased was a *bona*



fide passenger. Since he became unsuccessful in establishing the fact that the deceased was a *bona fide* passenger, no claim can be made for untoward incident, as defined in section 123 (c) of the Railway Act, 1989. In para 17.4 of ***Union of India Vs. Rina Devi*** (*supra*) the Hon'ble Apex Court has held as under:-

“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.”

10. Thus from perusal of the above mentioned decision of the Hon'ble Supreme Court, it is clear 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. 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 claimant which can be discharged by filing an affidavit of the relevant facts and the burden will then shift on the Railways.

11. In the present case, the claimant did not discharge his initial burden by filing affidavit.

12. On the basis of above mentioned observation, the appeal stands dismissed.

(Nawneet Kumar Pandey, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	28.02.2024
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