

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No.5600/2018

Bhagyashri Tayde @ Bhagyashri Savarne Vs. Union of India & Anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Sumesha Chaudhari, Advocate for petitioner.
Mr. Z.S. Shekhani, Advocate for respondent No.1.

CORAM : MANISH PITALE, J.

DATED : NOVEMBER 22, 2019

By this writ petition, the petitioner has challenged order dated 16/02/2018, passed by the Railway Claims Tribunal, Nagpur, whereby, compensation under the provisions of the Railways Act has been awarded to the respondent No.2 and the petitioner, despite being a co-applicant before the Tribunal, has been deprived of the same on the ground that she was not found to be widow of the deceased.

2. In the instant case, one Anil Tayde suffered injuries in railway accident and died on 22/05/2013. The application under the provisions of the said Act, seeking compensation was filed by the petitioner along with the respondent No.2 before the Railway Claims Tribunal. The petitioner claimed to be the widow of the deceased and the respondent No.2, the mother. It appears that initially both the applicants sought to raise

their grievances together before the Tribunal, but, later respondent No.2 (applicant No.2 before the Tribunal), claimed that the petitioner herein had no concern with the deceased and that, therefore, the compensation under the provisions of the said Act was payable only to the respondent No.2.

3. The petitioner placed on record affidavit in evidence in support of her claim that she had married the deceased about one month prior to the unfortunate incident and that as his widow she was also entitled to grant of compensation. The petitioner was cross – examined before the Tribunal. There was oral and documentary evidence on record led on behalf of the petitioner in support of her claim.

4. In the impugned order, the Tribunal gave a finding that the petitioner had failed to prove her marriage with the deceased and, therefore, it was found that she was not entitled to the grant of compensation. As a consequence, while holding that the compensation under the provisions of the said Act was payable, the same was granted only in favour of respondent No.2.

5. The petitioner filed the present writ petition, challenging the said order of Tribunal wherein on 27/08/2019, this Court issued notice for final disposal and directed that the Tribunal may not

disburse the amount to respondent No.2.

6. The respondents were served with the notice issued by this Court. While respondent No.1 i.e. Union of India represented through the Central Railways has appeared through counsel, the respondent No.2 has chosen not to appear before this Court despite service.

7. The learned counsel for the petitioner invited attention of this Court to the document on record, including the marriage invitation card showing that marriage took place between the petitioner and the deceased on 05/4/2013. The learned counsel also invited attention of this Court to the statement recorded by the police immediately after the incident, wherein the respondent No.2 herself had stated that the petitioner and the deceased had got married about a month prior to the incident and that, therefore, they were all living together when the incident took place. The impugned order of the Tribunal makes no reference to such material on record while giving finding that the petitioner failed to prove her relationship with the deceased.

8. The learned counsel for the respondent No.1 submits that in terms of the order passed by the Tribunal, amount was deposited by the respondent No.1, although it is not clear whether the same was

disbursed to the respondent No.2.

9. In view of the fact that there was documentary material placed on record by the petitioner to support her case that she was married to the deceased about a month prior to the incident, the Tribunal ought to have considered the same before holding that the petitioner was not entitled to maintain the claim petition under the provisions of the said Act. Before granting entire compensation to the respondent No.2, the Tribunal ought to have considered the said material and then rendered findings as regards status of the petitioner.

10. In view of the above, this Court is of the opinion that the impugned order cannot be sustainable and the writ petition deserves to be partly allowed.

11. Accordingly, the writ petition is partly allowed. The impugned order passed by the Tribunal is quashed and set aside only to the extent of entitlement of the petitioner to the amount of compensation determined by the Tribunal, while rest of the order determining the quantum of compensation is maintained and the matter is remanded back to the Tribunal only to decide the question as to whether the petitioner would be entitled to share in the quantum of compensation.

13. The petitioner shall appear before the

Tribunal on **09/12/2019**.

14. The record which was called by this Court is directed to be sent back forthwith so that it would be received by the Tribunal before 09/12/2019.

15. The Tribunal shall issue notice to the respondent No.2 before considering the aforesaid question on which the present matter has been remanded to the Tribunal.

16. The Tribunal shall make an endeavor to expeditiously dispose of the claim application and in any case dispose of the same within a period of four months from today.

17. The petitioner as well as the respondent No.2 will be at liberty to place on record affidavit and additional documents, if so advised.

18. The writ petition is disposed of.

JUDGE