

Further, the accident was the result of the deceased own reckless conduct in trying to alight from a train when it was in movement.

6. It is argued by learned counsel for the appellant that in order to entitle the claimant for compensation, the only requirement is that the deceased died in an untoward incident in a train, and that he was a bonafide passenger at the time of accident. Learned Tribunal has not discussed the evidence, which was brought on record either oral or documentary and the claim has been dismissed only on the ground that the railway ticket which was produced was of a date after the said accident. It is further argued that in the oral evidence, it has come as stated by AW1, AW2 and AW3 on 10.05.2011. Further, the requirement of railway ticket is not a sine qua non for establishing that the deceased was a bona fide passenger in view of the ratio laid down by the Hon'ble Apex Court in **(2019) 3 SCC 572 (Union of India Vs. Rina Devi)**.

7. Learned counsel for the Railways has defended the impugned order and submitted that the FIR has been lodged by the elder brother of the deceased who has been examined as AW 3 and he has stated in the FIR that the accident took place on 08.05.2011, whereas the ticket which has been brought on record is of 09.05.2011. There is contradiction between the testimony of the witnesses and the version as given in the FIR. Further, the case was lodged on 10.05.2011 and the postmortem of the dead body was also conducted on 10.05.2011 which will be evident from the document adduced into evidence.

8. Having considered the submissions advanced on behalf of both sides, there is not a scintilla of doubt that deceased Kailash Mahto died in an untoward incident while he was alighting from a train at Gomoh Railway Station. This part of the case of the claimant is established by the FIR, Inquest Report and the Forwarding Memo for postmortem. All of these consistently state that death was due to fall from the train. Postmortem examination report also attributes the cause of death to be hard blunt crushing force injury caused due to railway wheels. On these evidences, there cannot be any room for doubt that the death occurred in an untoward incident while the deceased was coming down to the train. Argument with regard to bona fide passenger cannot be taken true far in view of the ratio laid down by the Hon'ble Apex Court in *Union of India Vs. Rina Devi* (supra).

9. Learned Tribunal without considering any evidence and discussing the materials on record has dismissed the claim application.

10. Under the circumstance, the impugned order is not sustainable and, accordingly, is set aside.

11. Since the accident took place on 10.05.2011, therefore, in terms of Rule 3 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, Rs.8,00,000/- (Rupees Eight Lakhs) is awarded to the claimants/appellants with interest @ 7.5% from the date of accident which will be paid by the respondent-Railway within a month of the order.

12. Misc. Appeal stands allowed. Interlocutory Application, if any, is disposed of.

(Gautam Kumar Choudhary, J.)

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