

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.1401 of 2016

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Ram Dulari Devi, wife of Late Badri Mukhiya, resident of village and P.S. Khirhar,
District Madhubani. Appellant.

Versus

The Union of India, through the General Manager, Central Railway, Mumbai.
.... Respondent.

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Appearance :

For the Appellant/s : Mr. Murari Narain Chaudhary, Adv.

For the Respondent/s : Mr. Anil Kumar Sinha, Adv.

Mr. Yash Mathur, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 17-09-2018

Heard learned counsel for the appellant and learned counsel
for the respondent on this appeal.

2. This miscellaneous appeal has been preferred against the
order dated 18.02.2016 passed by the learned Member (Judicial),
Railway Claims Tribunal, Patna Bench, Patna (hereinafter referred to
as the 'Tribunal') in Restoration Case No. 60 of 2015, whereby the
learned Tribunal dismissed the restoration petition filed by the
claimant/appellant.

3. The factual matrix of the case is that claimant filed Claim
Case vide O.A. No. 000583 of 2014 for payment of compensation on
account of death of her son in an untoward incident during the course
of travelling by train. The aforesaid case was dismissed on 25.08.2015
as none was present on behalf of the appellant before the Tribunal in
the said case on the said date and no evidence was filed by her in the



case and for restoration of the aforesaid case the appellant filed the restoration petition bearing Restoration Case No. 60 of 2015 but the same was also dismissed by the learned Tribunal on 18.02.2016. Being aggrieved and dissatisfied with the aforesaid order of rejection of the restoration petition, the claimant has preferred this appeal.

4. It is submitted by learned counsel for the appellant that the appellant has filed all the documents such as FIR, heirship certificate, Postmortem report, death certificate information about the death photostat copy of the ticket and affidavit of the claimant in the case and the aforesaid documents are on record. But as the learned counsel for the appellant could not appear before the learned Tribunal on 25.08.2015, due to some personal reason, the aforesaid claim petition was dismissed for default as well as for want of evidence by the learned Tribunal. For restoration of the said claim case, he has filed restoration application vide Restoration Case No. 60 of 2015, but the learned Tribunal rejected the restoration petition without considering the facts and circumstances of the case under a wrong impression that no evidence has been filed by the appellant in the case, hence the order passed by the learned Tribunal is without any basis and bad in law and is liable to be set aside.

5. On the other hand, it is submitted by learned counsel for the respondent that the appellant has not filed any heirship certificate



to establish the relationship between the deceased and herself and the appellant has also not filed other required documents before the learned Tribunal. Hence, the learned Tribunal has rightly dismissed the restoration petition for want of the evidence.

6. As per the submission of the appellant, she has filed the affidavit of the claimant/ appellant as well as other documents such as FIR, heirship certificate, Postmortem report, death certificate information about the death, photostat copy of the ticket in the case and the aforesaid documents are on record before the learned Tribunal. But from perusal of the impugned order it appears that the appellant has not filed any evidence in buttress of her case and under this impression the learned Tribunal dismissed the restoration petition filed by her. It further appears that earlier the claim petition of the appellant was dismissed for default by the Tribunal on 25.08.2015 for want of her appearance in the case and due to non filing of any evidence on record. To explain her absence on the said date the learned counsel for the appellant has submitted that on each and every date fixed in the case he had appeared but he could not appear before the learned Tribunal on 25.08.2015, due to some personal reason, and the entire documents are on record but the aforesaid claim case was dismissed by the Tribunal on 25.08.2015. It is settled principle of law that justice should be done after hearing the parties and injustice



should not be done merely on technicality and shutting down the opportunity of hearing to the parties.

7. Be that as it may, in the interest of justice, the order dated 18.02.2016 passed by the learned Tribunal in Restoration Case No 60 of 2015 is hereby set aside and this appeal is allowed.

8. However, the learned Tribunal is directed to dispose of the aforesaid restoration petition on merit in the light of the observations made by me hereinabove within one month from the date of receipt/ production of a copy of this judgment.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.09.2018
Transmission Date	20.09.2018

