

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.769 of 2012

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Smt. Geeta Devi W/O Late Mahendra Yadav R/O Vill-Baidyanathpur,P.S.-
Sabour, Distt-Bhagalpur

... .. Appellant/s

Versus

The Union Of India through General Manager, Easter Railway, Kolkata.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Sanjay Kumar Tiwary, Adv
For the Respondent/s : Mr.Mahesh Prasad, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 15-04-2019

I.A. No. 5185 of 2015

Heard parties.

This interlocutory application has been filed for condoning the delay of about 7 month 10 days in preferring the present miscellaneous appeal.

For the reasons mentioned in the interlocutory application, this Court is satisfied that the appellant was prevented for sufficient reasons from preferring this miscellaneous appeal within time.

As a result, this interlocutory application is allowed and the delay in filing this miscellaneous appeal is condoned.



M.A No. 769 of 2012

This appeal has been filed for setting aside the judgment dated 09.12.2011 passed in Claim Application No. O.A. 00084 of 2002 by learned Member (Technical), Railway Claims Tribunal, Patna Bench, by which claim application of the appellant has been dismissed. Claimant is widow of Late. Mahendra Yadav who filed claim case in the Railway Claims Tribunal under Section 125 of the Railway Act, 1989 read with Section 16 of RCT Act, 1987, claiming compensation of Rs. 4 Lacs due to death of her husband in an untoward accident.

2. In the application, it was stated that on 24.06.2001 her deceased-husband Late. Mahendra Yadav was travelling from Pirpanti to Gogha with valid ticket by Train No. 837 and fell down from the train accidentally, near the outer signal of Ghogha Railway Station and died.

3. Written statement was filed by the respondents denying the claim of appellant on account of negligence of the deceased for which respondent-Railway cannot be held responsible. On the basis of pleading of the parties, 4 issues were framed by the Tribunal.

4. In her claim application, it was stated that her-husband Late. Mahendra Yadav, fell from passenger train near Ghogha



station and succumbed to his injuries at the place of accident. The deceased travelled with a second class ticket and in the claim application photocopies of FIR, memo issued by Station Master, Bhagalpur, Police Report, Post Mortem Report, and extract of Station Diary were enclosed.

5. The Tribunal in its order as impugned has held that none of these documents were attested, certified, or authenticated by anyone as such they could not be taken as exhibits. It has further been held that despite giving two opportunities none representing the applicant turned up either to submit any evidence or produce any witness. No witness scheduled was submitted and rejected the claim of appellant against which the present miscellaneous appeal has been filed by the claimant-appellant.

6. LCR was called for and on perusal of which it appears that date of filing of the claim is 22.03.2002 and thereafter the claim case could not be taken up because the bench was not available and it was listed for hearing on 18.11.2011, on which date learned counsel for the appellant was absent, however, learned counsel for the respondent was present and it was observed that several opportunities were given to the appellant to file witness scheduled and evidence but the same being not



done appellant's evidence was closed and the case was adjourned to be listed on 30.11.2011 and on which date none of the parties were present and respondent-evidence was also closed. On 08.12.2011 arguments were heard and judgment was reserved.

7. A petition was filed on 09.12.2011, on behalf of appellant for recall of the order to provide one opportunity to the claimant-appellant for adducing evidence on her behalf, however, same was rejected on the ground that learned counsel for the appellant was granted two opportunities but even witness scheduled was not filed and learned counsel was not present on both occasion, as such the order cannot be recalled and appellant cannot be permitted to lead evidence and thereafter rejected the claim case of appellant.

8. From perusal of the record, it appears that the issues were framed on 26.08.2011 and case was adjourned for 14.09.2011 for evidence of appellant, however, on 14.09.2011 the Bench was not available and the case was adjourned for 23.09.2011 and on 23.09.2011 none had appeared and appellant was directed to file witness scheduled and the matter was adjourned for 13.10.2011, but the case could not be taken up on 13.10.2011 as the bench was not available and adjourned for



18.08.2011 and on 18.08.2011 Bench was also not available and case was adjourned for 26.08.2011.

9. It appears that the claim case was filed under Section 124A of Railway (Amendment) Act, 1994 in the prescribed format in which both reports were submitted under Section 174 of the Cr.P.C to the Magistrate with respect to unnatural death. Post Mortem Report along with case diary was filed by the appellant. Written statement/objection filed on behalf of respondents is also on record. The list of witnesses filed on behalf of claimant in which she has given name of four witnesses which was filed through the learned counsel on 14.09.2011, is also on record. In such view of the matter, the Tribunal showed undue haste in rejecting the claim of appellant when the matter remained pending for more than ten years in absence of availability of bench and claimant is poor widow, cannot be allowed to suffer for any laches and lack of sincerity shown by her counsel.

10. Accordingly, the order dated 09.12.2011 passed in Claim Application No. OA00084 of 2002 by Railway Claims Tribunal, Patna Bench, is set aside and the matter is remanded to the Tribunal to permit petitioner to lead her evidence on the date as fixed by the Tribunal and thereafter proceed in



accordance with law and decide the claim of appellant within six months from the date of receipt/production of a copy of this order.

LCR is directed to be sent to the Tribunal forthwith.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	02.05.2019
Transmission Date	N.A.

