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Court : Patna

Decided On : May-16-2014

Judge : Amaresh Kumar Lal

Appeal No. : Miscellaneous Appeal No. 611 of 2009

Appellant : Rinku Devi

Respondent : Union of India

Advocate for Pet/Ap. : Sri. Jawala Prasad

Judgement :

1. This appeal is directed against the judgment and order dated 28.8.2009 passed by Railway Claims Tribunal, Patna Bench in Claim Case No. O.A. No. 00303/1999 by which the claim case of the applicant-appellant has been rejected.

2. The case of the applicant-appellant, in brief, is that on 4.8.1999, her husband Bablu Prasad was travelling from Neora Station to Rajendra Nagar Station on Train No. 388 Down. He was travelling as a bona fide passenger with proper ticket no. 39433 dated 4.8.1999. Due to heavy rush in the compartment, her husband was standing at the foot board on the southern side of the coach. Her husband was hit by the open door of the goods train coach which was coming from Patna on the Up-line and due to which he died on the spot.

3. Written statement was filed on behalf of respondent-railway denying the claim of the applicant-appellant on the ground that it does not come within the purview of Section 124 A of the Railway Act. After framing issues, A.W. 1, the appellant was examined. No document was exhibited.

4. No one appeared for the applicant-appellant and after hearing the learned counsel for respondent and on perusal of record, the case was dismissed by the impugned order.

5. It is submitted by learned counsel for the applicant-appellant that due to the conduct of lawyer of the applicant, the claim application had been dismissed by the learned Tribunal, as no proper opportunity has been given to adduce evidence. It has also been submitted that Sri Jawala Prasad, learned counsel for the applicant-appellant is a man of 84 years and due to his old age and illness he could not conduct the case properly for which the applicant should not be allowed to suffer.

6. He has further submitted that in case the claim-application is entertained, the applicant will not claim interest after the date of judgment i.e. 28.8.2009.

7. He has further submitted that the claim application was filed on 15.12.1999 and the case was adjourned to 23.2.2000, 17.4.2000 and 14.7.2000. Thereafter, the case was adjourned to 14.7.2008. At a stretch the case has been adjourned for eight years.

8. Learned counsel for the respondent has submitted that due to negligence on the part of the applicant, the claim application has been rejected. As no document was put on the record in pursuance to Rule 22 A of the Railway Claims Tribunal (Procedure), Rules 1989, the claim application has rightly been dismissed.

9. After hearing learned counsel for both the parties and on perusal of record it appears that the case was adjourned for 14.7.2000 and thereafter at a stretch the case was adjourned for eight years i.e. 14.7.2008. It also appears that the applicant is an illiterate lady and she does not know technique of the Court and her lawyer has also not properly taken care of her case, as such the applicant should

not be allowed to suffer.

10. Considering the facts and circumstances stated above, in my opinion, the impugned order is not fit to be sustained. It is set aside. The case is remanded to the Tribunal for fresh hearing.

11. As submitted on behalf of the claimant that in case the claim application is entertained, she will not claim for interest after 28.8.2009.

12. In the result, this appeal is allowed.

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