

(2020) 02 PAT CK 0211

In the Patna High Court

Case No : Miscellaneous Appeal No. 432 Of 2016

Union Of India

APPELLANT

Vs

Chandradeep Mahto

RESPONDENT

Date of Decision : 14-02-2020

Acts Referred:

Railways Claims Tribunal Act, 1987 — Section 23(1), 123(c)(2), 125
Evidence Act 1872 — Section 101

Citation : (2020) 02 PAT CK 0211

Hon'ble Judges : S. Kumar, J

Bench : Single Bench

Advocate : Kumar Alok, Sandip Kumar, Anant Kumar, Kaushal Kishore

Final Decision : Disposed Of

Judgement

Heard the parties.

2. This appeal has been filed under section 23(1) of Railways Claims Tribunal Act, 1987 for setting aside the order dated 03.11.2015 passed by learned Member (Judicial) Railway Claims Tribunal Patna Bench, Patna in Claim Application No. OA 00208 of 2007 (Comp. No. 92 of 2007) by which claim application of the respondent has been allowed directing the appellant railway to pay compensation amount of Rs. 4,00,000/-(four lacs) along with simple interest @ 9% per annum from the date of application till its payment.

3. Respondent had filed an application before the railway claims tribunal under section 125 of the Railways Act, 1989 claiming compensation of Rs. 4 lacs on account of death of his unmarried son on 08.08.2007 who after purchasing a valid 2nd class rail ticket from Hajipur Jn. was going to Goraul railway station and boarded train no. 515 (Sonapur-Narkatiyaganj Passenger) at Hajipur Jn. and died due to accidental fall from the running train when train was passing from Hanuman Nagar Dighi Western Tola, Gate No. 501C. He was standing near the gate of compartment and due to heavy rush and jostling of passengers he fell

from running train and died on the spot.

4. Appellant/railways filed their written statement in which they have disputed and denied the claim of claimant/respondents. It is further stated in their written statement that it was not case of untoward incident but deceased was run over by train while crossing railway track and as such claimant is not entitled for any compensation. No journey ticket was recovered from the possession of deceased as such he was not a bonafide passenger rather was a trespassers.

5. On the basis of rival pleadings of the parties, the tribunal framed four issues for its determination.

I. Whether the deceased was a bonafide passenger ?

II. Whether the death of the deceased is covered under the alleged untoward incident, as defined under Section 123 (c)(2) of the Railway Act, 1989 ?

III. Whether the applicant is dependent of the deceased ?

IV. Whether the applicant is entitled to get compensation, if yet, to what extent ?

6. Claimant has been examined as witness in support of his claim who in his deposition has supported his claim for grant of compensation and he was cross-examined on behalf of railways also.

7. Apart from oral evidence, claimants has also filed documentary evidence in support of his claim which has been marked as exhibits by the claims tribunal.

8. Exhibit-A1 is fardbeyan of Shri Chandradeep Mahto recorded by Railway police on 09.08.2007 at 10:10 A.M. at Hanuman Nagar Dighi Tola in which it has been stated that deceased died due to falling down from running train near Hanuman Nagar Paschami Dighi Tola, during his journey from Hajipur to Goraul.

9. Exhibit-A2 is the inquest report dated 09.08.2007 in which cause of death has been stated to be run over by the train.

10. Exhibit-A3 is the post mortem report in which cause of death has been attributed to injuries received by hard and blunt substance and its impact.

11. Exhibit-A4 is the final report submitted by police in which cause of death has been stated to be run over from by the train.

12. Respondent railway has also produced one documentary evidence which is marked as Exhibit-R/1, which is a D.R.M. report according to which no journey ticket was recovered from the possession of the deceased and he was run over while crossing the railway line.

13. The learned tribunal has disbelieved and doubted the D.R.M. report as well as final report submitted by the police and according to which it was a case of run over and deceased died while he was crossing the railway track and knocked down by running train and moreover no railway ticket was recovered from his

possession.

14. The learned tribunal has shifted the onus upon the railways to establish that it was case of run over and not a case of untoward incident which is contrary to the provisions of Railway Act where initial onus lies upon the claimant to establish that deceased died in a untoward incident while traveling in a train as a bonafide passenger. Section 101 of Indian Evidence Act 1872 makes it clear that the applicants having come to the court asserting some facts must prove that the death of deceased had taken place in an untoward incident and that the death occurred while the deceased was traveling in a train as a passenger with a valid ticket and the initial burden lies on the applicant to establish the same. The initial burden never shifts unless the respondent admits the assertions.

15. In case of Union of India Vs. Rina Devi, reported in 2018 ACJ (III) 1441, the Apex Court in para 17.4 has held as follows:-

"17.4 We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The Legal position in this regard will stand explained accordingly."

16. For the reasons as stated above, the judgment and award passed by tribunal is not sustainable either in law or on facts and is accordingly set aside. The claim case is remanded to the claims tribunal to decide the case afresh in accordance with law after giving reasonable opportunity to both the parties to adduce oral as well as documentary evidence and decide the claim case within 6 (six) months from date of receipt/production of copy of order passed by this court.

17. This miscellaneous appeal is disposed of.