

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.532 of 2016

- 1.1. Sarita Kumari @ Sarita Devi Daughter of Savitri Devi and Wife of Rajesh Kumar Verma Resident of Village- Mitra Mandal Colony, Phase II, P.O. and P.S.- Beur, Patna.
- 1.2. Sulochana Kumari Daughter of Savitri Devi and Wife of Sanjay Kumar Resident of Village- Mohalla Rajapuri Uttam Nagar Gali No.- 9, P.S.- Dabari, Delhi- 5.
- 1.3. Madhuri Kumari Daughter of Savitri Devi and Wife of Kapil Prasad Verma Resident of Mohalla- Dhansar, P.O. and P.S.- Dhansar, District- Dhanbad.
- 1.4. Anita Kumari Daughter of Savitri Devi and Wife of Ram Lakhan Prasad Resident of Village- Khusrupur, P.S.- Khusrupur, Patna.
- 1.5. Shashi Bhusan Prasad Son of Late Upendra Kumar Verma Resident of Village Gaibee, P.S.- Rahui, District- Nalanda.

... .. Appellant/s

Versus

Union of India through General Manager, East Central Railway Hazipur,
District- Hazipur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rajesh Kumar Verma, Advocate.
For the Respondent/s : Mr. Mohit Agrawal, C.G.C.

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

Date : 22-08-2024

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(1) of the Railway Claims Tribunal Act, 1987
(hereinafter referred to as “Act of 1987”) on behalf of the
applicant Savitri Devi (now deceased, represented through her
legal representatives) against the judgment dated 16.03.2016
passed by the learned Member (Judicial), Railway Claims



Tribunal, Patna Bench, Patna (hereinafter referred to as the “Learned Tribunal”), in Claim Application No. OA 00052 of 2009, whereby the claim application of the applicant for payment of compensation has been dismissed.

3. The brief facts of the case is that the applicant Savitri Devi as dependent, filed the claim application before the Learned Tribunal for compensation of Rs.4,00,000/- (Rupees four Lacs) along with interest on it, as her husband i.e. Upendra Kumar Verma died in an untoward incident. The applicant has mentioned in her claim application that the deceased along with his son Shashi Bhushan Prasad and grand son Suraj Kumar, on the fateful day, i.e. on 13.03.2008, after purchasing second class journey ticket bearing ticket no. 15603 boarded the train at Sohsarai Halt for Athmal Gola Station. Due to heavy rush in the General Compartment he was standing near the gate inside the Compartment. The passengers were jostling one another for space in the compartment, in the mean time the train stopped at Bakhtiyarpur Station with a sudden jerk due to which the *bonafide* passenger Upendra Kumar Verma got imbalanced and fell down from the moving train. The deceased died on spot in the east of Platform No. 5 at 9:45 A.M. thereafter the G.R.P. Bakhtiyarpur lodged a U.D. Case no 3/08 on 13.03.2008.



4. The Union of India/Railway filed its written statement pleading *inter alia*, therein that appellant had not produce any witness or supporting document to prove her case. The applicant had not proved that the deceased died due to injury caused by falling from train and applicant is not entitled to get any compensation.

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

1. *Whether the deceased was bonafide passenger?*
2. *Whether the alleged untoward incident is covered under Section 123(c) (2) of the Railways Act, 1989?*
3. *Whether applicant/dependent is dependent on deceased?*
4. *Whether applicant/dependent are entitled to receive compensation amount?*

6. During enquiry, the applicant, Savitri Devi filed affidavit on 23.02.2015, supporting the fact of death of her husband and also proved 9 documents (Ext.A-1 to A-9) which includes copy of DSM memo dated 13.03.2008 addressed to GRP, Bakhtiyarpur (Exhibit A/1), final report in U.D. Case (Exhibit A/2), U.D. Case No.03/2008 lodged by Rail P.S Bakhtiyarpur (A/3), inquest report (Exhibit A/4), *post-mortem* report (Exhibit A/5), Death Certificate (Exhibit A/6), family register (Exhibit A/7), and Aadhar Card (Exhibit A/8).

