IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10062 of 2022

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Beena Bhattacharya, W/o Late Soumendu Bhattacharya, presently R/o Flat No. I-1571, 10th Avenue, Sanskriti Vihar, Gaur City 2, Sector 16 C, Greater Noida West, Gautam Budha Nagar, U.P., P.S. and District-Gautam Budh Nagar, U.P.

... ... Petitioner/s

Versus

1. The Union of India through The General Manager, East Central Railway, Hajipur, P.S. Hajipur (Town), District-Vaishali, Bihar, PIN 841001.
2. The General Manager (Personnel), East Central Railway, Hajipur, P.O.-Digghi Kala, P.S. Hajipur (Town), District Vaishali at Hajipur, Pin Code-841001 (Bihar).
3. The Chief Commercial Manager, East Central Railway, Hajipur P.S. Hajipur (Town), District Vaishali.
4. The Financial Advisor and Chief Accounts Officer, East Central Railway, Hajipur P.O. Digghi Kala P.S. Hajipur (Town), District Vaishali.
5. The Divisional Railway Manager, East Central Railway, Sonepur, P.O. and P.S.-Sonepur, District Saran, Chapra, PIN 841101.
6. The Senior Divisional Personal Officer, East Central Railway, Sonepur, P.O. and P.S.-Sonepur, District Saran, Chapra, PIN 841101.
7. The Senior Divisional Engineer (Coordination), East Central Railway, Sonepur, P.O. and P.S.-Sonepur, District Saran, Chapra, PIN 841101.
8. The Senior Divisional Financial Manager, East Central Railway, Sonepur, P.O. and P.S.-Sonepur, District Saran, Chapra, PIN 841101.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Santosh Kumar, Advocate
For the Respondent/s : Mr. Rakesh Kumar Sinha, CGC

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 10-01-2023

Heard learned counsel for the petitioner and learned counsel for the respondents-Railways.

2. The present writ petition has been filed claiming

the following reliefs :-

> *"(i) For quashing of Order dated 12.10.2018 passed by the Ld. Judicial Member, the Central Administrative Tribunal, Patna Branch, patna in OA/050/00090/2018, whereby and whereunder the Ld. Tribunal has not found infirmity in the decision dated 14/11/2017 (Annexure-10) issued by the Respondent No.6 for compensation/Ex-gratia payment on account of death of deceased employee/husband of the petitioner have not found it proper to pay compensation to the petitioner under the Workmen Compensation Act.*
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> *(ii). For quashing of the consequential letter No. E/207/SS Bhattacharya/Engg/settle/SEE dated 26/12/2018 issued by the Respondent No. 06 (Annexure-12).*
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> *(iii). For considering the fact supported by the records that the deceased employee/husband of the Petitioner died in course of his duty, the Report of the Railway Authorities dated 15.06.2016 (Annexure-5), the Rail P.P Maheshkhoot U.D. Case No. 04/16 dated 15/06/2016 (Annexure-4),*

also the death report issued by the Additional Chief Medical Superintendent, East Central Railway Hospital, Garhara Dated 15/06/2016 (Annexure-5) and the revised order dated issued vide RBE No. 139 of 2016, Letter No. E(W)2016/EG-1/4 New Delhi, Dated 25/11/2016 (Annexure 13).

(iv). For commanding the Respondent No.06 to pay the compensation/Ex gratia payment on account of death of the deceased employee, who died in the performance of their bona fide official duties.

(v). For any other appropriate writ/writs order/s direction/s for which the writ petitioner would be found entitled under the facts and circumstances of the case.

3. The short facts, according to the petitioner, are that the husband of the petitioner namely, Soumendu Bhattacharya while working as Senior Section Engineer (Works/Planning), East Central Railway, Sonepur on 14.06.2016 was deputed along with the Senior Divisional Engineer-2, East Central Railway, Sonepur to participate in CRS Kolkata Inspection at Narayanpur Gauchhari Section scheduled to be held on

