

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.77 of 2015

1. Saharila Begam andanr Wife of Jamil Akhtar mother of the deceased Jawa Praveen.
2. Jamil Akhtar. Son of Late Basiruddin (father of the deceased Jawa Praveen). Both are resident of village - Gamharia, P.S.- Kochadhaman, Distt.- Kishanganj Bihar.

... .. Appellant/s

Versus

The Union Of India

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Krishna Mohan Murari, Advocate
For the Respondent/s : Mr. Anshuman Singh CGC

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

9 08-09-2022 Heard learned counsel for the appellant and learned counsel for the Union of India.

The instant appeal under section 23 of the Railway Claims Tribunal Act, 1987 (hereinafter referred to as 'the Act') has been preferred by the applicants-appellants against the order dated 5.11.2014 whereby the Claim Application no. OA 00377/2005 was dismissed by the learned Member (Technical) RTC, Patna Bench, Patna.

The relevant facts in brief are that on 23.1.2005 the daughter of the applicants met with an accident at the Kishanganj Railway Station while seeing off her relatives as a result of which her right leg was amputated and she subsequently died in course of treatment. An application was



filed by the father, the appellant no. 2. However, the same was dismissed by order dated 5.11.2014.

It is submitted by learned counsel for the appellants that an application (I.A. no. 2246 of 2015) has been filed by the appellants praying therein for condonation of delay of 21 days in filing of the present appeal.

Having heard learned counsel for the parties and taking into consideration the contents of the petition, the delay of 21 days in filing of the appeal is condoned.

On merits it is submitted by learned counsel for the appellants that the accident having taken place in the year 2005, the application had been filed by the appellant no. 2. However, the same was not taken up for consideration by the learned Tribunal for a considerable period and the appellants being from a poor background, could not pursue their case with their counsel. It is submitted that the counsel who was representing the appellant stopped doing proper pairvi in the case and as such on inquiry it finally transpired that the case had been dismissed. It is submitted that from perusal of the order under challenge it would transpire that the FIR, the postmortem report, the final report and the ticket were available on record along with the application filed by the appellant, however, in view of the



applicant not having appeared before the learned Tribunal, the same were not exhibited and were not considered while rejecting the application filed by the appellant no. 2.

It is submitted that the appellants have a good case on merits. They will appear as and when directed by this Court and shall cooperate in the disposal of the application before the learned Tribunal within the time fixed by this Court.

The appeal is opposed by learned counsel appearing for the Union of India. It is submitted that from perusal of the lower Court records it would transpire that the counsel for the applicant had been appearing before the learned Tribunal in the year 2013 and inspite of opportunity having been given and time having been taken he did not adduce evidence. It is further submitted that even from the facts of the case, the case would not fall under section 124A of the Railways Act and no case for grant of compensation is made out by the appellants.

Having heard learned counsel for the parties and on having perused the contents of the petition as also the lower Court records, it transpires that though it is true that the counsel for the applicant appeared on three dates ie. 18.3.2013 on which date the issues were framed, 30.8.2013 and 2.12.2013, however, the next date fixed by the order dated 2.12.2013 in the case by



the learned Tribunal was 12.3.2014. There is no order sheet of the learned Tribunal after the order dated 2.12.2013 and finally the case has been dismissed by order dated 5.11.2014. The Court further finds that, as submitted by learned counsel for the appellants it is correct that the lower Court record contains the first information report, postmortem examination report, the final report, tickets etc, however it is equally true that neither the same were exhibited before the learned Tribunal nor the veracity of the documents were tested.

In view of the facts of the case, the Court is of the opinion that an opportunity should be granted to the appellants to appear before the learned Tribunal with a direction to the learned Tribunal to proceed with the case from the stage of framing of issues and to conclude the same expeditiously preferably within a period of four months.

In view of the above, the order dated 5.11.2014 passed in Claim Application no. OA 00377/2005 is set aside. The appellants are directed to appear before the learned Railway Claims Tribunal, Patna Bench in connection with Claim Application no. OA 00377/2005 within four weeks from today. The learned Tribunal will fix a date in the appeal and shall proceed to conclude the case within a period of 4 months from



the date fixed.

The appeal stands disposed off with the above observations and directions.

Let the lower Court records be sent back immediately to the learned Tribunal.

(Partha Sarthy, J)

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