

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20413 of 2010

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Devapati Devi, W/O Late Ganesh Rai, R/O Ratanpura, Ahir Toli, P.S.-
Bhagwan Bajar, Distt.- Saran

.... Petitioner/s

Versus

1. The Union of India through the General Manager North Eastern Railway, Gorakhpur
2. The Divisional Railway Manager North East Railway, Varanasi
3. The Divisional Account Officer North East Railway, Varanasi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrityunjay Kumar Tiwary

For the Respondent/s : Mr. Anil Singh

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

2 19-03-2015

Heard the parties.

The petitioner, a widow of late Ganesh Rai, has filed the present writ petition under Article 226 of the Constitution of India seeking a direction to the respondents to pay her compensation to the tune of Rs.8,17,500/- on account of accidental death of her husband on 01.11.1994 due to negligence and fault of the Railway administration.

Learned counsel appearing on behalf of the petitioner has fairly submitted that the petitioner had earlier filed Money Suit No.8 of 1995 before the Civil Court, Chapra for grant of aforesaid compensation in which the present respondents were impleaded as defendants. According to him, the defendants filed their written-statement in the aforesaid suit raising the question of jurisdiction of the Civil Court and taking a plea that the suit for compensation is not maintainable before the Civil Court and, if the petitioner wants compensation, then her claim shall lie before the Railways Claims Tribunal.

Apparently, in view of the objections raised on behalf

of the respondents-defendants therein, the aforesaid Money Suit No.8 of 1995 was rejected vide order dated 16.05.2008 (Annexure-5) on the question of jurisdiction. However, instead of approaching the Railways Claims Tribunal, the petitioner has filed the present writ petition under Article 226 of the Constitution of India.

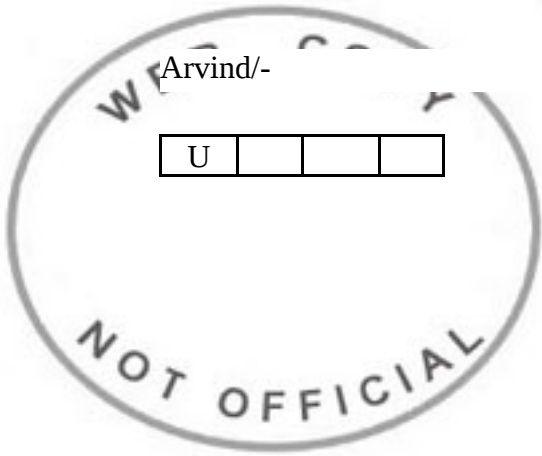
In the considered opinion of this Court, the claim of compensation raised on behalf of the petitioner may require recording of some evidence, which cannot be done in a proceeding under Article 226 of the Constitution of India. Indisputably, the respondents had taken their plea before the Civil Court that the claims for compensation raised by the petitioner shall be maintainable before the Railways Claims Tribunal, and that can be decided after recording of the evidence of the parties.

In the aforesaid factual matrix of the case, the petitioner is granted a liberty to file her case/claims before the Railways Claims Tribunal in the light of the observations made by the Civil Court in its judgment and order dated 16.05.2008 (Annexure-5) passed in Money Suit No.8 of 1995. If such a claim is raised on behalf of the petitioner, then the same shall be considered and decided on its own merits without being prejudiced/influenced by the present order.

It is clarified that, if such a claim is filed on behalf of the petitioner within a period of six weeks from today and, if it is found that it has become barred by limitation, then the Tribunal shall take into consideration that under a bonafide legal advice the present writ petition had been filed before this Court on 16.12.2010 and that remained pending till date.

The present writ petition stands disposed of with the

observations and directions made above.



Arvind/-

(Birendra Prasad Verma, J)