

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.551 of 2013

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1. Ram Nandan Mistri S/O Chanari Mistri Resident Of Village-Mohammadpur, P.O.- Mirchaiganj, P.S.- Nalanda, District- Nalanda (Bihar).
 2. Smt. Bacchi Devi W/O Ram Nandan Mistri Resident Of Village-Mohammadpur, P.O.- Mirchaiganj, P.S.- Nalanda, District- Nalanda (Bihar).
- Appellant/s

Versus

1. The Union Of India Through General Manager, Northern Railway, New Delhi.
 2. The General Manager, Northern Railway, New Delhi.
 3. The Railway Claims Tribunal, Patna Bench, Patna.
 4. Rina Devi W/O Pawan Sharma R/O Laxmanpur, P.S.- Bakhtiarpur, District- Patna.
- Respondent/s

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Appearance:

For the Appellant/s	:	Mr. Ashutosh Ranjan Pandey, Adv. Mr. Subhash Pandey, Adv.
For Railways	:	Mr. Bijoy Kumar Sinha, Adv.
For Respondent No.4.	:	Mr. A.N. Mishra, Adv. Mr. Anant Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 05-07-2016

Appellants who happen to be parents of Late Subodh Mistry have filed instant appeal against the order dated 21.05.2013 passed by Vice-chairman, Railway Claims Tribunal, Patna Bench in connection with Claim Case no.OA00188/2005, OA II/268/2015 whereby and whereunder while allowing the claim petitions bifurcated the claim amount in proportionate way amongst the wife as well as parents.

2. It is not under dispute with regard to bomb explosion in a train Shramjeevi Express on 28.07.2005 and the deceased Subodh Mistry, unfortunately was one of the occupant of the said bogey. Large number of passengers met with casualty and on account thereof, large number of claim cases were filed at different

places. As is evident, the order impugned had dealt with eleven claim cases, conjointly.

3. It is also evident from the lower court record that parents (appellants) have filed claim petition before Railway Claims Tribunal, Gorakhpur bearing no. OA II/268/2015 while the respondent no.4, Reena Devi, wife of deceased filed claim petition at Railway Claims Tribunal, Patna whereupon, the same has been directed to be disposed of by the Railway Claims Tribunal, Patna Bench and accordingly, the claim petition pending before Railway Claims Tribunal, Gorakhpur was transferred to Railway Claims Tribunal, Patna Bench wherein the parties led their evidence and further, by the order impugned the claim petition has been allowed and further, the amount has been directed to be disbursed amongst all the three claimants in terms so laid down under para-31 of the order which caused annoyance to the parent, appellants and that happens to be reason behind presentation of instant appeal.

4. The learned counsel for the appellants have challenged the finding recorded by the learned tribunal on the ground that at least there should have been a prima facie material to show that Reena Devi was married with Subodh, deceased just about a month ago as pleaded. The photographs having been filed on behalf of Reena Devi could be procured or manufactured by a now a days developed device as well as by scientific skill. Before putting reliance thereupon, the learned tribunal should have obtained scientific examination report on those photographs in order to satisfy that they are genuine as well as reliable. Therefore,

the conclusion of the learned Tribunal identifying Reena Devi as wife of deceased happens to be bad, wrong, illegal and is fit to be set aside.

5. It has also been submitted that the proportion of distribution of the claim amount also happens to be in partisan manner as, mother stood at par with wife being Class-I heir in terms of Section 8 of the Hindu Succession Act and so, at least both would have distributed half and half giving meager amount to the father. It has also been submitted that Reena Devi herself had admitted remarriage and so, on account of death of deceased the vagrancy is being faced by the parents and not by Reena Devi as, she is leading happy conjugal life, begotten two children after remarriage. Furthermore, the husband happens to be under obligation to maintain and therefore, the aforesaid Reena Devi should not have been given substantial amount in a manner as by the learned tribunal. So submitted that the mechanism of distribution of claim amount as happens to be defective one is subject to amenable.

6. On the other hand, the learned counsel representing Reena Devi has submitted that Railway Act is complete code and on account thereof, it should be taken in the same way as has been laid down while dealing with specific provision. Apart from this, it has also been submitted that Railway Claims Tribunal Act governs the function of the tribunal and in likewise manner, commanding procedure. Having conjoint reference thereof, it has been submitted that first of all wife and minor children have been identified to be dependant of the deceased and in absence thereof,



the parents of the deceased have been identified to be the claimant. As such, Reena Devi happens to be the competent enough to receive whole amount appertaining to Rs.4 lacs being wife of deceased. Furthermore, it has been submitted that she on her own had disclosed that apart from she herself, her inlaws were also dependent and further, had not contested or objected in having the claim amount distributed amongst herself as well as her inlaws. Because of the fact that now in inlaws developed greedy eye and further on account of having been tortured at their end even to the extent of ousting her coupled with the fact that being of a tender age, she got remarried but, she is still suffering, from the scar on account of death of her caring husband who unfortunately met with terrorist attack costing his life. Even remarriage is not going to compensate. Therefore, the amount so granted in her favour happens to be just, legal and proper and should be maintained accordingly.

7. The learned counsel for the railway has submitted that railway is ready to deposit the amount in terms of finding going to be laid down at the present moment. The railway has nothing to say with regard to the dispute having amongst the parties.

8. It is needless to say that while proceeding with the claim petition under the railway act, a summary procedure is to be followed. During course thereof, a prima facie material has to be seen with regard to untoward incident wherein the life of deceased has lost. At this very score, there happens to be no controversy or challenge at the end of the railway and so, death of deceased

Subodh is found out of controversy in an untoward incident. In likewise manner, the status of the parties for the present purpose did not warrant in depth discussion. If so desire, the appellants may move before the competent court for a declaration that Reena Devi is not the wife of deceased but for the present, a prima facie evidence has been perceived by the learned tribunal and on account thereof, the order has rightly been passed acknowledging his status of the respective parties. Furthermore, I do not see any improper application while making distribution amongst the heirs/dependant whereupon, instant appeal lacks merit and is accordingly dismissed. However, in the facts and circumstances of the case, parties will bear their own cost.

(Aditya Kumar Trivedi, J)

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