

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

FIRST APPEAL NO. 37 OF 2021

Sibriya W/o Plasidiyus Toppo
 Age about 69 years, Occu. Nill
 R/o Dipatoli, Girang, Gholeng,
 Jashpur, Dist. Jashpur
 (C.G.) - 496338

...APPELLANT

VERSUS

Union of India,
 Through The General Manager,
 South East Central Railway,
 Bilaspur (C.G.)

...RESPONDENT

Shri R.G. Bagul, Advocate for appellant/applicant.
 Shri N.P. Lambat, Advocate for respondent.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 03/02/2022

ORAL JUDGMENT :

. Heard. With consent appeals are taken up for final hearing, mainly in view of the narrow controversy involved in the matter.

2. By this application, the applicant has sought expeditious hearing of the appeal. Shri Lambat, learned Counsel for the respondent states that considering the narrow controversy involved in the appeal, matter can be disposed of today itself. Hence with consent, the appeal is heard finally.

3. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

4. By this appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987, the appellant has challenged the judgment dated 19/03/2020 whereby the Railway Claims Tribunal, Nagpur has dismissed the claim application filed by the appellant, in view of the death of her husband in an untoward incident.

5. The appellant who claims to be the widow of the deceased Plasidiyus Toppo claimed that on 27/08/2018, she and her husband were traveling from Bilaspur to Amritsar Swarn Mandir by special train under Chattisgarah Mukhyamantri Tirth Yatra Yojana. The appellant had claimed that on 28/08/2018, while her husband was washing his hands at wash basin near the door, that the train gave a severe jerk,

due to which her husband fell down from the running train and died on the spot. The appellant claimed that her husband was a bonafide passenger and that his death was caused in an untoward incident. The appellant, being the widow of the deceased, filed the claim application for statutory compensation.

6. The respondent contested the claim mainly on the ground that Plasidiyus Toppo was not a *bona fide* passenger and that his death was not caused in an untoward incident.

7. The Tribunal framed the issues and after considering the evidence adduced by the parties, dismissed the claim application solely on the ground that despite the opportunity given, the appellant had failed to implead her nine children in the claim petition. The Tribunal held that the appellant is not the sole dependent and hence dismissed the petition without recording findings on the issue of the deceased being a bonafide passenger and further without deciding whether the death of the deceased Plasidiyus Toppo was caused in an untoward incident.

8. Shri Bagul, learned Counsel for the appellant submits that the appellant is the widow of the deceased. He states that the deceased

and appellant have nine children i.e. four daughters and five sons. He submits that the appellant had already made a statement in her affidavit that all the daughters are married and that the sons are major and are not dependents. He therefore submits that the Railway Tribunal could not have dismissed the claim application solely on the ground of non joinder of the children.

9. Shri Lambat, learned Counsel for the respondent submits that all the nine children of the deceased were necessary parties and hence the Tribunal was justified in dismissing the claim petition.

10. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties. It is to be noted that the appellant had filed the application for compensation under Section 124-A of the Railway Claims Tribunal Act, in view of the death of her husband in an untoward incident. The appellant being the widow is a dependant within the meaning of Section 123(b) (i) of the Railways Act, 1989.

11. It is further to be noted that the appellant had filed her affidavit-in-evidence wherein she had stated that she has nine children i.e. four daughters and five sons. She has stated that all the four

daughters are married and her sons are majors and are earning. Feedelius Toppo s/o Plasidiyus Toppo, the elder son of the deceased has also filed an affidavit before this Court stating that all the four daughters are married and the five sons of the deceased are major and are earning their livelihood and were not dependant on the deceased.

12. It is pertinent to note that Clause (d) of Section 125 of the Railways Act contemplates filing of such application by any dependant of the deceased. Sub-Section 2 of Section 125 further stipulates that every application by a dependant for compensation under this Section is for the benefit of every other dependant. Hence, the Tribunal could not have dismissed the application for non joinder of other dependants of the deceased. The impugned order, therefore cannot be sustained. Since the Tribunal has not recorded any findings on the other issues, the matter needs to be remitted for adjudication on merits.

13. Hence, the Appeal is allowed. The impugned order is set aside. The matter is remanded to the Railway Claims Tribunal with directions to hear the parties and record the findings on the issue Nos. 2 and 3 and to decide the matter in accordance with the law preferably within a period of two months from the date of the receipt of this order.

14. The Appeal stands disposed of in above terms. The Civil Applications, if any, stand disposed of.

JUDGE

R.S. Sahare