

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5535 of 2023

1. Vinod Kumar, Son of Late Jhingan Yadav, Resident of Village Paniyalachak, P.O.- Pattam, P.S.- Naya Ramnagar, District- Munger.
2. Nitu Kumari, Daughter of Late Jhingan Yadav, Resident of Village Paniyalachak, P.O.- Pattam, P.S.- Naya Ramnagar, District- Munger.

... .. Petitioner/s

Versus

1. The Union of India through Ministry of Railways, Government of India, New Delhi.
2. The General Manager Railway, Eastern Railways, Kolkata.
3. The Divisional Rail Manager, Eastern Railway, Maldah Town, P.O. Maldah, District- Maldah (West Bangal).
4. The Divisional Personnel Officer, Eastern Railway, Maldah Town, P.O. and District- Maldah (West Bangal).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S. D. Sanjay, Sr. Adv. Mr. Mohit Agrawal, Adv. Mr. Ramadhar Sekhar, Adv. Mr. Lokesh Kuamr, Adv. Mr. Vishal Kumar, Adv.
For the Railway(UOI)	:	Mr. Awadhesh Kumar Pandey, Sr. CGC Mr. Rakesh Kumar Sinha, Adv

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

11 06-12-2023 Learned counsel appearing on behalf of the petitioners seeks permission to correct the age of the petitioner no. 1 in the cause title.

2. Permission granted.

3. Learned counsel appearing on behalf of the petitioners is permitted to correct the age of the petitioner no. 1 in the cause title.

4. Heard learned counsel for the parties.



5. The present writ petition has been filed for the following relief(s):-

“a) For quashing the Order dated 31.12.2021 passed in W.C. Case No. 11/2018 issued vide memo No. 1418 dated 31.12.2021 passed by deputy Commissioner, Labor Court Commissioner, Munger as the same has been passed without considering that ex-gratia lumps-sum compensation is payable after adjustment of compensation paid under the Workman Compensation Act in terms of Letter No. 04/2011 dated 10.01.2011, LAW.

b) For direction upon the Respondent Railways to pay Ex gratia lump sum Compensation and additional Insurance claim to the Petitioners (descendant of deceased employee of the Respondent Railway who died when was on duty) with interest from the date of death of the father of the petitioners as the petitioner died performance official duty;

c) For direction upon the Respondent Railways to pay one day salary of the father of the petitioner for the 16.07.1999 (along with interest till date) being the date of death as the deceased father of the petitioners was declared to be on duty on the said date by the learned Labour Commissioner, Munger Division, Begusarai vide order dated 13.09.2011 passed in Workman Compensation Case No. 13 of



2010;

d) For direction upon the Respondents to calculate and pay (with interest) the difference of family pension to be paid to the Petitioners in terms of Railway rules as the same was calculated considering normal death of the father of the petitioners and not considering him to have died on duty which was subsequently declared by the Learned Labour Court, Munger,

e) For direction upon the Respondent Railways to pay the arrears of family pension in terms of Railways Rules which accrued in favour of the mother of the petitioners (now deceased) as the same was arbitrarily not paid during the lifetime of the mother of the petitioner,

f) For direction upon the Respondents to pay the arrears of the family pension due to the Petitioners as the Respondents have paid general family pension to the Petitioners being the minor dependents of the deceased employer at the relevant time to be computed on the slab applicable to an employee who dies on duty as the father of the Petitioners has died while performing duty;

g) For holding that the Petitioners are entitled for all family pension compensation and also the ex-gratia lump sum compensation amount and additional compensation claim on the account of death of the father of the Petitioners who died while on duty due to rail accident as the same



have been denied by the Respondents for the reasons best known to them

h) For direction upon the Respondents to grant all benefits to the Petitioners in terms of Railway Rules as the father of the Petitioner had died on duty; for any other relief or reliefs as your lordship may deem fit and proper in the facts of the present case.

