

(2014) 07 JH CK 0061
In the Jharkhand High Court
Case No : M.A. No. 179 of 2013

Sushma Mishra

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-07-2014

Acts Referred:

Railways Act, 1989 — Section 123(c)(2), 124A

Citation : (2014) 07 JH CK 0061

Hon'ble Judges : Dhruv Narayan Upadhyay, J

Bench : Single Bench

Advocate : Chaitali Chatterjee, Advocate for the Appellant; Jalisur Rahman, Advocate for the Respondent

Judgement

Dhruv Narayan Upadhyay, J.—Heard the parties.

2. The instant appeal has been preferred against the Judgment dated 15.05.2013, passed by Railway Claims Tribunal, Ranchi Bench, in Case No. 0A(IIU) RNC/2010/0148 (Checklist No. 2907070023) whereby the application for grant of compensation filed by the appellant/claimant has been dismissed.

3. The facts in brief is that dead body of a male lying on a Railway Track near Pole Number 541/38 was located on 13.12.2006. After the dead body was identified, the family members including the claimant were duly informed. The inquest report was prepared and the dead body was sent for postmortem examination.

4. It is contended that the appellant/claimant who happens to be wife of the deceased, had filed an application for grant of compensation under Section 124A of the Railway Act, 1989. She has stated that her husband Manoj Kumar Mishra was traveling by Train No. 3288 Dn (Danapur-Tata Dakshin Bihar Express) and he boarded on the train at Patna Junction on 13.12.2006 since there was a crowd in the compartment, he was compelled to stand at the gate of the compartment and due to jerk and jolt, he fell down, sustained injuries and died near Pole No.

541/38.

5. It is contended that Fardbayan of the brother of the deceased was recorded in Kadam Kuan Police Station and it was forwarded to the GRP Patna for investigating into the matter because the dead body was found lying at Railway Track. The conducting Investigating Officer had recorded statement of the eye witness Shyam Kumar Yadav who has stated that he had seen the deceased boarding train no. 3288 Dn and he was going to Jasidih but due to rush in the compartment, he fell down and died.

6. The appellant has assailed the impugned Judgment on the ground that finding of the learned Tribunal is highly erroneous and illegal. Admittedly the dead body of Manoj Kumar Mishra was found lying near Pole No. 541/38. It is contended by the witnesses and the police officials that the dead body, with the help of some people, was brought to the house of the deceased and thereafter formalities have been done to register U.D. Case. There was every chance of loss of ticket in course of removal of the dead body from Railway Track to his house and from there to the postmortem house. Learned counsel has referred the Judgment in the case of U.O.I. vs. P. Krishnan reported in 2013(1) TAC 166 (Mad) and in the case of U.O.O. vs. Prabhakaran Vijay Kumar reported in 2008(4) LJLR 40 (SC). Since the documents on record and the statement of witnesses clearly suggests that the deceased was traveling in Train No. 3288 Dn and he fell down from the running train and, therefore, finding of the learned Tribunal that the incident does not come within the purview of Section 123(c)(2) of the Untoward Incident of Railway Act, 1989 is highly erroneous and, therefore, liable to be set aside. Learned counsel has referred exhibits R-1, R-2 and R-5 and submitted that final report clearly indicate that the incident was witnessed by one Shyam Kumar Yadav.

7. Counsel appearing for the respondent has opposed the arguments and submitted that the deceased died due to his own negligence and, therefore, the claimant is not entitled for any compensation as indicated under Section 124A of the Railway Act, 1989.

8. I have gone through the impugned Judgment, lower court record and the documents which have been marked exhibits. The final report submitted by the G.R.P. Is very clear that he had examined one of the witnesses Shyam Kumar Yadav who had seen the incident. Since the fact that the deceased was traveling by Train No. 3288 Dn and he fell down from the train due to rush in the compartment is more or less admitted by the respondent, I feel inclined to allow the appeal. The Judgment cited are also relied upon.

9. In the result, the respondent is directed to pay Rs. 4,00,000/- (Rupees four lacs.) as indicated in the Untoward Incident (compensation) Rules, 1990 with interest @6% p.a. From the date of application and the amount of compensation shall be paid within 90 days from the date of this order.

10. Accordingly, this appeal stands allowed.