

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.226 of 2017

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1. Smt. Babita Devi, wife of Late Ram Baran Paswan
 2. Vikash Kumar
 3. Chotu Kumar
 4. Aarati Kumari
 5. Bharati Kumari

Appellant nos. 2 & 3 are minor sons and Appellant nos. 4 & 5 are the minor daughters of Late Ram Baran Paswan represented by their natural guardian and mother Smt. Babita Devi, all are R/o Village-Manikpur, P.O.-Laxmipur, Suryagarha, Dist.-Lakhisarai (Bihar)

... .. Appellant/s

Versus

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

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Krishna Mohan Murari, Adv.
For the Railways	:	Mr. Amrendra Nath Verma, Sr. Adv.
For the Union of India	:	Mr. Rakesh Kumar Sinha, C.G.C.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

7 02-04-2026 Heard Mr. Krishna Mohan Murari, learned counsel for the appellants and Mr. Amrendra Nath Verma, senior learned counsel for the Railways and Mr. Rakesh Kumar Sinha, learned C.G.C. for the Union of India.

2. This Miscellaneous Appeal has been preferred against the judgment and order dated 19.01.2017 passed in Case No. MA (OA) 79 of 2010 by the learned Member (Judicial) of the Railway Claims Tribunal, Patna Bench at Patna, whereby the learned Claims Tribunal has dismissed the claim of the



claimants/applicants for grant of compensation on account of death of the husband/father of the appellants in an untoward railway incident. Appellant no. 1 is the widow of the deceased Ram Baran Paswan and appellant nos. 2 & 3 are the minor sons of the deceased and appellant nos. 4 & 5 are the minor daughters of the deceased.

3. In order to determine the matter in its correct perspective, it is necessary to briefly re-state the case of the parties.

4. The claimants filed a claim application seeking compensation and interest *pendente lite* and future expenses. The deceased was a *bonafide* passenger and was travelling from Bhubneshwar Railway Station to Kiul Railway Junction with a valid ticket, who started his journey from Bhubneshwar Railway Station to Kiul Railway Junction on 31.05.2009 having Ticket No. 970707426 and had changed train at Jhajha Railway Station and boarded Train No. 584 (Down) passenger train to onward journey. The deceased met with an accident at Jhajha Railway Station while boarding the alleged train. The deceased died in the intervening night on 01/02.06.2009 due to coming in contact with high voltage electric current running in the wire which supply current to the electric trains, which was hanging in the



middle of the open door of the train compartment due to which the body of the deceased got burnt and fell down from the train at platform and died on the spot on account of fatal injury sustained by him in this untoward incident. A U.D. Case No. 24 of 2009 was lodged with GRPS, Jhajha and after due inquiry, in detail, and statement of various passengers and the family members of the deceased, the concerned GRP submitted its final report stating therein that it is a case of accidental death on account of injuries sustained due to fall from the train on account of electrocution.

5. On summons, the East Central Railways filed its written statement and denied the claim of the applicants/appellants. It is vehemently pleaded that the deceased while travelling on the roof of the train came in contact with high voltage electricity and died on account of electrocution. Such type of travelling is treated unlawful under Section 156 of the Railways Act, 1989. Therefore, the applicants claim is fit to be dismissed. It is further pleaded that the deceased having suffered electrocution while travelling on the roof top of the train indulge into criminal act within the meaning of Section 156 of the Railways Act and hence, the concept of liabilities or provisions of Section 124 (A) would not apply.



6. Learned counsel for the appellants submits that the deceased was a *bonafide* passenger having valid ticket from Bhubneshwar to Kiul. The inquest report as well as final report submitted by GRPS supported the case of the appellants. The post-mortem report also suggests that the cause of death was due to high voltage electric shock. The deceased boarded Train No. 584 (Down) passenger train at Jhajha Railway Station for onward journey to Kiul Junction in the intervening night of 01/02.06.2009. All of a sudden, the deceased came in contact of high voltage electric wire hanging in the middle of open door of the train compartment. The learned Claims Tribunal failed to appreciate the oral as well as documentary evidence adduced by the claimants/applicants.

7. On the other hand, Railways/respondent despite granting several opportunity have neither adduced any oral nor produced documentary evidence to revert the evidence adduced on behalf of the appellants. The learned Claims Tribunal has erred in holding that the deceased sat on the roof top of the train compartment for onward journey and as such, he came in touch with high voltage electric wire and got burnt due to which he died on the spot. Thus, the death of the deceased does not come under the purview of Section 123 (C) (2) of the Indian Railways



Act and also wrongly held that the deceased was not a *bonafide* passenger though the journey ticket recovered from the dead body of the deceased was exhibited. There is no evidence either oral or documentary to prove that the Railways employees had warned the deceased for not climbing the roof of the compartment nor the deceased was prosecuted for the offence as required under Section 156 of the Indian Railways Act.

