

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.528 of 2015

Union Of India Through The General Manager E.railway Kolkata

... Respondent... Appellant/s

Versus

Moresa Bibi r/o Mohalla Kari Kado P.S. Kahalgaon, District Bhagalpur
(Bihar)

... Respondent/s

Appearance :

For the Appellant/s : Mr.Bijoy Kumar Sinha, Adv

For the Respondent/s : Mr. Anant Kumar No. 1, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 16-07-2019

Heard learned counsel for the parties.

This miscellaneous appeal has been filed by Appellant-Railways for setting aside the judgment and order dated 01.05.2015 passed by Member (Technical), Railway Claims Tribunal, Patna Bench, Patna in O.A 00297 of 2006, by which the Claims Tribunal has allowed the claim application for grant of compensation to the Applicant-respondent.

Applicant-respondent filed a claim application before the Railway Claims Tribunal, Patna Bench, Patna, for grant of compensation on account of death of her husband in an untoward incident on 02.12.2006, near Bhagalpur Railway



Station.

Claimants case as disclosed in claim application is that Md. Murshid husband of the applicant was travelling by Train No. 3071 Up (Howrah-Jamalpur Super Express) with a valid train ticket and was a bonafide passenger and said Train met an accident near Bhagalpur Railway Station on 02.12.2006 due to falling of road over-bridge on said Train. Name of deceased was found entered in railway record as a victim of said accident and having died due to falling of road over-bridge on said Train in which he was travelling and ex gratia payment was made.

Appellant-Railways filed written statement in which it denied that deceased was not a bonafide passenger as such claimants are not entitled for any compensation. Payment of *ex gratia* did not *ipso facto* fasten any liability on the respondent-railways for grant of compensation and same is to be granted on the basis of evidence produced by the Claimant before the Claims Tribunal in order to establish that deceased died in an untoward incident and was a bonafide passenger.

Claims Tribunal framed three issues for its determination.

Applicant Moresha Bibi has filed her affidavit which has been marked as Exhibit-A1 and affidavit of one Sheikh



Salim marked as Exhibit-A8. Documentary evidences were also adduced on behalf of claimant which were marked as Exhibits by the Tribunal which included inquest report (Exhibit-A2), Post Mortem Report (Exhibit-A3), Identity Card of deceased (Exhibit-A6), Office order of Eastern Railways regarding compassionate appointment of Nuresha Bibi (Exhibit-A9), Death Certificate (Exhibit-A10), Office order of Eastern Railways (Exhibit-A11),

Respondents have neither adduced any oral nor any documentary evidence before the Tribunal.

Railway Claims Tribunal has held that rail accident took place on 02.12.2006 near Bhagalpur Railway Station as a consequence of falling of road over-bridge on said Train in which Sheikh Murshid was one of the victims who died in said accident and his name finds place in the railway records. Railways have also admitted *ex gratia* payment of Rs. 5 Lacs. Claimant had stated in her application that the deceased was a bonafide passenger having a valid train ticket, however, said ticket was lost as a result of accident and could not be recovered from the possession of deceased. Railway Claims Tribunal has further relied upon a circular issued by Railway Board which was marked as Exhibit-A12 which mandates compensation to



the dependants of deceased to be paid irrespective whether any ticket was produced or not and further that Claimants need not be saddled with the liability of proving the bonafide of the victim as a passenger

Claims Tribunal observed that applicant Moresa Bibi has claimed compensation under Section 123(b)(i) claiming to be the widow of Md. Murshid who died on 02.12.2006 in a Train accident near Bhagalpur Railway Station. Claimant Moresha Bibi never presented herself before the Claims Tribunal in support of her claim case, even after granting several opportunities for her presence and same was being avoided by her on one pretext or the other and from her conduct the Claims Tribunal inferred that she is deliberately not appearing before the Tribunal for some ulterior and malafide reason. The Claims Tribunal held that evidence and materials brought on record are not of such conclusive nature that one can rely upon them to establish the correct identity of the Claimant-applicant *vis-a-vis* the deceased beyond the pale of all reasonable doubts. Claim application has been filed by Moresha Bibi for grant of compensation on account of death of her husband Md. Murshid for which several documents were produced by the Claimant from which it can be deduced that the victim's name was Sheikh



Murshid and the office order relates to appointment of Nuresha Bibi wife of late. Sheikh Murshid on compassionate ground who was given compassionate appointment by Eastern Railways and claimant on 27.07.2009 filed an affidavit that her name was Nuresha Bibi and she was also known as Moresa Bibi and her husband's name was Sheikh Murshid who was also known as Md. Murshid and she was granted sufficient opportunity to dispel the apprehension about her identity and to satisfy the Tribunal that Moresa Bibi and Nuresha Bibi are one and the same person but she never appeared before the Tribunal. The Claims Tribunal has held that claim application was filed in the name of Moresa Bibi w/o Late Murshid and not in the name of Nuresha Bibi w/o Sheikh Murshid and Claimant in spite of being given several opportunities never appeared before the Claims Tribunal to dispel suspicion raised about her identity as names were quite different and accordingly the Tribunal dismissed the claim application.

Against dismissal of her claim application Claimant preferred Miscellaneous Appeal before this Court giving rise to Miscellaneous Appeal No. 698 of 2009, which was disposed of by order dated 16.08.2012 granting opportunity to the Claimant to appear before the Railway Claims Tribunal and establish her



identity that Moresa Bibi and Nuresha Bibi are one and the same person and she is widow of deceased who died in an untoward accident and pursuant to said opportunity the Claimant appeared before the Railway Claims Tribunal on 13.03.2015 and gave evidence on affidavit and was also faced with cross-examination by the respondent-railways. She stated that at present she is working in the department after getting a job on compassionate ground. She stated before the Tribunal that she is widow of deceased who died in an untoward incident and Md. Raza and Md. Rashid are minor sons born from the wedlock of Claimant and deceased. Respondent-railways did not submit any evidence to disprove the identity and relationship of Claimant with the deceased.

The Railway Claims Tribunal concluded that as per order of the Hon'ble High Court the applicant appeared before the Tribunal, gave evidence and faced the cross-examination and established her identity and as such is entitled for compensation and accordingly, allowed her claim application for grant of compensation.

After hearing the parties and considering the materials and evidence available on record and perusing the order passed by the Railway Claims Tribunal, this Court is not inclined to



interfere in the order passed by the Claims Tribunal and accordingly, this appeal is dismissed.

LCR of this case be returned to the concerned Tribunal forthwith.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.10.2019
Transmission Date	NA

