

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.53 of 2013

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Durga Devi, Wife of Late Shashikant Singh, resident of Village-Piprahian, P.O & P.S.-Ara Muffasil, District-Bhojpur (Bihar).

.....Appellant

Versus

The Union of India through the General Manager, Eastern Railway, 3-Koelaghat Street, Kolkata-700001.

.....Respondent

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Appearance :

For the Appellant : Mr. Krishna Mohan Murari, Advocate

For the Respondent : Mr. Anil Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 23-02-2015

This file is brought under the heading “**For Hearing**”.

2. Heard the parties.

3. This is an appeal preferred against the order dated 29th November, 2012 passed in Claim Application No. OA 00238 of 2002 by Shri J.D. Goswami, Hon’ble Member (Technical), Railway Claim Tribunal, Patna Bench, dismissing the claim of the appellant.

4. During course of argument, it is pointed out that examination-in-chief of Dharmendra Yadav, the brother-in-law of the deceased, though is on record, but



the Claim Tribunal Below not only on affidavit, but also in the order-sheet has stated as such:- **“Not an eye-witness. He need not be examined/cross examined”**. Whereas, he comes as the person in whose presence the deceased has purchased the ticket and boarded in the train at Bihta railway station. It is also pointed out that on Memo, Exhibit-A-4, there is reference of the body lying at kilometer 590/08, but it appears underlying by the Claim Tribunal Below and in the margin encircled there is an endorsement **“Ara is located at 592.65 kilometer”**. This means he felled two (2) kilometers away from Ara, but from nowhere it appears as to how and why such endorsement was made by the Claim Tribunal Below.

5. Apart from the above, it appears that Exhibit-A-3, the written application, giving rise to Ara Rail U.D. (case of unnatural death) Police Station Case No. 10 of 2002 by one Jagnarayan Singh, the uncle of the deceased, but he too has not been examined nor his name finds figured in the schedule of the witnesses, whereas, the submission of the Bar is that his examination appears necessary.

6. Since the two points indicated earlier are so crucial and unless properly replied, no final adjudication

can be made. Hence, the order impugned is set-aside and the matter is remitted to the Claim Tribunal Below for fresh decision after permitting the parties to examine said Dharmendra Yadav and also to explain endorsement referred to above on Exhibit-A-4, the Memo, and in the event two such things are to be done, the claimant-appellant may also be permitted to examine the informant of the said U.D. case, if alive. The respondent-railway may also adduce any evidence, but in no case more than three (3) months time should be taken by the parties in final adjudication of the matter by the Claim Tribunal Below. The parties are directed to appear before the Claim Tribunal below on 16th March, 2015.

7. In the meantime, the Registry is directed to ensure transmission of the record/s at the earliest to the Claim Tribunal Below for needful.

(Akhilesh Chandra, J)

Praveen-II/-

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