

(2013) 01 PAT CK 0021
In the Patna High Court
Case No : Misc. Appeal No. 946 of 2010

Most. Rekha Devi

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 08-01-2013

Acts Referred:

Limitation Act, 1963 — Section 5

Penal Code, 1860 (IPC) — Section 147, 154, 304A

Railway Claims Tribunal Act, 1987 — Section 23(1)

Citation : (2013) 4 PLJR 61

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Pravin Kumar Gupta, for the Appellant; Anil Singh, for the Respondent

Judgement

Rakesh Kumar, J.—The present appeal u/s 23(1) of the Railway Claims Tribunal Act, 1987 has been preferred against an order dated 17.2.2010 passed by the Member (Judicial), Railway Claims Tribunal, Patna Bench, Patna (hereinafter referred to as "Tribunal") in Claim Application No. OA 00113 of 1999. The learned Tribunal has rejected the claim petition, which was filed, claiming compensation of Rs. 4,00,000/- (four lacs) due to death of husband of claimant/appellant No. 1 in a railway accident. The present appeal has been filed after expiry of period of limitation. Delay of 50 days has occurred in filing the present appeal. For condoning delay in filing the appeal, an interlocutory application, vide I.A. No. 10144 of 2010, u/s 5 of the Limitation Act has been filed.

2. After hearing the parties and considering the ground set forth in the interlocutory application, same is allowed and delay in filing the appeal stands condoned.

3. Short fact of the case is that on 20.9.1998, the husband of claimant/appellant No. 1 was travelling on a passenger train, bearing train No. 334 Dn., from Janki Nagar Station to Purnea Court Station and due to heavy rush in the train, he was

standing near the gate. An accident had occurred with a tractor and the train and in the said accident, husband of appellant No. 1, namely Shiv Charan Mehta died. It was claimed that deceased was travelling with a valid railway ticket. After the accident, an F.I.R. was got lodged on the fardbeyan of guard of passenger train No. 334 Dn., vide G.R.P.S., Purnea Case No. 53 of 1998 against unknown driver of the tractor. It was disclosed in the F.I.R. that due to negligence on the part of the driver of the tractor, hood of the tractor was intercepted with a bicycle, which was hanging outside the bogie of the train. In the said accident, besides husband of the appellant No. 1, one other lady had also received injuries. After the accident, train was stopped and dead body of one unknown male and female were kept in train and the dead bodies were carried to Purnea. In the claim petition, it was disclosed that late deceased Shiv Charan Mehta was a Rajaswa Karamchari (Revenue Clerk) in Krityanand Nagar Block in the district of Purnea. He was travelling as a bona fide passenger with a valid train ticket No. 73288 from Janki Nagar Station to Purnea Court station by a passenger train No. 334 Dn. There was heavy rush in the train, so he could not get seat in the bogie and he was standing at the gate of the bogie. When the train reached between Alinagar Halt and Krityanand Nagar Station at K.M. 18/5-2, the deceased fell down from the train due to interception of the tractor with bicycle, which was hanging on train. In the said accident, number of passengers got injuries and one Jahri Devi also died on spot besides Shiv Charan Mehta. The deceased was having second class ordinary ticket, while travelling in the train. After the death, dead-body was sent for post mortem and post mortem was conducted by Civil Surgeon, Sadar Hospital, Purnea. The claimants/appellants claimed for Rs. 4,00,000/- (four lacs) as compensation.

4. In this case, earlier Lower Court Record was called for, which is on record. From the record, it is evident that alongwith the application in prescribed proforma as per Form-II, number of documents were filed, which are true copy of G.R.P.S., Purnea Case No. 53 of 1998, true copy of seizure list, true copy of inquest report, true copy of certificate of post mortem report, true copy of post mortem report, death certificate and photocopy of Sanha. In support of claim case, appellant No. 1 had filed her own affidavit as well as an affidavit sworn by one Md. Sameer, who was co-passenger of the deceased in the train. In her statement, the appellant No. 1 has described about the accident in her own version, however; in the affidavit of Md. Sameer, clear picture of accident was depicted, which suggests that he was the eye-witness of the occurrence and fault was on the part of railway itself. He had stated in his affidavit that there were few number of trains available for the passengers and in the train, there were heavy rush of the passengers. It was also disclosed that without any booking, bicycles and milk drums were allowed to be hanged outside the bogie of the train and due to that reason, a loaded tractor was intercepted with bicycle hanging on the train and accident had occurred. Before the Tribunal, appellant No. 1 was cross-examined, however, the person, who had sworn affidavit, namely, Md. Sameer, did not appear for his cross-examination.

5. From the Lower Court Record, it is further evident that alongwith list of documents, further documents were brought on record, which were original photocopy of voter identity card of the appellant No. 1. Photocopy of family description issued by the Circle Officer, Purnea town and certified copy of final report submitted by the Katihar Railway Police in G.R.P.S., Purnea Case No. 53 of 1998 i.e. final report No. 36 of 1999 dated 7.5.1999, which was submitted against the driver of the tractor for the offence under Sections 304A, 147 & 154 of the Indian Penal Code.

