



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

FIRST APPEAL NO. 139 OF 2022

APPELLANT
 (Original applicant)

- : 1. Shri Ganj Ward Maa Vaishno Seva Samittee, Gondia, having registered office at Goyal Chowk, Ganj Ward, Kudwa Line, Gondia- 441601, acting through its President Shri Ramakant Kamalkishor Agrawal, Aged about 52, Occupation: Business, having office at Goyal Chowk, Ganj Ward, Kudwa Line, Gondia- 441601

//VERSUS//

RESPONDENTS
 (Original Respondent)

- : 1. The Union of India, through General Manager, S.E.C. Railway, Bilaspur
 2. Chief Operations Manager, S.E.C. Railway, Gondia

Shri Atul Pande, Advocate for appellant.

Shri P.V. Navlani, Advocate for respondents.

CORAM : G. A. SANAP, J.

DATED : 29th JANUARY, 2024

ORAL JUDGMENT

1. Heard finally with the consent of learned Advocates for the parties. Perused the record and proceedings.

2. In this appeal, filed under Section 23 of the Railway Claims Tribunal Act, 1987 (for short “the Act of 1987”), challenge is to the judgment and order dated 23.10.2019 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the Tribunal dismissed the claim application made by the appellant/claimant.

3. With the able assistance of learned Advocates for the parties, I have gone through the record and proceedings. On going through the record, I am satisfied that this is a fit case to set aside the order passed by the Tribunal and remand the claim application to the Tribunal for fresh decision, in accordance with law.

4. Perusal of the impugned order would show that the evidence adduced by the appellant and the respondents was not taken into consideration. Similarly, the issues framed were not reproduced in the order. No specific finding was recorded by the Tribunal, on each issue. It is seen that on the date of the argument, the Advocate for the applicant was absent. The Tribunal, in the absence of the Advocate, proceeded to pass this order, which, in my view, is erroneous and cannot be sustained under the law. The Tribunal had two options, namely either to dismiss the claim

application in default or to decide the claim application in accordance with law on merits by taking entire evidence into consideration. In this case, the Tribunal opted to decide the claim in the absence of the Advocate for the applicant. Learned Tribunal proceeded on the assumption that in the absence of the Advocate on the date of the argument, the Tribunal was not duty bound to consider the evidence and recorded a finding on all the issues. In my view, therefore, this order which has been passed without analyzing the evidence on record cannot be sustained. The order deserves to be set aside. Accordingly, I pass the following order:-

5. First appeal is **allowed**.

i) The order dated 23.10.2019 passed by Railway Claims Tribunal, Nagpur Bench, Nagpur is set aside.

ii) Claim application is restored.

iii) The claim application is sent back to the Tribunal for deciding it afresh on the basis of the available evidence.

6. The Advocates for the parties submit that they would appear before the Tribunal on **05.02.2024** at 11.00 AM. The Advocates for the parties shall appear before the Tribunal on **05.02.2024** at 11.00 AM. The record and proceedings be sent

back immediately to the Tribunal. The Tribunal shall decide the claim application afresh within two months.

7. First Appeal stands disposed of. No order as to costs.
Pending applications, if any, stand disposed of.

(G. A. SANAP, J.)