IN THE HIGH COURT OF JHARKHAND AT RANCHI
(CIVIL MISCELLANEOUS APPELLATE JURISDICTION)

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M.A. No. 647 of 2019

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Anil Kumar Mandal @ Anil Mandal ….. **Appellant**

Versus

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

….. **Respondent**

…….....

Coram: Hon'ble Mr. Justice Kailash Prasad Deo

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For the Appellant : Mr. Shashi Kant Thakur, Advocate
For the Respondent : Mr. Gautam Rakesh, Advocate

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04/06.03.2020

Heard, learned counsel for the appellant and learned counsel for the Railway- Union of India.

The instant appeal has been preferred by the claimant/appellant against the judgment dated 17.9.2019 passed in Case No.O.A.(IIU)/RNC/38/2018 whereby the learned Tribunal has dismissed the claim application on the ground that Bambam Kumar with his mother were crossing the railway track and came in front of train. She along with her child committed crime under the provision of Section 179(2) and punishable under Section 147 of the Railways Act and both are themselves responsible for their death.

Learned counsel for the claimant/appellant has submitted that the UD Case No.7 of 2017 dated 04.04.2017 of Railway Barharwa (PP Pakur) was instituted. After investigation the investigating officer, Ravi Ranjan Kumar, ASI has submitted a report that both the deceased were travelling on down Upper India Express and fell down from running train due to which both have sustained grievous injury and died. The final report was submitted vide no.7 of 2017 dated 30.09.2017 and the same has been placed before the claim Tribunal but claim application has been refuted on erroneous ground and not considered the document in correct perspective. Learned counsel for the claimant/appellant has submitted that Anil Kumar Mandal @ Anil Mandal has been examined before the learned Tribunal as A.W.-1 and has categorically stated in para 3 that on 04.04.2017 at around 02:00 p.m. he purchased ticket for his wife and son, who boarded Banaras Siyaldah Train No.13120 DN and returned to his house, as such, the learned Tribunal ought to have considered his evidence in consonance with report submitted by Ravi Ranjan Kumar, ASI in view of the judgment passed in the case of ***Union of India Vs. Rina Devi,*** reported in ***(2019) 3 SCC***

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Learned counsel for the claimant/appellant has further submitted that the impugned judgment may be set aside by awarding, fair and just compensation to the claimant.

Learned counsel for the Railway- Union of India has filed Counter affidavit which is accepted and be taken on record. As per DRM's report, the deceased- Bambam Kumar Mandal @ Sonu Kumar along with his mother- Shampa Devi were crossing the railway track and came in front of train. She along with her child committed crime under the provision of Section 179(2) and punishable under Section 147 of the Railways Act and both are themselves responsible for their death. Learned counsel for the Railway- Union of India has thus submitted that in absence of any contrary materials brought on record the learned Tribunal has rightly dismissed the claim application.

Learned counsel for the claimant/appellant has submitted that the DRM report cannot be relied upon in view of the investigation report submitted by ASI in UD case No.7 of 2017. Apart from that the deceased has died in Railway accident at Railway Barharwa (PP Pakur) though the deceased and the claimant are residents of Village- Premnagar (Bara Jirwabari), P.O.- Chanan, P.S. Jirwabari, O.P. Subdivision + Dist- Sahibganj (Jharkhand), as such, it is not possible that both the persons were crossing a Railway track in unknown place and met with an accident. The police report submitted in UD Case No.7 of 2017 categorically says that both died because of fall from a running train. Apart from that, the evidence given by A.W.1 that he has purchased ticket for both and thereafter both boarded the train and A.W.1 returned to his house. This evidence ought to have been considered by the learned Tribunal in view of the judgment passed in the case of ***Union of India Vs. Rina Devi (Supra).*** No contrary evidence to that has been brought on record by the Railway, as such, the initial burden has been proved by the claimant/appellant. Accordingly, the appeal may be allowed.

Heard, learned counsel for the parties and perused the materials brought on record. It appears that there is contrary report of the Railway itself. DRM's report suggest that both the deceased died while crossing the railway track, but the police report submitted after preliminary enquiry in UD Case No.7 of 2017 clearly says that both the deceased have died because of fall from a running train. The claimant- Anil Kumar Mandal @ Anil Mandal who has been examined as A.W.1 has categorically stated in para 3 that he purchased tickets for both of them, who boarded the train and then he returned to his house. No contrary evidence has been brought on record by Railway.

Accordingly, the instant Miscellaneous Appeal is allowed.

Consequently, Union of India/Eastern Railway, Kolkata is directed to indemnify the Award of Rs.8,00,000/- to the claimant within a period of 90 days from today.

Let Lower Court Records be sent down forthwith.

(Kailash Prasad Deo, J.)

sandeep/R.S-