6. Sri Pravin Kumar Gupta, learned counsel for the claimants/appellants has argued that the learned Tribunal, in a mechanical manner without noticing any document or even oral evidence, which were brought on record in support of the claim case, has rejected the same. He further submits that though alongwith the claim petition, which was filed in prescribed proforma, documents, such as; seizure list, inquest report, post mortem examination report etc. were filed by the claimant/appellant No. 1, the learned Tribunal on mere technicality has not taken note of those documents and rejected the claim petition. He further submits that deceased was a bona fide passenger. At the time of preparing inquest report, seizure list was also prepared and in the seizure list, besides seizure of Identity Card of deceased Shiv Charan Mehta issued by the Human Resources Development Department, Govt. of Bihar, duly signed by the District Magistrate, Purnea, vide I-Card No. A/011095 showing that deceased was Revenue Clerk, Purnea Collectorate, one railway ticket, bearing No. 73288 from Janki Nagar to Purnea Court, was also recovered and those facts have been mentioned in the seizure list. True copy of the same, duly issued by the railway police, was brought on record. It was argued that since it was a case of death in a railway accident and from possession of the deceased valid railway journey ticket was found, the learned Tribunal was required to accept those materials and should have allowed the claim case, but surprisingly, ignoring all those evidences only on technicality, the Tribunal has rejected the same. The impugned order is required to be set aside and a direction may be issued for paying compensation amount as claimed by the appellants before the Tribunal.

7. Sri Anil Singh, learned counsel appearing on behalf of Union of India, through its General Manager, North Eastern Railway, Gorakhpur (now East Central Railway, Hajipur) has vehemently opposed the prayer of appellants. It was submitted by Sri Anil Singh that since the claimants/appellants had not got exhibited any document before the Tribunal, the learned Tribunal has rightly not taken note of those documents. He further submits that non-mentioning of recovery of ticket in column No. 7 of inquest report suggests that recovery of railway ticket from possession of deceased was subsequently included for strengthening the claim of the deceased. He further submits that even though affidavit of one Md. Sameer, purported to be co-passenger of the deceased, was filed on behalf of claimants/appellants, the claimants failed to get him produced before the Tribunal for his cross-examination and as such, the learned Tribunal has rightly not taken note of the affidavit of so-called co-passenger. According to

Sri Anil Singh for establishing that deceased was a bona fide passenger, it was required on the part of the claimants/appellants to bring on record admissible evidences. Since nothing was brought on record by the claimants, the learned Tribunal, while rejecting the claim petition, has committed no error and order impugned requires no interference.

8. Besides hearing the parties, I have perused the Lower Court Record. Before the Tribunal after filing of the claim petition in prescribed proforma enclosing therewith all the relevant documents, the respondent-Railway had appeared and filed written statement. In the written statement, entirely different story was described by the respondent. It was stated that train in question bearing No. 334 Dn. passenger was going from Saharsa to Katihar and when it passed Alinagar Halt and proceeded towards K. Nagar Railway Station, one tractor, carrying some persons coming from Katihar side, came nearer to the railway track and dashed with the train near K. Nagar and some passengers including the deceased fell down from the tractor. Though in the written statement, a story was concocted by the railway that the deceased was travelling on a tractor, perusal of the F.I.R. certified copy of which is on record, does not support the stand of the railway in its written statement. On the contrary, in the fardbeyan of the Guard, he had accepted that near Ali Nagar Halt, K. Nagar Railway Station at K.M. 18/5-2, the Assistant Driver, after noticing the accident, said that bicycle has fallen stop the train. After stopping the train, the informant went to the spot and noticed dead body of one male and one female. He further accepts that with the help of passengers deceased and some injured were boarded on the train and moved towards Purnea. Had it been a case of death of passenger of tractor, this fact would have been specifically mentioned by the informant, who was none else but Guard of the train. The claimants at the time of filing of the claim petition had brought on record true copy of seizure list and other documents. The seizure list, which is on Lower Court Record, makes it clear that deceased was a bona fide passenger since valid railway ticket, which was for the journey from Janki Nagar Station to Purnea Court Station was found from his possession. This suggests that the deceased was a bona fide passenger and in untoward incident i.e. in railway accident, he died. The fact that a bicycle was hanging on the bogie of the passenger train is evident from the F.I.R. itself since the informant had stated that Assistant Driver of the train had informed that bicycle from the train had fallen. The reason for accident, which has been gathered from the record, was interception of hood of the tractor with the bicycle hanging outside the bogie of the train. Once a bicycle was hanging outside the bogie of the train, it is evident that negligence was on the part of the railway and in such accident, if a passenger receives injury and died, then in that event, responsibility comes on the railway for compensating the injured or family members of deceased. Moreover, rejection of prayer of the appellants by the Tribunal on technicality may not put a bar to this Court in examining those documents, which are already on record. Prima facie it appears that those documents i.e. seizure list, inquest report etc. are its true copy authenticated by the railway police. Once those

documents are available on the Lower Court Record, this Court can examine those documents. After examining those documents, the Court is of the opinion that it was a fit case for grant of compensation to the claimants. Though the co-passenger, whose affidavit is on record, was not produced for cross-examination, his affidavit may also not be ignored since it is already on record. The affidavit of co-passenger suggests that the accident had occurred due to fault on the part of the railway. The deceased was standing at the gate of the bogie due to heavy rush in the train.

9. In view of the facts and circumstances, after hearing the parties and perusing entire materials, available on record, the Court is of the opinion that it is a fit case for allowing the claim for compensation.

10. Accordingly, order dated 17.2.2010 passed by the Member (Judicial), Railway Claims Tribunal, Patna Bench, Patna in Claim Application No. OA 00113 of 1999 is hereby set aside and respondent/Union of India through its General Manager, N.E. Railway, Gorakhpur (now East Central Railway, Hajipur) is directed to pay the compensation amount of Rs. 4,00,000/- (four lacs) to the appellants within a period of two months from the date of receipt/production of a copy of this order. The respondent/railway is further directed to pay interest on the compensation amount at the rate of 4% per annum from the date of filing of the claim petition till the date of payment. With above observation and direction, the appeal stands allowed.