

(1996) 07 PAT CK 0025

In the Patna High Court

Case No : Miscellaneous Appeal No. 49 of 1991

Kapil Ram

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 17-07-1996

Acts Referred:

Railways Act, 1890 — Section 82A

Railways Act, 1989 — Section 123, 125, 125(1)

Citation : (1997) 1 PLJR 847

Hon'ble Judges : N. Pandey, J

Bench : Single Bench

Advocate : R.K. Sharma, S.B.P. Sinha and Ajit Sangani, for the Appellant; None, for the Respondent

Judgement

N. Pandey, J.—This miscellaneous appeal has been filed by the son of the deceased Rula Devi, who died in railway accident which took place on 16.4.90. By the order dated 8.11.1990 in Claim Application No. 36/DA passed by the Members of the Railway Tribunal, Patna, claim for compensation has been refused.

2. Smt. Fula Devi was the bonafide passenger of Train No. 383 Up Mokama-Danapur passenger and died on 16.4.1990 in the accident which took place on that date. The Tribunal has also recorded such finding in favour of the claimants.

3. However, the claim for grant of compensation has been rejected on the ground that the lady had no earning capacity. Her involvement was only limited to domestic works. It has been held that since the applicant was not dependant on the earning of the deceased lady, therefore, not entitled for compensation.

4. Learned Counsel for the Appellant has pointed out that the accident in this case had taken place on 16.4.1990, therefore the claim for compensation had to be considered in terms of the provision of Sections 123 and 125 of the Railways Act, 1989. He contended that a bare reference to the provisions of Section 123(b)

(i) reveals that the son of the deceased has been defined as dependent, therefore, legally entitled to make an application for compensation u/s 125(1)(d).

5. It appears learned members under a, wrong, impression have examined the claim of the applicant with reference to the provision of Section 82A of the Indian Railways Act, 1890. Since the accident had taken place on 16.4.1990, therefore, the claim should have been considered in terms of the provisions of Sections 123 and 125 of the Railways Act, 1989.

6. In view of the provisions of Section 123 there cannot be any dispute that a son being "dependant" of the mother is legally entitled to make an application for compensation on account of her death. But this aspect has not been considered by the members of the Tribunal.

7. Accordingly, I set aside that part of the order whereby the claim for compensation has been rejected without considering the relevant provision, available at the time of accident.

8. In the result, this appeal is partly allowed to the extent indicated above. The learned members are accordingly directed, to fix the amount of compensation within a period of two months from the date of receipt/production of a copy of this order. But there shall be no order as to costs.