

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.137 of 2013

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Smt. Lalita Devi, wife of Late Kamalendra Narayan Das, resident of village -
Tonaha, P.O. Batgama, P.S. Bhargama, District - Araria (Bihar).

.... Applicant-Appellant.

Versus

1. The Union of India through the General Manager, North Eastern Railway,
Gorakhpur.
2. East Central Railway, Hazipur through its General Manager.

.... Respondents-Respondents.

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Appearance :

For the Appellant : Mr. Pravin Kumar Sinha, Advocate.
For the Respondents : Mr. Sunil Kumar Ravi, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA


ORAL JUDGMENT

Date: 31-03-2015

Heard learned counsel for the appellant and the Respondents
and also perused the records of the case.

2. The present Misc. Appeal has been preferred under
Section 23 of the Railway Claims Tribunal Act, 1987 against the
Judgment and Order dated 30.11.2012 passed in Claim Application
No.OA-000247 of 2002 by the Member (Technical), Railway Claims
Tribunal, Patna Bench, Patna (hereinafter referred to as “the
Tribunal), dismissing the aforesaid Claim Application filed on behalf
of the claimant-appellant.

3. In brief the case is that the applicant-appellant, Smt.
Lalita Devi, wife of the deceased, Kamalendra Narayan Das,
alongwith his two sons, namely, Satyendra Kumar Verma and




Shivendra Kumar Verma, filed Claim Application No.OA-000247 of 2002 before the Tribunal with the contention that her husband, Kamalendra Narayan Das, boarded at Train No.311 UP Katihar-Banmankhi Passenger Train at Purnea Court Railway Station after purchasing the ticket bearing No.16495 on 02.07.2002. Due to heavy crowd in the train, her husband could not enter into the bogie of the train, so he remained standing on the gate. When the train moved from the Station and reached 100 yards from Station, Kamalendra Narayan Das, accidentally fell down from the train due to pressure of heavy crowd of passengers in the train and he sustained several grievous injuries. He was carried to the Sadar Hospital, Purnea, for treatment where he succumbed to the injuries on the same day. The post-mortem of his dead body was conducted on 03.07.2002. The claimants claimed Rs.4,50,000/- as compensation due to the death of the deceased, Kamalendra Narayan Das, in course of traveling in the train in an untoward accident.

4. After hearing the parties and considering the materials available on the record, the learned Tribunal dismissed the aforesaid Claim Application of the applicant-appellant and her two sons, through the impugned Judgment and Order arriving at the conclusion that the claimants have failed to prove that the deceased was passenger of Train No.311 UP on 02.07.2002 and the deceased died in

an untoward accident of the railway.

5. Learned counsel appearing on behalf of the appellant submits that AW-2, Atul Kumar, in his evidence has specifically stated that he purchased three second class train tickets from Purnea Court for Banmankhi Railway Station on 02.07.2002, for the deceased, Kamalendra Narayan Das, Mahendra Lal Das and one for himself, and all boarded at the Train No.311 UP Katihar-Banmankhi Passenger and also supported the factum of accident but the learned Tribunal illegally disbelieved his evidence and also dismissed the claim application of the applicant-appellant.

6. Before the Tribunal, the claimants, Smt. Lalita Devi, the wife of the deceased, and Satyendra Kumar Verma, son of the deceased, have been examined as AW-1 and AW-3 and one Atul Kumar has been examined as AW-2. From the evidence of AW-1 and AW-3, who respectively are wife and son of the deceased, Kamalendra Narayan Das, it is clear that both of them are not the eye witnesses to the accident. AW-2, Atul Kumar, has stated in his examination-in-chief on affidavit that he alongwith Mahendra Lal Das and the deceased Kamalendra Narayan Das, on purchasing ticket at Purnea Court Railway Station boarded in Train No.311 UP Katihar-Banmankhi Passenger Train. The deceased, Kamalendra Narayan Das, and Mahendra Lal Das, could not occupy the seat in the bogie of the



train, so they remained standing in the bogie of the train. When the train started for destination, the deceased, Kamalendra Narayan Das, due to pressure of the rush in the train fell down and sustained injuries. The train was stopped on pulling the chain, he and Mahendra Lal Das went near the place of occurrence and saw Kamalendra Narayan Das lying on the platform at Purnea Court Railway Station. Thereafter, he informed the Station Master. The deceased, Kamalendra Narayan Das, was rushed to the Sadar Hospital, Purnea, for treatment but he succumbed to the said injuries. This witness has further stated that after accident, he remained with the deceased till the next morning and after carrying the dead body of the deceased, he left the hospital but the inquest report of the deceased (Ext.A/5) shows that he is not a witness of the inquest report. According to this witness, he and Mahendra Lal Das were traveling with the deceased at the time of accident but Ext.A/4, the F.I.R.-cum- final form dated 08.07.2002 shows that Mahendra Lal Das is the informant of the case, who gathered the information about the accident from Nita Kumari, the daughter of the deceased, which clearly indicates that Mahendra Lal Das and this witness, who is said to have accompanied the deceased, were not present at the time of accident.

7. The learned Tribunal has discussed the oral and documentary evidence of the witnesses in detail in paragraphs-9 to 13

of the impugned Judgment and Order and arrived at the conclusion that the claimants have failed to prove that the deceased was passenger of Train No.311 UP Katihar-Banmankhi Passenger Train on 02.07.2002 and he died in an untoward accident of the Railway and, accordingly, dismissed the aforesaid claim application of the applicant(s).

8. I find no illegality and infirmity in the impugned Judgment and Order of the learned Tribunal. Accordingly, this Miscellaneous Appeal stands dismissed.

(Rajendra Kumar Mishra, J)

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