

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.217 of 2013

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Union of India through the General Manager, Eastern Railway, Kolkatta.

.... Appellant.

Versus

Md. Barik, Mohallah, Bakarpur, P.O. Dariapur, District Munger (Bihar).

.... Respondent.

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Appearance :

For the Appellant/s : Mr. Bijay Kumar Sinha, Advocate.

For the Respondent/s : Mr. Uma Shankar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 07-08-2018

Heard learned counsel for the appellant and learned counsel for the respondent on this Miscellaneous Appeal.

This Miscellaneous Appeal has been preferred against the order dated 20.09.2012 passed by the Railway Claims Tribunal Patna Bench, Patna (hereinafter in short referred to as the 'Tribunal') in claim application No.OA000191 of 2002, whereby the learned Tribunal allowing the claim petition directed the appellant to pay compensation to the tune of Rs. 4 lakhs along with interest @ 6% per annum from the date of filing of the claim petition till pronouncement of the order.

The factual matrix of the case is that the respondent claimant filed claim application No.OA000191 of 2002 under Section 125 of the Railway Act to award compensation to the tune of Rs. 4 lakhs on



account of death of his son who died in a train accident with the case in succinct that his son, namely, Md. Imtiyaz was posted as Naik in SPR Engineering Regiment 216 Transit Camp Jammu. On 31.03.2002 his aforesaid son was coming to his native village Bakarpur (Munger) from Jammu by Himgiri Express train taking IInd Class reserved ticket against the Railway warrant. When the said train was about to arrive at Kiul Railway Station in the evening on 02.04.2002, there was jostling amongst the passengers for alighting from the train. Resultantly he fell down on the Kiul railway station near platform No. 5 and sustained multiple injuries on the entire parts of the body and died on the spot. The aforesaid accident was noticed by the Railway official and station Memo to this effect was issued by the Deputy Station Superintendent of Kiul Railway Station and on the basis of which UD Case No.3 of 2002 was instituted by the Kiul Railway police on 02.04.2002. The case was investigated by the police and after investigation the case was found to be true. The deceased was a *bona fide* passenger of the train and died due to untoward accident falling from the running train. Appellant puts appearance in the case and filed written statement. Both parties adduced evidence in buttress of their respective cases.

After hearing the parties and perusing the record, the learned



Tribunal passed the impugned order, as detailed in earlier paragraph.

Being aggrieved and dissatisfied with the impugned order, the appellant Railway has filed this Miscellaneous Appeal.

It is submitted by the learned counsel for the appellant that the deceased had not died by falling from the running train rather was run over by the train during the course of crossing the railway track as evident from the inquest report and post-mortem report etc. The deceased had sustained multiple injuries on his head and his head, left hand and left leg were severed from the body. The aforesaid injuries are not possible by falling from the running train rather by running over the deceased by the train. The learned Tribunal after discussing the case and considering all the material available on record initially found it to be a case of run over. But as the deceased was a military personnel hence considering the aforesaid aspect of the case without any basis it made U-turn observing the aforesaid case to be an untoward incident and allowed the compensation in an arbitrary and capricious manner. Hence the impugned order passed by the learned Tribunal is liable to be set aside.

On the other hand it is submitted by learned counsel for the respondent that it is admitted case of the parties that the deceased was a *bona fide* passenger and learned Tribunal has also found the



deceased *bona fide* passenger of the aforesaid train. Dead body of the deceased was found beside the railway track of line no. 5 of platform no. 5 which is due to accident falling from the running train and not in course of crossing the railway track. It is further submitted that in course of travelling due to jostling of the passengers inside the compartment, the deceased had fallen down from the running train and had come under the train and was crushed by the said train inflicting various sorts of injuries and mere severing of parts of the body in the accident does not make it a case of run over. It is further submitted that there is no such case of the appellant of dying the deceased in run over in course of crossing railway track but the learned Tribunal has made the third case to the aforesaid effect which is not permissible in the eye of law. It is further submitted that the aforesaid accident took place in the evening and the matter was immediately brought to the notice of the personnel of the Railway and accordingly Station Memo was drawn and inquest report, was prepared on the spot.

From perusal of the record, it appears that it is the case of the respondent claimant that the deceased was travelling by the Himgiri train and as a bona fide passenger by taking IInd Class reserved ticket against the Railway warrant issued by the office. During the course of travelling, he was to alight from the train at Kiul railway station.



When the aforesaid train arrived near platform no.5, in the mean time, due to jostling by the passengers in a bogy in a bid to alight from the train first he fell down from the running train and sustained several injuries. Appellant in his written statement has simply denied factum of taking place of the accident as claimed by the respondent. It has not whispered about dying of the deceased in run over during the course of crossing railway track. But from perusal of the impugned order, it appears that the learned Tribunal has made out a third case of death of the deceased in run over in the course of crossing railway track which is not permissible in the eye of Law. As it is settled principle of Law that the Court cannot *suo moto* make out a third case not taken by either parties to the case.

From perusal of the FIR, final report and the inquest report etc. it appears that the deceased was found lying sustaining several injuries beside the railway track of the line no. 5 of platform no. 5 at the Kiul Railway Station in the evening of 02.04.2002 and the inquest report was prepared at 6:10 PM on the said date. Though from perusal of the inquest report and post-mortem report, it appears that the left hand, left leg and head of the deceased were severed in the accident but the said injury itself does not decisively indicate it to be a case of run over. As aforesaid injuries had been sustained by the deceased on the left side of his person it might have been caused by falling from the



running train on the railway track by left side and coming of the head and left part of the body under the wheels of the said train. Moreover, as admittedly and as found by the learned Tribunal the deceased was *bona fide* passenger of the said train and he was travelling by the said train taking IInd Class reserved ticket against the railway warrant issued by his office. The aforesaid aspect of the case candidly indicates that the deceased was travelling by the aforesaid train and fell down on the aforesaid place from the train and sustained fatal injuries.

In the facts and circumstances of the case, in my considered opinion, it appears to be a case of untoward incident and not run over. Hence, the claimant is entitled to get compensation on account of the death of the deceased as found by the learned Tribunal. Thus, the impugned order passed by the learned Tribunal holding the aforesaid case as of an untoward incident is upheld and this Appeal is accordingly dismissed.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
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