15.06.2016. On 15.06.2016, while the husband of the petitioner was performing the technical work at Narayanpur-Gauchhari Section along with other staffs, he suddenly fell down at 7:15 hours and got injured. The Pharmacist of the Railway Hospital immediately gave him the first aid. When his condition deteriorated, he was referred to Civil Hospital, Begusarai from where he was referred to Heart Care Hospital, Begusarai and lastly he was referred to Global Hospital, Begusarai where he succumbed to his injuries during treatment. The petitioner being wife of the late employee lodged an FIR on 15.06.2016 bearing Rail P.P Maheshlhoot U.D. Case No. 04/16 stating therein that her husband was on duty since last night 14.06.2015 and on the next morning in course of his duty, he suddenly fell down and became unconscious and was taken to the Hospital and he died during treatment. The Post Mortem of the husband of the petitioner was conducted on 15.06.2016, which shows that the deceased sustained external injuries followed by Heart and blood clot present inside the left ventricles. A combined Report dated 15.06.2016 has been prepared by the officials concerned of Railway with opinion that the death occurred during the course of performance of railway duty. The husband of the petitioner died in course of his duty of measurement work, when the deceased suddenly fell down on the Railway Track and sustained injuries. The Rail Police after enquiry/investigation of the matter submitted its Final Report on 30.06.2016 before the court of learned Railway Magistrate.

4. The petitioner submitted a representation before the respondents for payment of *ex-gratia* compensation to the tune of Rs.20 lacs on account of the death of her husband due to accident during course of duty. The respondent no.6 rejected the claim of the petitioner on 14.11.2017 vide its order dated 14.11.2017.

5. Being aggrieved by the order of the Respondent No.06, the Petitioner filed the O.A. bearing OA/050/00090/2018 before the Central Administrative Tribunal, Patna Branch, Patna. The respondents appeared and filed their written statements dated 23.03.2018 opposing the compensation/*ex-gratia* payments to the petitioner. The learned CAT heard the matter at length and rejected the claim vide order dated 12.10.2018 with a direction that "However, since it is noticed that the applicant was on duty and admittedly he died while on duty, it is open for the respondents to extend welfare benefits under the welfare scheme for the dependent of the deceased employee who died in harness by way of lump sum *ex-gratia* compensation to the

family members, if impermissible under welfare scheme of the respondents”. In terms of the aforesaid direction, the respondent authorities has considered the case of the petitioner and held that the petitioner was not liable for payment of compensation and lump sum *ex gratia* amount as per their rule vide letter dated 26.12.2018. Hence, the present writ.

6. The learned counsel for the petitioner has submitted that the husband of the petitioner was on duty when accident took place and due to the injury, he died. The respondents constituted a three member committee to inquire about the untoward incident and the said committee submitted its enquiry report that the husband of the petitioner on 15.06.2016 during CRS inspection fell down on rail track and due to that he sustained serious injury and he was hospitalized where he was declared dead. The learned counsel for the petitioner has further submitted that the reasons stated by the respondents in denying the claim of the petitioner are contrary to the materials on record. There is sufficient evidence to show that the death took place due to accident on railway track while the employee was on duty. The learned counsel for the petitioner has further submitted that in the facts and circumstances of the case, the petitioner is entitled for ex-gratia compensation.

7. *Per contra*, learned counsel for the respondents has opposed the contention of the petitioner. He has submitted that there is no dispute about the death of the husband of the petitioner which took place on 15.06.2016 due to heart attack at the time he was deputed at Gauchhari for the CRS inspection along with other staff. In the post mortem report, the cause of the death was Acute Myocardial Infarction (Heart attack). He has further submitted that Section 3 (1) of the Workmen Compensation Act, 1923 provides that if personal injury is caused to a workman by an accident arising out of and in the course of his employment, his employer shall be liable to pay compensation, but the husband of the petitioner was not a workman as per definition of Workman in Workmen Compensation Act, 1923. The death was not due to any accident. Therefore, the petitioner is not liable for payment of compensation as per rule. The committee has only stated that Late Soumendu Bhattacharya lost his balance and fell down on the railway track and sustained some injury. The committee has not stated that the death took place due to any injury. The injury was found to be minor and due to the injury sustained by the husband of the petitioner, the death cannot be possible. As such, the respondents being employer has no liability for any

compensation. However, all the admissible dues were released immediately in favour of the petitioner. Apart from that, the son of the deceased employee namely, Bhaskar Bhattacharya was appointed on compassionate ground.

8. Having considered the material available on record and further considering the rival submission, in the present writ petition, the core question which arises is whether the petitioner is entitled to *ex-gratia* lump-sum compensation or not in the given facts and circumstances.

