

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.569 of 2012

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Smt. Sulekha Devi, W/O Late Badlu Sahni, Resident Of Village- Ishapore, P.O & P.S- Ishapore, Distt- Begusarai.

.... Appellant/s

Versus

The Union of India, through the General Manager, Eastern Railway, 3, Koelaghat Street, Kolkata

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Mohan Murari, Advocate

For the Respondent/s : Mr. Anil Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 16-01-2015

Heard the parties.

2. This is an Appeal preferred against order dated 01.06.2012 passed in Claim Application No. OA 00013/2007 by the Member (Technical) Railway Claims Tribunal, Patna Bench at Patna (hereinafter referred as to the "Claim Tribunal").

3. The claimant appellant widow of the Badlu Sahani has preferred this claim application before the Claim Tribunal seeking compensation against death of her husband, who was a bonafide passenger boarded at Barauni in Mithila Express to Howrah on 06.04.2006 having valid ticket and being sent up by his father but a few kilometers before the destination he fell down in between Serampur and Rishra stations while washing his hands in



the wash basin fixed near the door of the railway compartment wherein he was traveling. Immediately, thereafter, rushed to Serampur Walse Hospital by ASM, Rishra of railway station after some treatment surviving for a few days succumbed to the injuries sustained. Meanwhile, he was identified and on information his father rushed to the place and did other formalities. The railway filed a formal written statement but not in consonance with Rule 15 of the Railway Act, 1989 besides the Provision as contemplated in Order 8 Rule 2, 3 ,4, 5 and 10 CPC and also avoiding adducing in oral and documentary evidence. Rule 15 reads as such:-

"15. Filing of reply and other documents by the respondents-

(1) Each respondent may file his reply to the application and copies of the documents on or before the date of hearing.

*(2) In reply filed under sub-rule (1), the respondent shall specifically admit, deny or explain the facts stated by the applicant in his application and state such additional facts as may be found necessary in his reply [***]*

[(3) When the respondent admits the facts stated in the application, the Tribunal may make order in this regard].

[15-A. Filing of Rejoinder.- The applicant intending to file rejoinder to the written reply filed by the respondent may do so with the permission of the

Tribunal.

15-B. Admissions and denial of documents.- The Tribunal may, before framing issues ascertain from parties or their authorized representatives whether they admit or deny documents accompanying the application or reply, if any, and shall record such admission and denial.

15-C. Marking of Documents.- The documents filed by the applicant shall be marked as "A" series and the documents filed by the respondent shall be marked as "R" series and the Tribunal exhibits shall be marked as "C" series."

4. It is submitted that the Claim Tribunal has on imagination arrived at findings, contrary to the materials available on record and dismissed the claim application.

5. There is neither any pleading nor any evidence to show that on the particular date the said train was running as per schedule but the Claim Tribunal taking into consideration timing of purchase of the ticket (Annexure-7) assuming the train must be in time on particular date hold that since ticket was purchased after schedule time claimant is not entitled. Such imaginative findings without any material as indicated above cannot be accepted.

6. Similarly, on basis of respective age of parents of the deceased as mentioned in the voter list, on basis whereof the same was mentioned in the application, the Claim Tribunal found

the ground for denial. The difference of age being much less than normal to give birth of a child but at the same time he fail to consider that the age mentioned in the voter list etc. cannot be a decisive factor.

7. The Claim Tribunal has also denied the claim on the ground that ASM, Rishra had to first intimate GRP about the injured (who subsequently died) and it was the GRP who had to take steps for his shifting for treatment etc. But it was left with notice of the Claim Tribunal that at all railway stations deputation of GRP is not a rule nor there is any material to show whether any GRP personnel was present at the relevant time and that apart it was the duty of the authorities to take care of treatment of injured first only, thereafter, other legal formalities, if at all required, may be observed but he cannot be taken care of without giving preference to the primary duty and providing memo medical assistance etc.

8. There was no other ground to refuse the claim of the appellant and as indicated the refusal is not at all sustainable. Hence, order impugned dated 01.06.2012 passed in Claim Application No. OA 00013/2007 by the Member (Technical) Railway Claims Tribunal, Patna Bench at Patna is set aside.

9. Respondent railway is directed to pay a sum of

Rs.4,00,000/- (Four Lakh) within a period of two months from today with an interest @ 6 % per annum from the date of filing of application till actual payment is made to the appellant. The appellant is also directed to furnish bank mandate etc., as required, within a month from today.

(Akhilesh Chandra, J)

Ashwini/-

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