

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

FIRST APPEAL NO.205 OF 2019

APPELLANTS :
(Org.claimants)

1. Neeta wd/o Naresh Thawakar,
Age : 37 years, Occ. Student.
2. Veer s/o Naresh Thawakar,
Age : 13 years, Occ. Student.
3. Ku. Bhakti d/o Naresh Thawakar,
Age : 09, Occ. Student.

2 & 3 through its Guardian Appellant
No.1.

All R/o Thawakar Bahwan, Ganjipeth,
Near Tata Parsi School, Bhaldaipura,
Nagpur.

VERSUS

RESPONDENT :
(org.Respondent)

Union of India,
Through the General Manager,
Central Railway, CST Mumbai.

Shri S. B. Dhande, Advocate for appellants.
Shri N. P. Lambat, Advocate for respondent-sole.

CORAM:- MANISH PITALE, J.

DATED : 14/10/2019.

ORAL JUDGMENT :

1. At the outset, it is pointed out by the learned counsel appearing for the respondent that the present appeal is filed only against rejection of review application filed by the appellants herein and therefore, in the absence of challenge to the

Judgment and order dated 07/04/2017 passed by the Railway Claims Tribunal, Nagpur, the present appeal is not maintainable.

2. Considering the fact that the Railways Act, 1989 insofar as it concerns grant of compensation, is beneficial piece of legislation and therefore, appeal cannot be thrown out only on technical ground. The learned counsel for the appellants has made oral prayer to incorporate challenge in the present appeal to the Judgment and order dated 07/04/2017 passed by the Railway Claims Tribunal in the claim application. The amendment is allowed in the interest of justice. The same be carried out forthwith.

3. In the present case, the Tribunal by its Judgment and order dated 07/04/2017 found that the appellants were entitled to grant of compensation in view of untoward incident that took place, due to which husband of appellant No.1 died. But, while passing the Judgment and order dated 07/04/2017, effect of notification dated 22/12/2016, which came into effect from 01/01/2017, was not taken into consideration whereby the quantum of compensation was increased from Rs.4,00,000/- to Rs.8,00,000/-.

4. In this backdrop, the appellants filed review application before the Tribunal, but by the impugned Judgment and order dated 27/09/2018, review application was rejected by the Tribunal.

5. The question sought to be raised on behalf of the appellants in the present appeal is no more res integra in view of Judgment of the Hon'ble Supreme Court in the case of Union of India Vrs. Rina Devi, reported in AIR 2018 SC 2362, whereby the Hon'ble Supreme Court in para 15.4 held that if the incident took place before the said notification came into effect, compensation @ Rs.4,00,000/- with interest would be granted, if it is more than Rs.8,00,000/-, which is payable under the aforesaid notification. It is made clear that between the two, the higher amount would be paid to the claimants. In the present case, it is not in dispute that amount of compensation of Rs.4,00,000/- with interest would be less than Rs.8,00,000/- and therefore, as per the ratio laid down by the Hon'ble Supreme Court, the appellants are entitled to Rs.8,00,000/- from the respondent – Union of India.

6. Accordingly, the appeal is allowed and while Judgment and order dated 27/09/2018 passed by the Tribunal is set aside, the Judgment and order dated 07/04/2017 passed by the Tribunal is modified and it is directed that the respondent shall now pay Rs.8,00,000/- to the appellants. It is pointed out that the respondent has already paid amount to the appellants in terms of Judgment dated 07/04/2017 and therefore, now the respondent shall pay balance amount to the appellants within a period of three months from today. Hence, appeal is disposed of.

JUDGE

Choulwar