8. Moreover, the Railways/respondent has not filed D.R.M. report as being mandatory provision in deciding the matter involving the death of the deceased in railway accident. The death occurred within the premises of Jhajha Railway Station (platform) on account of gross negligence on the part of the Railway Administration. The evidence as well as materials on record fully establish the death of the deceased in an untoward incident.

9. Learned counsel for the appellants has relied upon a decision of the Hon'ble Supreme Court in the case of ***Anil Kumar Gupta vs. Union of India and others*** reported in ***AIR 2016 SC 3171***, wherein, it has been held that "*it must be expected of the persons concerned to be aware of the inherent danger in allowing the train to run with such speed having large number of persons travelling on roof top. Though the*



people who travelled on roof top also contributed to the mishap, the Railway Administration was not free from blame. Concluding so, Supreme Court directed that the next of kin of those who died in the incident and those who sustained injuries must be duly compensated by the Railway Administration.”

Learned counsel for the appellants further argued that admittedly the deceased Ram Baran Paswan died due to electric shock, who came in contact of high voltage electric wire hanging in the middle of open door of the compartment. The body of the deceased got burnt and fell down from the train at platform and died on account of fatal injury sustained in an untoward incident. *“As untoward incident this case does not fall into any of the exceptions as mentioned in Section 124 (A) of the Act, the railway authorities are liable to pay the compensation.”* Reliance has also been placed in the case of ***Paramjit Kaur and others vs. Union of India*** reported in **2012 ACJ 2794**.

10. Learned counsel for the respondent/Railways authorities submits that the deceased died due to his own negligence. It is further submitted that the deceased was travelling on the roof top and when he was outside the train on the roof top of the bogie, he incurred risk of his own and he was



not a *bonafide* passenger. The deceased by travelling on the roof of the train, indulged into criminal act within the meaning of Section 156 of the Railways Act and hence the concept of liability or provisions of Section 124 (A) would not apply. Section 156 of the Indian Railways Act, 1989 says that a passenger travelling on the roof, steps on engine of a train commits an offence. For ready reference, Section 156 of the Indian Railways Act, 1989 is reproduced hereunder:- **“156. Travelling on roof, steps or engine of a train:-** *If any passenger or any other person, after being warned by a railway servant to desist, persists in travelling on the roof, steps or footboard or any carriage or on an engine, or in any other part of a train not intended for the use of passengers, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both and may be removed from the railway by any railway servant.”*

It is further contended that *“an accidental falling in course of a criminal conduct or while doing a criminal act cannot come within the definition of ‘untoward incident’ in Section 123 (C) (2) for the purposes of Section 124 (A). A passenger travelling on the roof would be outside the purview and his falling down is not an ‘untoward incident’.*” Reliance has also been placed in



the case of *Kallu Prasad Krushnandan Dubey and others vs. Union of India* reported in (2016) ACJ 455 (passed by Gujarat High Court Single Bench). It is further submitted that the deceased passenger travelling on the roof suffered injury due to burn caused by electric shock while he was climbing on the roof of the bogie. Therefore, there was no liability for the railway to pay compensation under Section 124 (A) of the Railways Act.

11. On scrutinizing the impugned judgment and order, materials on record and also the lower court records, it is evident from Exhibit A/3 that a railway ticket was found in possession of the deceased which proves that the deceased was travelling with a valid railway ticket. Exhibit A/4 proves that the deceased died due to electric shock. Exhibit A/5 is the inquest report, which reveals that the dead body was found at platform no. 1. Exhibit A/1 (F.I.R.) reveals that the deceased died due to climbing on roof of the bogie and came in contact with high voltage electric wire. It is also apparent from the record that the claimants/appellants filed nine documentary evidences to prove their case. AW-1/appellant no. 1, who is the wife of the deceased, adduced her evidence in support of the case. On the other hand, respondent/Railways neither filed any documentary nor adduced oral evidence to disbelieve the case of the



claimants/appellants. Even the respondent did not choose to file D.R.M. report, which is essential for deciding the matter involving the death in a railway accident.

12. Considering the submissions of the parties and after analyzing the order of the Railway Claims Tribunal, Patna, this Court is of the view that it is admitted fact that the deceased was found at (Down) platform near G.R.P.S. Post in burnt condition and a U.D. case was instituted on the basis of memo issued by the Station Master/Manager. The police also mentioned that a railway ticket was recovered from the pocket of the deceased which shows that the deceased was a *bonafide* passenger of Train No. 584 (Down) and also instituted a U.D. case that the said deceased had fallen down in burnt condition from the train. In absence of any report of the railway authorities, the Tribunal wrongly presumed that the deceased died due to travelling on the roof top and contacted with high voltage electricity wire. The specific case of the claimants/appellants is that the deceased died on account of electric shock due to contact with electric wire hanging in the middle of open door of the train compartment. The railway authorities failed to produce any evidence to show that the passengers were warned by the railway servant to desists,



persists in travelling on the roof top of the train. There was no evidence to indicate that the requests were made by the railway authorities and the similar officials to get the roof riders come down from the roof top and announcements were made in that respect.

