

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.406 of 2013

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1. Ramakant Sharma Son Of Sukhdeo Sharma Resident Of Village Tenua, P.S.-
Mansurchak, District- Begusarai (Bihar)

.... Appellant/s

Versus

1. Union of India, through its General Manager, N.E Railway, Gorakhpur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pravin Kumar Gupta, Advocate.

For the Respondent/s : Mr. Mahesh Prasad,
Mr. Anil Singh, Advocates.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 27-08-2015

Heard learned counsel for the appellant and learned
counsel for the Railway Administration.

2. I.A. No.6405 of 2013 has been filed for condoning the
delay of 556 days in preferring the appeal.

3. Having heard learned counsel for the parties, this Court
condone the delay and proceed to take up the appeal on merit.

4. In the present appeal the appellant is challenging the
order dated 10.8.2011 passed by the Railway Claims Tribunal,
Patna in O.A No.000185 of 2000 by which the Tribunal has
rejected the claim application.

5. As per the record of the case the son of the appellant,
namely,. Deepak Kumar, was travelling as a bonafide

passenger on 10.5.2000 in Train No.401 UP Barauni to Samastipur passenger and on account of jerk and jostling in the compartment accidentally his son met with an untoward incident.

6. This Court is not required to go for elaborate discussion on the fact that Tribunal has refused to grant compensation, basically on the fact that the appellant has filed its affidavit but even after adjournment the appellant never turned up for cross-examination. As per record it shows that the court has fixed the date of his cross-examination on 7.1.2010, 3.2.2010, 18.2.2010, 22.3.2010, 20.4.2010, 26.5.2010, 9.7.2010, 13.8.2010, 14.9.2010, 20.10.2010, 25.11.2010, 21.12.2010, 7.2.2011 and 14.3.2011 but the appellant did not turn up for cross-examination from the side of the Railway.

7. Learned counsel for the appellant submits that in fact appellant has filed an affidavit, present himself althrough, it is the Railway Administration who did not cross-examine the witnesses and wrongly Tribunal has shifted the burden on the appellant.

8. Learned counsel for the Railway has pointed out that the submission is divorced from the actual state of affairs



which is apparent from paragraph 8 of the order from where it appears that his lawyer did not produce the appellant for cross-examination, paragraph 9 shows that enough time was granted even thereafter the appellant did not presented himself for cross-examination and at the same time in paragraph 10 also the Tribunal has recorded that several documents have not been marked as Exhibit.

9. Having considered the rival contentions of the parties, the fact is that the appellant has filed an affidavit including supporting documents. Some documents have been marked as exhibit but one reason or the other he did not produce himself for cross-examination. Though counsel for the Railway has relied on the order passed in Misc. Appeal No.366 of 2013 where the Court has said that such type of laches should not be allowed to continue. If appeals like the present are entertained and matter is remanded to the Tribunal, the legal system shall sink under its own burden It will be relevant to quote relevant portion of the aforesaid order:

“Every litigant has a right to approach a Court for grant of relief. While the Court leans in favour of substantive justice rather than rejecting a claim or cases on technicality, yet there has to be a line drawn for the purpose. A litigant has a right to use the legal system and not to abuse. It appeals like the present are entertained and matters remanded to the

Tribunal, the legal system shall sink under its own burden.”

10. The fact of that case is quite different to this case as in that case the document could not be produced for eight long years that is the mind of the court and on that account the court has refused to remand back the matter but here the fact is not the same fact but the fact is quite different. Appellant has filed affidavit including the document but could not be cross-examined for one year. So for the ends of justice it will be prudent for this Court to remand back the matter subject to deposit of costs of Rs.1,000 with the Secretary, High Court Legal Services Committee, Patna and receipt of the same should be filed in the office of this Court. However, it is made clear that this Court is of the view that the appellant will not be entitled for interest from the date of filing of the application but on remand if the order goes in his favour he will be entitled for interest from the date of order.

11. With the aforesaid observation this appeal is disposed of.

Vinay/-

(Shivaji Pandey, J)

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