

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.681 of 2013

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Ajay Kumar Sharma @ Ajay Sharma, Son of Late Hari Narayan Sharma, resident of Village-Lakhisarai, P.S.-Ghosi, District-Jahanabad (Bihar) at present residing at Mohalla-Baikunthpuri, Sector 'C', I.M.S. Road, Near-Bhalotia Dharmshalla, Jumaritilaiya, Koderma (Jharkhand).

.....Applicant/Appellant

Versus

The Union of India, through the General Manager, East Central Railway, Hazipur.

...../Respondent/Respondent

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Appearance :

For the Appellant : Mr. Krishna Mohan Murari, Advocate

For the Respondent : Mr. Sunil Kumar Ravi, Advocate

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 30-01-2015

Heard the parties.

2. This is an appeal preferred against the order dated 9th September, 2013 passed in Claim Application No. - O.A. 00098 of 2005 by Dr. B. Rai, learned Hon'ble Member (Technical), Railway Claim Tribunal, Patna Bench, Patna, dismissing the claim put forward by the claimant-appellant seeking compensation against death of his minor unmarried son for himself and his wife, i.e., the mother of the deceased as

mentioned in paragraph no. - 13 of the claim application taking aid of Section 125 of the Railway Act, 1989.

3. It is submitted that the Claim Tribunal Below has passed the order shutting the doors of the claimant-appellant to adduce evidence and also neither permitted to participate in spite of prayer made in writing nor considered the materials available on the record.

4. True it is, the claim application was filed by the father of the deceased, who is solitary appellant here, on 18th May, 2005 fixing the date for reply 18th July, 2007 but the record indicates nothing could be done for 5 - 7 years but the file was placed on 30th October, 2012 for the first time, obviously, none appeared on behalf of the claimant-appellant. Similarly, there a petition on the next date, i.e., 20th November, 2012, but on the adjourned date, i.e., 19th December, 2012, written statement on behalf of the railway was filed. The order-sheets shows that both sides were in attendance, but the copy of the said written statement was served only on 29th August, 2013 by the changed counsel with permission of the Tribunal only at the



stage when the matter was posted for arguments. Earlier, the order-sheet indicates that on 15th January, 2013 after hearing the parties, the issues were settled but it is the submission on behalf of the claimant-appellant that in fact there was no representation on his behalf due to lack of communication. On 12th April, 2013, i.e., the first date fixed for evidence after settlement of the issues, the applicant was denied for producing any evidence since it is closed in his absence. On 3 - 4 adjourned dates without any further progress evidence on behalf of the railway was also closed and the matter was posted for arguments on 29th August, 2013 when on getting information the claimant-appellant appeared with a new counsel, who not only filed some documents but also two petitions, (1) seeking recall of earlier order permitting to adduce the evidence and (2) some sort of correction in the spelling of name of wife of the appellant, i.e., class - 1 heir of the deceased.

5. In spite of the unfortunate circumstances and manner, wherein, the Claim Tribunal Below proceeded, as pointed out by respondent, the appeal is

not at all maintainable only because the claimant-appellant, i.e., the sole applicant before Claim Tribunal Below being class - 2 heir of the deceased indicating existence of class - 1 heir, i.e., the wife in paragraph no. - 13 of the application before Claim Tribunal Below left impleading the said class - 1 heir, i.e., mother of the deceased, party to the appeal in either of the capacity as co-appellant or respondent.

6. Thus, having regard to the facts and circumstances stated above, this appeal deserves dismissal; accordingly, ordered.

(Akhilesh Chandra, J)

Praveen-II/-

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