

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.384 of 2014

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Sunita Devi w/o Late Baijnath Sah @ Baidnath Sah resident of village -
Sahdei Bujurg, PS Desari, Distt Vaishali Bihar.

... .. Appellant/s

Versus

The Union Of India through the General Manager, East Central Railway,
Hajipur (Vaishali).

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Mohan Murari, Adv.
For the Respondent/s : Mr. Raj Kamal, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 30-06-2022

(1) Heard learned counsel for the appellant and
learned counsel for the respondent.

(2) The instant appeal has been preferred against the
order dated 28.4.2014 passed in Claim Application no.OA 0099
of 2005 by the learned Member (Technical), Railway Claims
Tribunal, Patna Bench, Patna whereby the substitution petition
filed on behalf of the appellant was rejected.

(3) The relevant facts in brief are that on 18.1.2005,
the husband of the appellant got on the train no.84235 at Sahdei
station for going to Mahnar. As a result of the rush, he met with
an accident as a result of which he seriously injured his leg and
in an unconscious state he was taken to the Patna Medical
College and Hospital, Patna. An F.I.R. was registered. The



injured husband of the appellant filed an application which was registered as Claim Application no.OA 0099 of 2005 in the Railway Claims Tribunal, Patna Bench at Patna.

(4) The case of the appellant is that inspite of having filed the claim case, the matter was not taken up and the injured husband of the appellant, during pendency of the claim case, died on 1.11.2010. A substitution petition was filed on 11.2.2011, however as the same was misplaced, as directed, another petition praying for substitution was filed on behalf of the appellant on 4.9.2013. By the order impugned dated 28.4.2014, the learned Tribunal rejected the substitution petition filed on behalf of the appellant for substituting her and her children in place of her husband on the ground of delay. It is submitted that inspite of the claim having been filed in the year 2005, the matter was not taken up and in fact the matter was taken up by the learned Tribunal for the first time in the year 2013. Learned Tribunal should have considered the prayer of the appellant for condonation of delay in filing of the substitution petition and in a compassionate manner should have allowed the prayer made therein and should have substituted the applicant along with the others in place of the deceased.

(5) The appeal is opposed by learned counsel appearing



for the respondent. It is submitted that from perusal of the Lower Court records in connection with the claim case filed by the husband of the appellant, it would transpire that although the appellant's husband died on 1.11.2010, the petition for substitution was filed only on 4.9.2013. No petition was filed for condoning the delay in filing of the substitution petition. So far as the claim of the appellant that a substitution petition had been filed on the earlier occasion on 11.2.2011 is concerned, the same is incorrect and is not reflected from the Lower Court records. Learned Tribunal has rightly rejected the substitution petition because of inordinate delay. There is no illegality in the order impugned and it is prayed that the appeal be dismissed.

(6) Having heard learned counsel for the parties and on perusal of the material on record including the Lower Court records, it transpires that the claim case was filed by the husband of the appellant sometime in the year 2005 and the same was registered as Claim Application no.OA 0099 of 2005. Accepting the case of the appellant that her husband died on 1.11.2010, as per her case, the first substitution petition was filed on 11.2.2011. Even accepting the contention on behalf of the appellant that such a petition was filed, still taking the date of death to be 1.11.2010, the same would still be beyond the



period of limitation as provided in Rule 26 of the Railway Claims Tribunal Procedure Rule, 1989 and was admittedly not accompanied with any petition for condonation of delay in filing of the same. Even the substitution petition filed on 4.9.2013 has been filed without any petition praying for condonation of delay in filing of the same. The applicants in the second petition praying for substitution filed on 4.9.2013 are the wife of the deceased ie the appellant herein as also the sons and daughters. None of them have been made party in the instant appeal.

(7) Having heard learned counsel for the parties and having perused the material on record, no petition for condonation of delay in filing of the substitution petition having been filed at any of the two stages, the Court finds no error in the order impugned rejecting the prayer for substitution made on behalf of the appellant.

(8) The appeal is dismissed.

(Partha Sarthy, J)

Saurabh/-

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