7. As per GRP Memo dated 13.03.2008 (Exhibit



A/1) addressed to DMO on Platform No.5, in east side, one person is lying dead and as per F.I.R. (Exhibit A/3), and Inquest Report (Exhibit A/4), the death of the deceased Upendra Kumar Verma was stated due to some unknown disease. The *post-mortem* report (Exhibit A/5) of deceased disclosed the cause of death due to disease of heart. As per the final report (Exhibit A/2), the cause of death has been stated as due to “Cardiac Arrest”.

8. In this case, no evidence has been adduced on behalf of respondent/Railway.

9. After considering the F.I.R., inquest report, *post-mortem* report, and the conclusion in final report of U.D. Case, the Learned Tribunal observed that the deceased Late Upendra Kumar Verma died due to 'disease of heart' and the applicant failed to prove that the deceased died due to injury caused in 'untoward incident', thus, the applicant is not entitled to get compensation arising out of the death of the deceased. The learned Tribunal dismissed the petition with cost of Rs 10,000 and held that the claim of the applicant does not come under the provision of Section 123 (c) & 124A of the Railways Act, 1989.

10. The learned counsel for the appellants has



submitted that the deceased was a *bonafide* passenger of the train and died in untoward incident at the platform. The learned tribunal did not consider that the deceased died due to cardiac arrest caused by acute respiratory failure in course of journey and it is well settled principle of law that death of a *bonafide* passenger in course of journey due to cardiac arrest would come within the definition of 'untoward incident'. He has further submitted that the learned tribunal has committed serious error of law by imposing cost to the applicant. Learned counsel has further submitted that the Learned Tribunal illegally dismissed the claim application and the impugned judgment is liable to be set-aside.

11. On the other hand, learned counsel for respondent/Railway has submitted that the deceased had been suffering from heart ailment for which he was taking medicine which is admitted by the applicant (AW-1) herself in para 3 of her cross-examination. The applicant has admitted that she had not seen the incident. Shashi Bhushan Kumar (AW-2) who is son of the deceased has admitted that he was on the place of occurrence but police had not taken his signature. It is pointed out that in the final report it is stated that Rajesh Kumar Barnwal and Ram Lakhan Prasad both are son-in-law of the



deceased and also witness of the Inquest Report, during enquiry, stated that the deceased was suffering from heart disease due to which he died. In view of the aforesaid facts, the death of the deceased was not a death on account of untoward incident.

12. Section 124A 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.

13. Section 124A of the Railways Act, 1989 read as under:-

124A- “Compensation on account of untoward incidents”-- *When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only of loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:*

Provided that *no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to*
(a) suicide or attempted suicide by him;
(b) self-inflicted injury;



(c) his own criminal act;
(d) any act committed by him in a state of intoxication or insanity;
(e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation: *For the purpose of this section, "passenger" includes*

(i) a railway servant on duty; and
(ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.

14. Having heard the learned counsel for the parties and considering the material on record, it appears that in the present case, inquest report (Exhibit A/4) and the *post-mortem* report of deceased (Exhibit A/5) read with final report (Exhibit A/2) of U.D. Case No.80 of 2014 shows that deceased Upendra Kumar Verma died due to disease of heart. The applicant failed to prove that the deceased died due to accidental falling which comes under the purview of Section 123 (c) (2). It is clear from the evidence on record that the cause of death due to diseases of heart is covered under Clause (e) of Proviso to Section 124A of the Railways Act, 1989. Therefore, it is not the responsibility of the Railway to pay compensation to the applicant/appellants.

15. In my considered opinion, the learned Tribunal has rightly considered the evidence and materials available on



record and passed the impugned judgment dated 16.03.2016 in claim Application No. OA 00052 of 2009 which requires no inference and is accordingly confirmed. However, in the facts and circumstances of the case, the cost imposed on the applicant/appellant is set aside.

16. The instant Miscellaneous Appeal stands **dismissed** with the aforesaid modification in the impugned judgment with respect to cost.

17. Accordingly, this Miscellaneous Appeal is disposed off and there shall be no order as to costs.

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

(Sunil Dutta Mishra, J)

Ritik/-

AFR/NAFR	NAFR
CAV DATE	06.08.2024
Uploading Date	22.08.2024
Transmission Date	NA