13. In the case of *Anil Kumar Gupta (supra)*, the Hon'ble Supreme Court has held that it must be expected of the persons concerned to be aware of the inherent danger in allowing the train to run with such speed having large number of persons travelling on roof top. Though the people who travelled on roof top also contributed to the mishap, the Railway Administration, in our view, was not free from the blame. Concluding so, we direct that the next of kin of those who died in the incident and those who sustained injuries must be duly compensated by the Railway Administration.

14. It is apparent from the record that there was no evidence to suggest that the railway authorities warned the deceased not to climb on the roof. On the other hand, AW-1, clearly stated that the deceased came in contact with hanging electric wire on the middle door of the train compartment.

15. In view of the decision of the Hon'ble Supreme Court in the case of *Anil Kumar Gupta (supra)* even though



such act was illegal, the Railway Administration was not free from blame to grant compensation. Learned counsel for the Railways relied upon Gujarat High Court's judgment in the case of *Kallu Prasad Krushnandan Dubey (supra)*, wherein, the injured himself admitted that he was travelling on the roof top. In the present case, there is no evidence to suggest that the deceased was trying to climb the roof of the bogie.

16. Reliance has also been placed in the case of *United India Insurance Company Limited Vs. Sunil Kumar*, wherein, it has been held that laying down that plea of negligence of the victim cannot be allowed in claim based on 'no fault theory' under Section 163(A) of the Motor Vehicles Act, 1988. Accordingly, we hold 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 provision of Section 124(A) merely on the plea of negligence of the victim as a contributing factor.

17. Considering the aforesaid facts and circumstances of the case, I am of the opinion that the claimants/appellants have proved their case on the basis of materials available on record.

18. Now, with regard to question of amount of



compensation in respect of accident, the same has been settled by the Hon'ble Supreme Court in the case of ***Union of India vs. Dilip and others (Civil Appeal No. 9124 of 2019)*** which reads as follows:-

“The question, whether in respect of accidents that occurred before the Railways Accidents and Untoward Incidents (Compensation) Rules, 1990 were amended w.e.f. 27.12.2016, the amount of compensation has to be arrived, taking into account the base figure of Rs. 4 lakhs or Rs. 8 lakhs was considered by this Court in Union of India vs. Rina Devi reported in (2019) 3 SCC 572.”

19. The aforesaid judgment was further explained by the Hon'ble Supreme Court in the case of ***Union of India vs. Radha Yadav*** reported in ***2019 (3) SCC 410*** which reads as under:-

“11. The issue raised in the matter does not really require any elaboration as in our view, the judgment of this Court in the case of Rina Devi is very clear. What this Court has laid down is that the amount of compensation payable on the date of accident with reasonable rate of interest shall first be calculated. If the amount so calculated is less than the amount



prescribed as on the date of the award, the claimant would be entitled to higher of these two amounts. Therefore, if the liability had arisen before the amendment was brought in, the basic figure would be as per the Schedule as was in existence before the amendment and on such basic figure reasonable rate of interest would be calculated. If there be any difference between the amount so calculated and the amount prescribed in the Schedule as on the date of the award, the higher of two figures would be the measure of compensation. For instance, in case of a death in an accident which occurred before amendment, the basic figure would be Rs.4,00,000/-. If, after applying reasonable rate of interest, the final figure were to be less than Rs.8,00,000/-, which was brought in by way of amendment, the claimant would be entitled to Rs.8,00,000/-. If, however, the amount of original compensation with rate of interest were to exceed the sum of Rs.8,00,000/- the compensation would be in terms of figure in excess of Rs.8,00,000/-. The idea is to afford the



benefit of the amendment, to the extent possible. Thus, according to us, the matter is crystal clear. The issue does not need any further clarification or elaboration.”

20. In the aforesaid judgment, the Hon'ble Supreme Court has held that “The compensation be computed taking interest @ 7.5% per annum in accordance with both the modalities namely;

(a) Which was in existence before the amendment with Rs. 4 lakhs as the base figure.

(b) Which came into existence after the amendment, with Rs. 8 lakhs as the base figure.

The compensation shall thereafter be payable in accordance with the sum which is greater of the two, as laid down in the aforesaid judgments.”

21. The Hon'ble Supreme Court in ***Civil Appeal No. 9124 of 2019 (arising out of SLP (c) No. 6486 of 2018*** has ascertained the modalities with regard to quantum of compensation.

22. Accordingly, this Miscellaneous Appeal is allowed.



23. The learned Tribunal is directed to calculate the amount of compensation in the light of the judgment of the Hon'ble Supreme Court quoted above and ensure the payment of the same at the earliest, preferably, within three months from the date of receipt/production of a copy of this order.

(Khatim Reza, J)

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