

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.544 of 2016

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Phulpati Devi, W/o Rajendra Prasad Sharma, resident of Mohallah-Takiyapar, Nariyal Ghat Road, P.S.- Danapur, District- Patna.

... .. Appellant/s

Versus

Union Of India Through General Manager East Central Railways at P.S. Hajipur, District-Vaishali.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Manoj Kumar Ambastha, Adv,
Mr. Arunjay Kumar, Adv.
For the Respondent/railway : Mr.Ramadhar Shekhar, Adv.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 06-08-2019

Heard the parties.

2. This miscellaneous appeal has been filed on behalf of claimant/appellant for setting aside order dated 25.02.2014 passed in M.A. (Restoration) No. 0021 of 2009 passed by Member (Technical) Railways Claim Tribunal, Patna Bench Patna by which the restoration application of claimant/appellant was dismissed.

3. Claimant/appellant had filed a claim case No. O.A. 008 of 2000 before the Claim Tribunal for grant of Rs. 4,00,000/- (Four lacs) as compensation under Section 125 of Railway Act read with Section 16 of the Railway Claim Tribunal, 1987. The claim case remain pending for 8 years and



was taken up on 17.12.2008 and on which date the appellant was present and issues were framed and the case was posted for evidence on 21.01.2009 and on 21.01.2009 the appellant filed her evidence on affidavit and the case was posted for cross-examination on 02.03.2009. However, due to traffic jam near Gandhi Maidan, counsel for the appellant could not appear when the case was called on 02.03.2009 and it was dismissed for default for his non-appearance. Appellant filed an application being M.A. No. 0021 of 2009 for review and recall of order of dismiss for default on 31.03.2009. However, same was dismissed on the ground that appellant was not present on 21.01.2009 and on 02.03.2009 when the matter was taken up according to appellant same is error of record and he was present on 17.12.2008 and on 21.01.2009 when the case was taken up and issues were framed in his presence and he has also filed evidence on affidavit and for the reasons as stated in review petition he could not appear on 02.03.2009 when the case was posted for cross-examination of claimant.

4. From the materials available on record it appears that claimant had filed the case in the year, 2000 itself but same remained pending in the tribunal for 8 years and was taken up for the first time on 17.12.2008 and thereafter on 21.01.2009



on which dates appellant was present and he had given sufficient reasons for his non-appearance on 02.03.2009 when the matter was called and case was dismissed for default.

5. This court finds that appellant had shown sufficient reasons for his non-appearance on 02.03.2009 when the case was called out as such the order dated 25.02.2014 passed in M.A. No. 0021 of 2009 (restoration) dismissing restoration application is set aside and the claim application No.008 of 2000 is restored to its original file.

6. The claim case of appellant shall be decided on merit by the Railways Claims Tribunal within 06 (six) months from the date of receipt/production of order passed by this court after granting reasonable opportunities to both parties.

7. Accordingly, the appeal is allowed.

(S. Kumar, J)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.10.2019
Transmission Date	NA

