

(2019) 08 GAU CK 0060

In the Gauhati High Court

Case No : Miscellaneous First Appeal No. 29 Of 2016

Union Of India

APPELLANT

Vs

Dipa Das

RESPONDENT

Date of Decision : 26-08-2019

Acts Referred:

Railway Claims Tribunal Act 1897 — Section 16

Citation : (2019) 08 GAU CK 0060

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : B Gogoi, T Hazarika

Final Decision : Dismissed

Judgement

1. Heard Dr. B.N. Gogoi, learned counsel for the appellant. Also heard Mr. S.B. Rahman, learned counsel for the respondents.
2. An application for compensation under Section 16 of the Railway Claims Tribunal Act 1897 was made by the respondent No.1 Dipa Das in respect of an incident that took place on 18.10.2007 in which her husband died. According to the complainant, on 18.10.2007 the deceased had purchased a ticket from Barpeta Road railway station and boarded the train, whereupon he died when he suddenly fell down from the train.
3. In this respect, an information was received by the government railway police at around 4.45 am on 18.10.2007 that the deceased was lying near the railway track at KM 296/1-2 and his legs were cut by a running train. Consequent, thereof, the police made an investigation and the deceased was immediately sent to the Barpeta Road hospital for treatment, where he died at around 6.30 am.
4. In the proceeding before the claims tribunal, the Government Railway Police In-Charge had submitted a police report stating that information was received at around 5.45 am that a man was lying in the railway track at KM 296/1-2 and his legs were cut by running train. But the report further stated that during

investigation it came to light from the statement of the complainant and other witnesses that the deceased was travelling to Guwahati by 5610 Up Avadh Assam Express on 18.10.2007 from Barpeta Road Police Station and in doing so, he fell down from the running train and got cut injuries in his legs and died.

5. In respect of the incident, an enquiry report was also submitted by the government railway police station in UD Case No.53/2007 that during the investigation, it came to light that the deceased fell down from the running train and got cut injuries in his legs and he died. The police report dated 31.03.2008 and the final report also dated 22.10.2007 were exhibited as Exhbt- A1 and A2 before the claims tribunal.

6. The post mortem report which was exhibited as A4 showed that the deceased had cut injury on his knee joint on the left side with laceration of skin and muscles and there were compound fracture. But the Exhbt-A4 postmortem report also showed that the post mortem examination was done at 1.00 p.m. on 18.10.2007 and the death had taken place about 24 to 36 hours prior. Based on the opinion in the postmortem report that the death may have taken place 24 to 34 hours prior in a case where the post mortem examination done at 1.00 pm on 18.10.2007, Dr. B. N. Gogoi, learned standing counsel for the railway authorities raises a contention that the death must have taken place on the day prior i.e. on 17.10.2007 and therefore, the claim of the claimant that the deceased had boarded train on 18.10.2007 and fell down from it are incorrect.

7. On the other hand, we have the evidence of AW-2 who is the brother of the deceased who had deposed in his evidence that the deceased was his younger brother and he was sent by the witness to Guwahati for purchasing some flowers and lights for decoration for the purpose of Durga puja. AW-2 stated that the deceased had purchased his ticket in his presence and the colour of the ticket was brown. AW-1 the claimant in her evidence stated, although she was not with the deceased at the time of the accident and she was not an eye witness, that her deceased husband travelled from Barpeta road railway station to Guwahati on 18.10.2007 by Avadh Assam Express and he boarded the train 2/2.30 am at night for Guwahati for purchasing flowers and light for Durga puja decoration. Both AW-1 and AW-2 stated that they have heard about the incident at 5.30 to 6 am on 18.10.2007 and when they reached the spot they found him in an injured condition. We have taken note of that the aforesaid statements were made by AW-1 and AW-2 in their cross examination by the prosecuting railway authorities, but there is not even a suggestion by the railway authorities before the witness that the statements they made that the deceased had purchased a ticket and had boarded the Avadh Assam Express on 18.10.2007 is incorrect and false. In the resultant situation, we have before us the evidence of AW-1 and AW-2 which remains uncontroverted by the railway authorities that the deceased had purchased a ticket on 18.10.2007 and had boarded the Avadh Assam Express at about 2 to 2.30 am. On the other hand, the railway authorities have relied upon the opinion in the post mortem report that the death may have taken place 24 to

36 hours prior to the cross-examination which was done at 1.00 pm on 18.10.2007. In this respect, it is a settled law that whenever there is a conflict between the ocular evidence of the witnesses and that of an opinion rendered in the post mortem report, the ocular evidence would prevail over the post mortem examination.

8. In such view of the matter, the ground taken by the railway authorities solely based on the opinion rendered in post mortem report that the death may have taken place 24 to 36 hour prior to 1 pm of 18.10.2007 and therefore, it had taken place on 17.10.2007 and as such, the claim of the claimant is unsustainable is found to be unacceptable.

9. A further contention has been raised by Dr. B.N. Gogoi based upon the Exbt-A1 police report that the deceased died when he had sustained the cut injuries in his leg by a running train. But we notice that the portion of the police report which provides that the deceased was injured with cut injuries on his leg when he was run over by a train was based on the information received by the police. But the same report further provides that upon investigation, it was found that the deceased had boarded the train and he sustained injuries where he fell down from a running train.

10. In such view of the matter, the part of the police report which is based on information received cannot have a precedence over the part of the report which is made after investigation, nor the information that was received had been proved in evidence.

11. Accordingly, the said contention that the deceased sustained injuries when he was run over by a train and died as a result thereof, also cannot be accepted merely on the basis of the police report which is based on information received. As both the grounds urged upon in the appeal are found to be unsustainable, the appeal stands dismissed.