

(2024) 01 PAT CK 0099

In the Patna High Court

Case No : Miscellaneous Appeal No. 606 Of 2014

Rama Shankar Pathak,

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 31-01-2024

Acts Referred:

Citation : (2024) 01 PAT CK 0099

Hon'ble Judges : Shailendra Singh, J

Bench : Single Bench

Advocate : Anant Kumar-1, Abhay Shankar Jha, Hrishikesh

Final Decision : Dismissed

Judgement

1. Heard learned counsels appearing on behalf of the appellant and the respondent/railway.

2. The instant appeal has been filed against the Judgment dated 29.04.2014 passed in Claim Application No. OA 00101/2003 by learned Member (Technical), Dr. B. Ray of Railway Claims Tribunal, Patna Bench, by which the claim application of the appellant has been dismissed.

3. Mr. Anant Kumar, learned counsel appearing on behalf of the appellant submits that on 10.03.2003 the appellant was going to Patna Junction from Patna Sahib Railway Station by 555 Up Mokama-Danapur Passenger Train. The appellant had purchased a valid railway ticket before starting his journey and thereafter, boarded the said train at Patna Sahib railway station and after boarding, the train started but unfortunately the appellant fell down from the running train near the outer signal of Patna Sahib railway station due to heavy rush being inside the compartment, as a result of which he sustained serious injuries and lost his both legs in the said untoward accident. It is further submitted by learned counsel for the appellant that after accident, the appellant was brought to N.M.C.H., Patna for treatment and the accident matter was reported to Alamganj Police Station and subsequently, Sanha No. 620 of 2003 was lodged at G.R.P.S. Patna Sahib.

Further submission is that at the time of accident, the appellant was a bona fide passenger traveling in 555 Up Mokama-Danapur Passenger Train and after accident he became physically handicapped and presently, he is dependent on others and in support of his traveling as a bona fide passenger, sufficient relevant documents were produced before the Tribunal and the appellant produced himself as a witness and he was examined as A.W.1., and in addition to his oral testimony he submitted six documents and got them marked as exhibits A1 to A6. It is further submitted that the respondent did not adduce any oral or documentary evidence before the Railway Tribunal to rebut the appellant's claim, and the Railway Tribunal dismissed the appellant's claim petition, without proper application of judicial mind, on technical ground.

4. In support of above submissions learned counsel appearing on behalf of the appellant has placed reliance upon the judgment of Hon'ble Apex Court passed in the case of Union of India vs. Rina Devi, reported in (2019) 3 Supreme Court Cases 572.

5. On the contrary, learned counsel appearing on behalf of the respondent/railway submits that the appellant failed to prove the maintainability of his claim before the Railway Claims Tribunal and he could not have discharged his initial burden to prove that he sustained injuries to his legs on account of falling down from a running train and except appellant's fardbeyan there is no material to substantiate his the plea that he was traveling in a train and during that course he fell down and consequently, sustained injuries and furthermore the appellant's case is not covered with the principles laid down by the Hon'ble Apex Court in the case of Union of India vs. Rina Devi (supra).

6. Learned counsel for the respondent has placed reliance upon the judgment of Hon'ble Apex Court passed in the case of Kamukayi and Others vs. Union of India and Others, reported in 2023 SCC Online SC 642 and he has referred the paragraph nos. 18 and 19 of the said judgment which show that the law laid down by the Hon'ble Apex Court in Rina Devi (Supra) was followed by the Hon'ble Apex Court in the said judgment.

7. Heard both the sides and perused the judgment impugned and other materials available on the case record of Railway Claims Tribunal. The learned Railway Claims Tribunal framed four issues and answered the Issue no. 3, which is formal in nature, in favour of the appellant but answered the rest issues against the appellant and in the result, dismissed the claim application of the appellant. After taking into account the relevant facts appearing from the pleadings of both the parties and also in view of the above submissions, the main question for determination is that:-

(i) Whether the appellant succeeded to prove the maintainability of his claim case before the Railway Claims Tribunal or not ?

8. As per the principles laid down by the Hon'ble Apex Court in the case of Rina Devi (Supra), no doubt, the initial burden will lie on the claimant, which can be

discharged only by filing an affidavit of the relevant facts and thereafter, burden will shift on the Railways and thereafter the issue can be decided on the facts shown or the attending circumstances.

9. If we take into account the facts and circumstances of this cited case then it is clearly evident that there must be some attending circumstances to prima facie show that the victim was traveling in a train and during that course he sustained injury owing to some accident while traveling.

10. In the instant matter, the appellant revealed in his claim petition before the Railway Claims Tribunal that the alleged accident took place on 10.03.2003 when he was going to Patna Junction from Patna Sahib railway station by 555 Up Mokama-Danapur Passenger Train. But before the Tribunal he deposed in the cross-examination that he was going to Patna Junction from Patna City on 11.03.2003 and the same date was reiterated by him in the Court question. Hence, a serious contradiction with regard to the date of accident appears between the narration of claim petition of the appellant and his deposition. The appellant deposed in the cross-examination before the Railway Claims Tribunal that after the accident Government Railway Police (GRP) personnel arrived. But in this regard no evidence was given by the claimant rather as per Annexure-1, his fardbeyan was recorded by one Rameshwar Ram, A.S.I. of Alamganj Police Station, except this fardbeyan, which was recorded by a police official of the general police station, there is no material to substantiate the appellant's plea that he sustained injuries to his legs on account of falling down from a running train. The appellant could not produce two persons namely, Shyam Sundar Pathak and Amitabh Trivedi whose details was given in his fardbeyan. Even no attempt was made by the appellant to produce the result of action of the concerned police station after recording his fardbeyan. The appellant could not have produced any relevant document related to Railway Department showing an entry in the official documents of the Railway Department regarding the alleged accident after its happening. The appellant could not have proved the place where he fell down from the running train.

11. The principles laid down by the Hon'ble Apex Court in the above referred cases do not help the appellant as the facts and circumstances of the instant matter are quite different and the appellant's fardbeyan and his affidavit, that were only available before Railway Tribunal, are not sufficient to prima facie show that the appellant sustained injuries on account of falling down from a running train and the attending circumstances discussed above are also not sufficient to make out a case in favour of appellant for compensation from railway department. Accordingly, the appellant failed to prove the maintainability of his case before the Railway Claims Tribunal for the compensation from the Railway Department. Hence, the above question is determined against the appellant.

12. This court finds no illegality in the judgment impugned and there is no merit in this appeal, hence it stands dismissed.