

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**(Civil Miscellaneous Appellate Jurisdiction)**

**M.A. No. 330 of 2013**

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Mrs. Susana Kachhap, W/o Late Sahay Kachhap ..... Appellant  
**Versus**  
Union of India through General Manager, East Central Railway, Hajipur, Bihar  
.....Respondent

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**CORAM: HON'BLE MR. JUSTICE KAILASH PRASAD DEO**  
**(Through :-Video Conferencing)**

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For the Appellant : Ms. Chaitali Chatterjee Sinha, Advocate  
For the Respondent : Mr. Vijay Kr. Sinha, Advocate

**09/Dated: 24/06/2020.**

Heard, learned counsel for the parties.

Appellant has preferred this appeal against the impugned judgment dated 21.08.2013 passed by learned Member(Technical), Railway Claims Tribunal, Ranchi Bench, Ranchi in Case No.OA(IIU)/RNC/2012/0029, whereby the learned Tribunal has dismissed the claim application.

Learned counsel for the appellant has submitted that the deceased was a bonafide passenger though the learned tribunal has held that incident was not covered under the definition of untoward incident as defined under Section 123(c)(2) of the Railways Act, 1989.

Learned counsel for the appellant has further submitted that Vijay Nag has filed an affidavit brought on record as Annexure-6 of the memo of appeal, which shows that the deceased had purchased ticket and the wife has also submitted the same fact, which has been brought on record as Annexure- 6/a of the memo of appeal. Learned counsel for the appellant has further submitted that in view of the judgment passed by the Hon'ble Apex Court in the case of *Union of India vs. Rina Devi*, reported in (2019) 3 SCC 572 para 29, wherein it has been considered by the Hon'ble Apex Court that the initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift upon the Railways and the issue can be decided on the facts shown or the attending circumstances, as such, the deceased was a bonafide passenger.

So far untoward incident is concerned, a person has fallen down from a train as such the claimant is entitled for compensation in view of the judgment passed by the judgment passed by Hon'ble Apex Court in the case of *Union of India vs. Prabhakaran Vijaya Kumar AIR 2008(2) T.A.C. 777(SC) equivalent 2008(9) SCC 527*, paras 15, 16 and 23, as such, the impugned judgment of dismissal of the claim application may be set aside, directing the Railway to pay Rs.4,00,000/-

with interest or Rs.8,00,000/- as per the new amended rule whichever is higher in favour of the claimant.

Learned counsel for the respondent, Mr. Vijay Kumar Sinha has filed counter-affidavit and has vehemently argued that dependent No.2 is Beronika Kachhap, aged about 25 years but her marital status has not been disclosed rather the claim application has been filed by the wife, as such, if the amount is paid it should be paid in proportion or affidavit of the other dependents may be brought on record, so that the Railway may pay Rs.4,00,000/- with interest or Rs.8,00,000/- as per the new amended rules, to finally settle the dispute.

Learned counsel for the respondent has further submitted that the learned Tribunal has rightly held that the deceased not to be a bonafide passenger and the occurrence does not come under the preview of untoward incident as defined under Section 123(c)(2) of Railway Act, 1989, as such, this Court may not interfere with the same.

After hearing of the learned counsel for both the parties and on the basis of the materials brought on record, it appears that the learned Tribunal has wrongly given a finding regarding the deceased not to be a bona-fide passenger contrary to the judgment passed by the Hon'ble Apex Court in the case of *Rina Devi (Supra)*.

The occurrence is covered under the definition of untoward incident in view of the judgment passed by the Hon'ble Apex Court in the case of *Prabhakaran Vijaya Kumar (Supra)*.

Under the aforesaid circumstances, the impugned award dismissing the claim appeal is hereby set aside.

Accordingly, the Railway claim Tribunal is directed to pay the claimant after taking an affidavit from the dependents namely, Beronika Kachhap and Sandeep Kachhap in favour of the claimant either Rs.4,00,000/- with interest or Rs.8,00,000/- as per the new amended rules which is applicable from 01.01.2017.

The instant appeal is hereby allowed.

**( Kailash Prasad Deo, J.)**