

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.823 of 2014

1. Kumar Suman
2. Minni Kumari Both Son & Daughter of late Viveka Nand Rai, Resident of Village Rannuchak, P.O. Rannuchak Makandpur, P.S. Nath Nagar, District-Bhagalpur.

... .. Appellant/s

Versus

The Union Of India through General Manager, E. Railway Kolkatta

... .. Respondent/s

Appearance :

For the Appellant/s : Ms. Pravina Kumari, Advocate
For the Respondent/s : Mr. Anil Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 17-04-2019

Heard parties.

2. This miscellaneous appeal has been filed by the appellant for setting aside the order dated 13.10.2014 passed by Railway Claims Tribunal, Patna in (O.A.) No.0041/05 which was dismissed due to non-prosecution.

3. Claimant-appellant had filed an application on 19.10.2005 for grant of compensation on the ground that on 20.04.2004 at 4 p.m., his father went to Railway Station for boarding the train for Bidai of his niece and on 21.04.2004, he came to know that his father has died in train accident at Murarpur station southern cabin. Opposite party- Railways had filed their written statement and had denied the claim of the complainant on the ground that there was no eye witness of the



accident. No railway ticket was recovered from the possession of the deceased and it was a case of the run over as such the claim should be dismissed along with her claim application. The claimant had enclosed copy of F.I.R., final report and postmortem report. The Tribunal in its order has found that the mater was taken on 30.08.2013, 17.02.2014 and 13.10.2014 but on none of the dates which was fixed either claimant appeared or his counsel appeared to present the case. The claim case was dismissed by the Tribunal by its order dated 13.10.2014 on the ground that in spite of three opportunities provided to claimant, neither she appeared nor her counsel appeared before the Tribunal and even all the documents were not filed by her and the documents which have been filed do not indicate that there is any relation between deceased and claimant and claimant has not shown any promptness and seriousness to pursue her claim case as a result of which her claim has been dismissed by the Tribunal under Section 16 of the Railway Claims Tribunal Act, 1987.

4. It has been submitted on behalf of the appellant that she is a poor widow and had filed her claim case in the year 2005 but same could not be taken up.

5. After hearing learned counsel for the appellant



although this Court does not find any error in the order passed by the Tribunal as in spite of three opportunities having been provided to the claimant, neither she nor her counsel appeared before the Tribunal as such the Tribunal had no option but to reject the claim of the claimant. However, since it has been submitted that appellant is poor widow and have filed her claim case way back in the year 2005 but could not be taken up due to various reasons as such she was not aware about the case being fixed on the date as mentioned in the order.

6. In the interest of justice and in view of the matter that claim compensation has been rejected not on merit but due to non-prosecution, this Court wanted to impose cost in order to revive the claim but it has been submitted by counsel for the appellant that her condition is very miserable and if any cost is awarded by this Court, she is not in a position to pay.

7. In the facts and circumstances of the present case and taking sympathetic view in the matter the order dated 13.10.2014 passed by the Tribunal is set aside and the matter is remanded to the Tribunal to provide opportunity to the claimant and decide the case on merit. The appellant is directed to appear before the Tribunal along with certified copy of order passed by this Court and, thereafter, Tribunal shall fix a date on which



date, claimant should produce her witnesses and other evidence and Tribunal will also grant opportunity to respondent railways and decide the matter on merit within six months from the date of receipt/production of a copy of this order passed by this Court.

The miscellaneous appeal is disposed of with aforesaid observation and direction.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.05.2019
Transmission Date	NA