9. This Court on 01.12.2022 has passed the following order :-

> *"Question for consideration in the present writ petition is whether petitioner is entitled to ex-gratia lumsump compensation or not?*
>
> *Perusal of departmental communication dated 14.11.2017 it is a recent order. There is no reference to RBE285/1999 issued by the Senior Divisional Personnel Officer E.C. Railway/Sonpur. The respondent are relying on official memorandum relating to payment of ex-gratia to such of those persons who have killed by armed hostile, extremists, terrorist etc., and with reference to the policy decision of the Government of India that if Government employee died while he was in-service, while he was on duty.*
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> *In this regard, all the schemes introduced*

by the Government of India from time to time shall be taken into consideration including RBE No. 139/2016 dated 25.11.2016 vide Annexure-13 and passed a detailed speaking order as to how the petitioner is not entitled to ex-gratia amount. Such speaking order shall be passed and place it on record before next date of hearing.

Relist this matter on 03.01.2023."

10. Pursuant to the aforesaid order, a supplementary counter affidavit on behalf of the respondents has been filed. In paragraph 4, it is stated that "in compliance to the order dated 01.12.2022 passed by the Hon'ble High Court, Patna in CWJC No. 10062 of 2022, speaking order dated 28.12.2022 has been passed, wherein, all the schemes for payment of Lump- Sum Ex Gratia Compensation introduced by the Govt. of India from time to time, including RBE No. 139/2016 dated 25.11.2016 have been taken into consideration". In paragraph 12, it is stated that "thus in the present case, the petitioner is not entitled for grant of lump sum ex gratia compensation as per rule, in the circumstances discussed above. The order passed by the Hon'ble Court stands complied with accordingly".

11. It is not in dispute that the husband of the petitioner suddenly lost his balance and fell down on the railway track while on duty at Gauchhari for the CRS inspection along with

other staff on 15.06.2016. Further, the post mortem report shows ante-mortem injuries suffered by the husband of the petitioner. Now, the government scheme, brought out in Office Memorandum dated 11.09.1998 and modified from time to time, provides payment of ex-gratia lump-sum compensation in certain specified circumstances to the Central Government civilian employees who die in harness in performance of their bonafide duties under various circumstances and one such circumstance is that the death occurred due to accident in the course of performance of duties.

12. The contention of the respondents is that the death of the husband of the petitioner was due to Acute Myocardial Infarction (Heart Attack) and the injuries on the body of the husband of the petitioner were minor injuries and the death was impossible from such injuries. Now, the office memorandum as mentioned above only talks about accidental death in the course of performance of duties. On the other hand, accidental death means a death that is not intended, expected or anticipated. It is admitted fact that the husband of the petitioner suffered heart attack after accidental fall and the injuries are ante-mortem. Death of the husband of the petitioner might have occurred due to Acute Myocardial Infarction (Heart Attack). But the same

occurred only after the husband of the petitioner suffered accidental fall. Moreover, there has nowhere it is mentioned anything about the nature of injuries suffered by the deceased employee to enable his legal heir to claim *ex-gratia* lump-sum compensation in case the death occurred due to accident in course of performance of duties.

13. It is also a fact that a combined Report dated 15.06.2016 has mentioned the fact about death occurred during the course of performance of railway duty. It is also a fact that while the husband of the petitioner was performing the technical work at Narayanpur-Gauchhari Section along with other staffs, he suddenly fell down at 7:15 hours and got injured. The Pharmacist of the Railway Hospital immediately gave him the first aid. When his condition deteriorated, he was referred to Civil Hospital, Begusarai from where he was referred to Heart Care Hospital, Begusarai and lastly he was referred to Global Hospital, Begusarai where he succumbed to his injuries during treatment. So it can be said that the accidental fall lead to a chain of events which ultimately resulted the death of the husband of the petitioner. Further the fact is not to be lost sight of that office memorandum regarding *ex-gratia* lump-sum is part of welfare scheme of the government and has been

provided to alleviate the hardship suffered by the survivors of the civilian employees. So, in view of the aforesaid discussion, we are unable to agree with the conclusion reached by the learned CAT.

14. In the light of discussion made hereinabove and under the facts and circumstances of the case, the present writ petition deserves to be allowed and is accordingly allowed. The order of learned CAT dated 12.10.2018 and the letter dated 26.12.2018 issued by the respondent no.6 as well as the order dated 28.12.2022 passed by the Divisional Personnel Officer (IC), E.C. Railway, Sonepur are quashed and set aside.

15. This Court directs the respondents to pay the *ex-gratia* lump-sum compensation amount to the petitioner in accordance with law within a period of three months from the date of receipt/production of a copy of this judgment.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	13.01.2023
Transmission Date	N.A.