

02.07. 2023

item No.6

n.b.

ct. no. 551

FMA 2881 of 2016

with

IA No. CAN 2 of 2011(Old No. CAN 11384 of 2011)

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CAN 3 of 2020(Old No. CAN 2002 of 2020)

(not here)

Nurbanu Bibi

Vs.

Union of India & Ors.

Mr. Supritim Dhar,

Mr. Kazi M. Rahman,

.....for the appellant.

Mr. Pradip Kumar Das,

Mr. Chirantan Sarkar,

... for the respondent.

The instant appeal has been preferred against the judgment and order dated December 8, 2010 passed by the learned Judge, Railway Claims Tribunal, Kolkata in claim application No. O.A.(11U)/198/2008. The present appellant being the claimant filed one application under Section 124A of the Railway Claims Act, 1989 praying for compensation on account of death of her husband namely, Ajumuddin Mia in an untoward incident of falling from the train. The union of India contested the matter before the learned Tribunal. After the hearing of both the parties and after receiving the evidence on record both oral and documentary, learned Tribunal has dismissed the claim petition. Hence this appeal.

It appears from the impugned judgment that the learned Tribunal has attended in the finding that the victim was a bona fide passenger in the train and he died in an untoward incident. The claim application was only

dismissed on the ground that the identity of the present claimant to be the wife of the deceased is not convincing.

Learned advocate for the claimant submitted before the court that the learned Tribunal has committed an error for not considering the entire materials on record. The present appellant/claimant is married wife of the deceased and she submitted the application with proper form. The Voter Identity Card of both the claimant and the deceased were filed before the learned Tribunal, which was not considered by the learned Tribunal, for which he came to an erroneous finding. It is the submission of the learned advocate for the appellant that the impugned judgment should be set aside and order of appropriate compensation may be passed in favour of the present claimant/appellant..

Learned advocate appearing on behalf of the Union of India submitted before this Court that the learned Tribunal has committed no error. After the said accident, the police authority had conducted inquest over the death body of the victim, where in LTI of the wife of the deceased was taken viz. Jannu Bibi but the Nurbanu Bibi. the present appellant is not the wife of the deceased. He submitted that the application filed by the claimant under Order 41 Rule 27 of the Code of Civil Procedure in this appeal is not maintainable.

Heard the learned advocates and perused the materials on record also perused the application filed by

the appellant under Order 41 Rule 27 of the Code of Civil Procedure. The application being CAN 3 of 2020 under Order 41 Rule 27 of the Code of Civil Procedure is supported by a copy of Voter Identity Card of the present appellant. It appears that the copy of Voter Identity Card was filed along with claim application before the learned Tribunal.

During the cross-examination of the appellant who appears before the learned Tribunal as AW 1, she specifically stated that she is wife of the deceased and she produced the Voter Identity Card. The Voter Identity Card was tendered before the learned Tribunal but was not marked as exhibit.

It appears to me that the learned Tribunal has committed an error not considering the Voter Identity Card of the present appellant. It further appears to me that the Voter Identity Card was prepared in the year 1005, much prior to the alleged accident. The Voter Identity Card was issued by the Election Commission of India which mentioned the husband's name of the present appellant to be Ajimuddin Miya. The respondent Union of India never produced any document to disprove the Voter Identity Card of the appellant.

I make it clear that the note in the inquest report by taking LTI of one person namely, Jannu Bibi to be the wife of the deceased Ajimuddin Miya is not sufficient proof to deny the claim of the present claimant. The present

appellant filed claim form before the Tribunal by putting her LTI. To disprove the claim of the appellant the LTI of the appellant may be verified by the Railway Authority with the alleged LTI in the inquest report. No such steps was taken by the respondent. Moreover, the evidentiary value of voter I-Card is much higher than the stray note on inquest report. The application under Section 41 Rule 27 CPC appears to me justified to be accepted at this stage. The compensation has to be granted according to the law to the original dependent. The present appellant appears to me the wife of the deceased. Thus, I find no justification to deny her claim at this juncture. After considering the entire materials, in my view, the impugned judgment passed by the learned Tribunal in respect of issue no.1 is erroneous. The issue should have been decided in favour of the claimant. Thus, the claimant/appellant is entitled to get the compensation.

By virtue of the decision of the Hon'ble Supreme Court in **Radha Yadav** and **Rina Devi** the present appellant is entitled to get the compensation amounting to Rs.4,00,000/- along with the interest of 12% per annum from the date of filing of the claim application. If the interest along with principal appears to be less than Rs.8,00,000/- then the compensation should be at least Rs.8,00,000/- and if the compensation along with interest appears more than Rs.8,00,000/- then the higher value of compensation should be awarded.

The respondent/Union of India is directed to pay the compensation through the office of the learned Registrar General, High Court, Calcutta within six weeks from the date of passing of this order, on such deposit the appellant is at liberty to withdraw the same according to prevalent rules.

Accordingly, FMA 2881 of 2016 is disposed of.

Connected applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)