

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.410 of 2009

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1. Smt. Jay Mala Devi, Wife of Shiv Kumar Malakar
 2. Shiv Kumar Malakar, Son of Sri Ram Bahdur Malakar
- Both Resident of Village-Dharampur, P.O & P.S.-Garhpura, District-Begusarai
(Bihar).

.....Applicants/Appellants

Versus

Union of India, through the General Manager, Eastern Central Railway, Hajipur.

.....Respondent/Respondent

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Appearance :

For the Appellant/s : Mr. Pravin Kumar Gupta, Advocate

For the Respondent/s : Mr. Mahesh Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 12-01-2015

Heard the parties.

2. This is an appeal preferred against Order dated 9th April, 2009 passed by the Railway Claims Tribunal, Patna Bench in Claim Application No. - O.A. 000156 of 2004.

3. This appeal has been preferred against refusal of claim preferred by the appellants seeking compensation of death of their son, namely, Chunur Malakar, aged about 14 years, who died on falling from a train on 18th November, 2003 while he was returning from Khagaria to Hasanpur Road

with a valid railway ticket.

4. Admittedly, on the basis of finding of dead-body of deceased (aged about 14 years) on the information given by the D.I.T. (Divisional Inspector of Ticket), a case of unnatural death was instituted and, thereafter, the inquest report was prepared at 10.20 A.M. and even the postmortem examination could be conducted by 1.20 P.M. as of unknown deceased and, as it further reveals, the said unknown dead-body after taking photographs was disposed of by 3.00 to 4.00 P.M. denying any opportunity to the family members of the deceased and his companions, who started travelling with the deceased could do nothing except on arrival/stoppage of the train at another station after consuming roughly 45 minutes informed about the untoward incident to the family members and they anyhow arrived at Khagaria by travelling through road since there was no train to return at the relevant time, but could only identify and know about the disposal of the dead-body on the basis of the photographs and clothing etc. of the deceased.

5. It is pointed out that the Claim Tribunal Below has refused the claim on the ground of non-production of photographs and railway ticket etc., but such grounds appear not at all tenable. No doubt, the claimant, i.e., the mother of

the deceased, has stated that the railway ticket has been filed in court, but this statement appears inadvertence since in the original application it is stated that not only the railway ticket but the bag of the deceased has also been missing, which finds support from the Inquest Report also.

6. The another son of the claimants, as witness, has said that on the same day he arrived at 3.30 P.M. at Khagaria and found nothing, but from the personal wearing of the deceased and photographs etc. just to identify and finding his brother, a student of class-IX, dead. The third witness, namely, Dharmesh Sharma, is one of the co-traveler and has stated that it is he who had purchased the tickets and distributed the same amongst the companions including the deceased, who was the last person to be boarded in the train but had to stand near the gate as all the efforts to go inside failed and soon after the train was finally to leave the platform he failed down and all the efforts made by this witness and other companions to get the train stopped failed and he could do anything only after arriving of train at Salona station after travelling for about 45 minutes, anyhow, he was able to return at Khagaria but only to see the photographs and personal wearing of the deceased.

7. The Death Certificate, Exhibit - A9, is another proof of death of the deceased in the manner stated by the claimants and there is nothing to rebut the same.

8. Having regard to the facts and circumstances stated above, the findings of the Claim Tribunal Below appears to be not at all sustainable. Accordingly, the Order dated 9th April, 2009 is hereby set-aside. The Respondent (Railway) is directed to pay a sum of Rs. 4,00,000/- to the appellants within a period of 2 (two) months from today after furnishing the mandate of the bank, which is to be furnished within a month, with an interest @ 6% per annum right from the date of filing of claim application till the date of actual payment.

(Akhilesh Chandra, J)

Praveen-II/-

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