6. Learned counsel appearing on behalf of the petitioners has stated that the father of the petitioners has met with an accident while on duty and died in harness. That the petitioners were granted statutory compensation under various enactment pursuant to the order dated 13.09.2011 passed by the Labor Commissioner, Labor Commission, Munger Division. Learned counsel has stated that the Labor Commission, Munger has given a categorical finding that the father of the petitioners has died in harness while on duty and the said finding has become a final. That the respondents have not challenged the order by way of appeal. Further it is stated that the compensation payable to the petitioners pursuant to the said order has also been paid. Learned counsel has stated that the petitioners are also entitled to payment of Ex gratia lump sum compensation under the Workmen's Compensation Act but the same was not paid. The authorities in spite of making several



requests have not paid the said compensation till date. That the petitioners filed W.C. Case No. 11 of 2018 before the Labor Commissioner, Munger for payment of the Ex gratia lump sum compensation amount. That the Labour Commissioner, Munger while holding that the father of the petitioners died while on duty has refused to grant the relief sought on the ground that once compensation is paid under the Workmen Compensation Act, no other compensation can be paid. The petitioners left with no other option have preferred this CWJC. Learned counsel appearing on behalf of the petitioners has also stated that the respondents, Government of India, Ministry of Railways, have themselves issued clarificatory order dated 10.01.2011 (Annexure 13), wherein it was clarified that the earlier orders whereby the compensation payable under the Workmen's Compensation Act was sought be reduced from the lump sum amount payable as Ex-gratia was withdrawn. Therefore, the learned counsel seeks a direction from this Hon'ble Court to set aside the order dated 31.12.2021 passed by the Labor Commissioner, Munger and direct the Respondents Nos. 3 and 4 to consider the case of the petitioners and pay the lump sum compensation amount due under the Workmen's Compensation Act.



7. Per contra, the learned counsel appearing on behalf of the respondents relying on the counter affidavit has stated that the Workman was not on official duty at the time of death. Therefore, the lump sum compensation is not liable to be paid. Learned counsel has stated that whatever statutory benefits, the petitioners were entitled after the death of the employee have already been paid and nothing remains to be paid to the petitioners. The respondents making a bald statement in the counter affidavit stating that the father of the petitioners was not on duty at the time of the accident have neither filed any proof to that effect nor denied the fact that the order dated 31.12.2021 passed by the Deputy Labour Commissioner (Annexure 12) and the finding given in the said order have become final.

8. A reading of the order dated 31.12.2021 passed in W.C. Case No. 11 of 2018 by the Deputy Labour Commissioner (Annexure 12), it is seen that a categorical finding has been given stating that the father of the petitioners died while on duty, however the relief was not given only on the ground that once the petitioners are paid compensation were paid under the Workmen Compensation Act. The Ex gratia lump sum compensation cannot be ordered to be paid with all due respects to the authority who has passed the order dated 31.12.2021, the



said logic is against the spirit of the Act and the provisions of the Act. Once it is held that the workmen has died while on duty whatever statutory benefits that the family members of the deceased are entitled to the same have to be paid. The compensation cannot be denied on the ground that the other benefits under the Act have already being paid. A perusal of the provisions of the Workmen Compensation Act does not reveal that any embargo has being made for payment of lump sum Ex gratia compensation, if the other statutory benefits are given. Moreover, as seen from the Memo No. E(W)2007/CP-1/37 issued by the Government of India, Ministry of Railways (Annexure 13), the Ex-gratia compensation amount payable to the deceased workmen's family, under Section 124 of the Railways Act specifically clarified that the earlier order directing that the compensation payable under the Workman's Compensation Act should be reduced from the lump sum amount payable as Ex-gratia compensation was withdrawn and that the aggregate amount payable was increased from Rs.10 lakh to Rs.20 lakh in each individual case with effect from 01.01.2006. This clarification makes it abundantly clear that the family of the deceased employee who has died in an accident while on duty is also entitled to the Ex gratia lump sum



compensation besides the other statutory benefits available under the said Act.

9. Having regard to the above, the impugned order dated 31.12.2021 is set aside and the writ petition is disposed off with a direction to the Respondent Nos. 3 and 4 to consider the case of the petitioners afresh duly taking into considering the finding given by the Deputy Labour Commissioner vide order dated 31.12.2021 (Annexure 12) that the father of the petitioner died while on duty and also the clarification issued by the Government of India and pass the necessary orders for payment of the Ex-gratia lump sum compensation amount payable to the petitioners. The entire exercise shall be completed as expeditiously as possible preferably within a period of twelve weeks from the date of receipt of a copy of this order. Any order passed shall be communicated to the petitioners.

10. With the above directions, the present writ petition stands disposed off.

(A. Abhishek Reddy , J)

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